

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 3970/2010 & CrI. M.A. No.18859/2010**

% *Judgment delivered on :23rd August, 2011*

R K SRIVASTAVA Petitioner
Through:Mr.Sudhir Nandrajog, Sr. Adv.
with Mr.A.K. Vali, Adv.

versus

CBI Respondent
Through:Mr.Narender Mann, Adv.

**CORAM:
HON'BLE MR. JUSTICE SURESH KAIT**

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | YES |
| 2. To be referred to Reporter or not? | YES |
| 3. Whether the judgment should be reported
in the Digest? | YES |

SURESH KAIT, J. (Oral)

1. Vide the instant petition, the petitioner is seeking for setting aside the criminal proceedings qua the petitioner/accused No.5 pending before the Special Judge, CBI, Patiala House Courts, New Delhi emanating from case No. RC-DAI-1999-A-0025.

2. Mr. Sudhir Nandrajog, learned Senior Advocate appearing for the petitioner, submits that the Directorate of Revenue Intelligence had issued a Show Cause Notice dated

03.12.1999 under Section 124 of the Customs Act, 1962 and under Rule 16 to the Customs and Central Excise Duties Drawback Rules, 1995.

3. In the aforesaid Show Cause Notice in para 77 it is alleged as under:-

“77. Shri Rajesh Bhasin further stated that wherever his wife Smt. Deepshika Bhasin was promoted as proprietor, she was a proprietor only for record sake and was signing certain documents on his instructions and that all the activities of all the above mentioned firms were being managed by him and that he takes full responsibility for all the activities of the said firms; that garments were being exported to Dubai in the name of these firms and that the garments exported used to be procured by him from the local market against cash payments; that initially no CHA was involved for handling exports in the names of these firms and clearance was being managed by him on self clearance basis; that the exports were under claim of drawback and the bank accounts of these firms were in Corporation Bank, New Delhi.”

In the aforesaid Show Cause Notice in para 80 it is further alleged as under:-

“80. In his further statement dtd. 23.9.99 Shri Rajesh Bhasin was shown statements dtd. 25.2.99, 26.2.99, 18.5.99, 19.5.99, 20.5.99 and 21.5.99 of Smt. Poonam Chaddha, Sr.Br.Manager, Corporation Bank. Shri Rajesh Bhasin stated that he had opened bank account of his five firms in Corporation

Bank, New Delhi, at Preet Vihar Branch and Mundaka Branch and that he knew Smt. Poonam Chaddha as the Branch Manager of Preet Vihar Br., Mundaka. On being asked about the statement of Smt. Poonam Chaddha that he had brought a/c opening forms of all these 16 firms referred earlier except that of M/s Deepshikha Overseas and that the said accounts were opened and operated by/through him; that at the time of opening the Bank account the proprietors of the said firms never visited the Banks and there was no formal introduction; that in the case of the a/c of M/s Deepshikha Shri Karunakaran who was shown as the proprietor of the said firm was with him (Rajesh Bhasin) at the time of opening of the said account; that the subject Bank accounts were operated either through him or on his instructions that on some occasions Shri R.K.Srivastava or Shri Karunakaran used to collect cash/pay orders on his instructions, Shri Rajesh Bhasin replied that he did not go with the account opening forms to Smt.Poonam Chaddha, however, account opening forms in respect of 11 firms mentioned above were brought to him by Shri Gopi Pillai and he (Rajesh Bhasin) telephoned Smt. Poonam Chaddha to open the account of these 11 firms; that the operations of these 11 firms were handled by Shri Gopi Pillai. Shri R.K.Nair and Shri R.K.Srivastava; that the cheque books of these 11 firms were with Shri Gopi Pillai and the accounts of the said 11 firms were opened at the behest of Shri J.P.Singh who had asked him (Rajesh Bhasin) to help Shri Gopi Pillai to open these accounts; that he got opened the accounts of the said 11 firms in Corporation Bank through Mrs.Poonam Chaddha for Gopi Pillai who works for Shri J.P. Singh."

4. It is revealed from the investigation that Shri Rajesh Bhasin is a postgraduate in commerce from Delhi University and had also passed Inter examination for Chartered Accountancy. As such he is a well qualified individual to understand the ramifications of his actions. He is in export business since 1993-94 and thus fully familiar with export/customs procedures, banking formalities etc. It is further alleged that it clearly indicate that he was the chief architect of this fraud in obtaining IEC code for these firms, filling up account opening forms, affixing photographs of persons known to him – his relatives, his employees, people working for him – influencing bank officials in opening and operation of these accounts, procuring old and used garments and their transportation to his godown for packing and further transportation to ICD, TKD, hiring of containers, arranging stuffing of goods into containers without examination, receipt and disposal of amounts received as drawback.

5. I have discussed allegations against some of the other co-accused.

6. Now, I shall discuss the allegations against the

petitioner herein.

7. Ld.Senior Advocate further submits, it is pertinent to mention here that the petitioner was an employee of Sh.Rajesh Bhasin and he was getting a meagre salary of ₹5000/- per month.

8. It is alleged that the petitioner was a close associate of Shri Rajesh Bhasin, who managed the encashment of pay orders on behalf of Shri Rajesh Bhasin, by his act of commission and omission and by aiding, abetting the exporter, for fraudulent export and drawback claim of ₹7,41,75,970/- has rendered himself liable to penal action as per provisions of Section 114(i), 114(iii) and 117 of the Customs Act.

9. This show cause notice dated 03.12.1999 was issued by Additional Director General of DRI.

10. The matter was investigated by CBI and, accordingly, the CBI filed charge-sheet against the petitioner which is pending for adjudication before the trial court.

11. In addition, the Adjudicating Authority passed Order-in-Original No. 4/2007 dated 14.02.2007 passed by the Commissioner of Customs, New Delhi, against the petitioner

also.

12. Being aggrieved, the petitioner challenged the same before the Customs, Excise & Service Tax Appellate Tribunal, (CESTAT) Principal Bench, New Delhi.

13. The contention of the petitioner before the Tribunal was that the penalty has been imposed on the ground that petitioner was close associate of Shri Rajesh Bhasin who is king pin of the fraud as he was an employee of Shri Rajesh Bhasin and he was not a party to the fraud. It was further submitted, that there is no evidence on record which proves that he has withdrawn the money from the bank account, where, the drawback amount was deposited.

14. The contention of the petitioner was that the statement of bank manager specifically mentioned that bank accounts were operated by the concerned person, however, on some occasions Shri Rajesh Bhasin also used to go to the bank for issue of pay orders or for withdrawal of cash as per the instructions of the account holder.

15. Further the contention was that as the supplier of the impugned goods nowhere mentioned the name of the petitioner, hence, this allegation was dropped. It was also

contended that the adjudicating authority's finding was that petitioner was too much associated with Shri Rajesh Bhasin.

16. On the other hand, the contention of the Revenue before the learned Tribunal was that in this case huge amount of drawback has been claimed by the exporter by exporting poor quality of readymade garments. The address of the companies was given in the bank account and other documents of the places which were taken on rent by the petitioner. The contention of the Department was that as the petitioner was assisting Shri Rajesh Bhasin, therefore, the penalty was rightly imposed.

17. After hearing both the learned counsels, the Tribunal has opined as under:-

“6. The contention is that as the appellant was assisting Shri Rajesh Bhasin, therefore, the penalty was right imposed.

7. I find that in this case the adjudicating authority imposed penalty under Section 114 of Customs Act on the ground that the appellant was close associate of Shri Rajesh Bhasin. I have gone through the statement of bank manager and in their statement the bank manager nowhere stated that the present appellant was operating the account of the firms. The only evidence is that the appellant is coming to bank for transactions

as per the instructions of account holder. I have also gone through the statement of Shri Rajesh Bhasin in his statement dated 27.9.99 specifically stated that the premises were taken on rent by him in the name of present appellant as he was working for him. In the adjudication order, the case of the Revenue is that Shri Rajesh Bhasin was the chief architect of this fraud, in obtaining IEC code for these firms, filing up account opening forms, affixing photographs of persons known to him, his relatives, his employees, people working for him. The appellant admitted that he was working for Shri Rajesh Bhasin but there is no evidence that he has been benefited with the fraud or he is party to the fraud. In these circumstances, I find merit in the contention of the appellant. The impugned order is set aside and the appeal is allowed."

18. Ld. Sr. Counsel appearing for the petitioner submits that as per the statement dated 27.09.1999 of Shri Rajesh Bhasin the premises was taken on rent by him in the name of the petitioner as he was working for him. In the adjudicating order, the case of Revenue is that Shri Rajesh Bhasin was the chief architect of this fraud in obtaining IEC code for these firms, filling up account opening forms, affixing photographs of persons known to him – his relatives, his employees, people working for him. The petitioner was working for Shri Rajesh Bhasin and was getting a meagre salary of ₹ 5,000/- per month and, as rightly opined by the

learned Tribunal that there is no evidence against the petitioner that he has been benefitted in any manner or he was party to the fraud.

19. The question before this Court is that when the petitioner has been exonerated from all charges by the learned Tribunal and the same has not been challenged by the Department, therefore, the finding of the Tribunal attained finality. In such a situation, as is challenged in the instant petition, that the prosecution proceedings cannot continue against the petitioner.

20. Ld. Sr. Counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court of India in the case of **P.S. Rajya vs. State of Bihar** (1996) 9 SCC 1 in which case the Supreme Court has observed as under:-

“17. At the outset we may point out that the learned Counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it. On these premises, if we proceed

further then there is no difficulty in accepting the case of the appellant. For if the charge which is identical could not be established in a departmental proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings. In this context, we can usefully extract certain relevant portions from the report of the Central Vigilance Commission on this aspect.

“Neither the prosecution nor the defence has produced the author of various reports to confirm the valuation. The documents cited in the list of documents is a report signed by two engineers namely S/Sh. S.N. Jha and D.N. Mukherjee whereas the document brought on record (Ex. S-20) has been signed by three engineers. There is also difference in the estimated value of the property in the statement of imputation and the report. The document at Ex. S-20 has been signed by three engineers and the property has been valued at Rs. 4,85,000 for the ground floor and Rs. 2,55,600 for the second floor. A total of this comes to Rs. 7,40,900 which is totally different from the figure of Rs. 7,69,800 indicated in the statement of imputation. None of the engineers who prepared the valuation report though cited as prosecution witnesses appeared during the course of enquiry. This supports the defence argument that the authenticity of this document is in serious doubts. It is a fact that the Income Tax Authorities got this property evaluated by S/Sh. S.N. Jha and Vasudev and as per this report at pages 50 to 63 they estimated the property at Rs. 4,57,600 including the cost of land Rs. 1,82,000 for ground and manezaine floor plus Rs. 2,55,600 for first floor and Rs. 20,000 for cost of land). Thus both the

engineers who prepared the valuation report for income tax purposes also prepared the report for the CBI and there is no indication in the subsequent report as to why there is a difference in the value of the property. A perusal of these two reports reveals that there is difference in the specification of the work. The valuation report prepared by Sh. S.N. Jha for ground floor for income tax purposes clearly states that the structure was having "RCC Pillars at places, brick work in cement mortar, RCC lintel, 60 cm walls, 9 inch floor height, 17.6, 8.00, 8.00 inch" but in the report for CBI which was also prepared by him the description is "RCC framed structure open warranted on three sides in the ground floor. Similarly, for the first floor it is written in the report as "partly framed structure and partly load bearing walls, floor heights 3.20 m. Further Sh. S.N. Jha on page 54 of Ex. D-1 had adopted a rate of Rs. 290 per sq. mtr. for ground floor and adding for extra height he had estimated ground floor including mezzanine floor at Rs. 2,02,600. But for the report at Ex. S-20 the rate has been raised to 365 per sq. mtr. There is no explanation for this increase of rate by Rs. 75 per mtr. It is also observed that for the updating of the cost of index 5-% was added to the rate of Rs. 290/as per page 55 of Ex. D-1 by Sh. S.N. Jha but this has been raised to 97% as an escalation to the cost of index in Ex. S-20 without explaining or giving the reasons therefore. It is surprising that same set of engineers have adopted different standard for evaluating the same property at different occasions. Obviously, either of the report is false and it was for the prosecution to suitably explain it. In the absence of it the only inference to be drawn is that report at Ex-S-20 is not authentic. Since the same set of engineers have done the evaluation earlier

and if subsequently they felt that there was some error in the earlier report, they should have explained detailed reasons either in the report itself or during the course of enquiry. Therefore, Ex. S-20 is not reliable.

20. Moreover a perusal of Ex, S-20 reveals that Sh. Vasudev, Executive Engineer has recorded a note as follows:

Hence the valuation of Sh. S.N. Jha was never superceded by any other estimates. As is confirmed from the records, his estimated figures were only accounted for by the ITO Bokaro.

Thus according to Sh. Vasudev, who was the senior-most among the three CPWD engineers who prepared Ex. S-20, the valuation of ground floor remains at Rs. 1,82,600 plus Rs. 20,000 for the cost of land. The first floor as per Ex. S-20 was estimated at Rs. 2,55,600 and a total of all this comes to Rs, 4,57,600 which is very nearer to the declaration of actuals to the income tax authority and also the estimated cost by the Bokaro Steel Township Engineer and the Govt. approved valuer.

21. It is clear from the above discussions that though the document cited in Annexure III is a joint report of two engineers what has been brought on record is a document signed by three engineers the same set of engineers evaluated the property for income tax purposes and there is a vast difference in the specifications and the rates adopted for calculating the cost in Ex. S-20 have been increased without any explanation and none of these engineers were produced during the course of enquiry to clarify the position.

Hence the authenticity of Ex. S-20 is doubtful as claimed by the defence.

22. It needs to be mentioned that the report at Ex. S-20 has evaluated the ground floor at Rs. 4,85,300 and a note to the effect that 10% should be allowed for self supervision and procurement of material has also been recorded at the end. On this basis the net value of ground floor comes to Rs. 4,36,810 (Rs. 4,85,344 Rs. 48,534). The first floor has been evaluated at Rs. 2,55,600 after allowing the allowance for self supervision and a total of both items would come to Rs. 6,62,410. Thus, even the report at ex. S-20 docs not support the prosecution case that as per the report of CPWD Engineers the property is valued at Rs. 7,69,800. As the property assessed by the income lax authority for Rs. 4.67 lakhs and even the valuation given by the Bokaro Steel Township Engineer and the Govt. approved valuer are very nearer to this figure, the reasonable value of this property could only be taken as 4.75 lakhs assessed by the Bokaro Township Engineer on detailed estimate basis.”

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20. At the risk of repetition, we may state that the charge had not been proved and on that basis the appellant was cleared of departmental enquiry. In this connection, we may also usefully cite a decision of this Court in State of Haryana and Ors. v. [Bhajan Lal](#). This Court after considering almost all earlier decisions has given guidelines relating to the exercise of the extraordinary power under Article [226](#) of the Constitution or the inherent powers under Section [482](#) of the Code of Criminal procedure for quashing an F.I.R. or a

complaint. This Court observed as follows:(SCC pp. 378-79, paras 102-3)

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article [226](#) or the inherent powers under Section [482](#) of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and indelible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegation in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section [156\(1\)](#) of the Code except under an order of a Magistrate within the purview of Section [155\(2\)](#) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do

not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR

or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

21. Ld. Sr. Counsel has further relied upon a judgment of this Court in the case of **Anil Mahajan and Anr. Vs. Union of India & Anr.** 2008(101)DRJ 473. In this case, four eventualities were discussed and the principles culled out from various judgments of the Supreme Court were set out while dealing with different situations in such matters which are reproduced as under:-

“1. On the same violation alleged against a person, if adjudication proceedings as well as criminal proceedings are permissible, both can be initiated simultaneously. For initiating criminal proceedings, one does not have to wait for the outcome of the proceedings are independent in nature.

2. The findings in the departmental proceedings would not amount to rest judicata and initiation of criminal proceedings in these circumstances can be treated as double jeopardy as they are not in the nature of "prosecution".

3. In case adjudication proceedings are decided against a person who is facing prosecution as well and the Tribunal has also upheld the findings of the adjudicators / assessing authority, that would have no bearing on the criminal proceedings and the criminal proceedings are to be determined on

its own merits in accordance with law, uninhibited by the findings of the Tribunal. It is because of the reason that in so far as criminal action is concerned, it has to be proved as per the strict standards fixed for criminal cases before the criminal court by producing necessary evidence.

4. In case of converse situation namely where the accused persons are exonerated by the competent authorities / Tribunal in adjudication proceedings, one will have to see the reasons for such exoneration to determine whether these criminal proceedings could still continue. If the exoneration in departmental adjudication is on technical ground or by giving benefit of doubt and not on merits or the adjudication proceedings were on different facts, it would have no bearing on criminal proceedings. If, on the other hand, the exoneration in the adjudication proceedings is on merits and it is found that allegations are not substantiated at all and the concerned person(s) is/are innocent, and the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution cannot be allowed to continue.

The reason is obvious criminal complaint is filed by the departmental authorities alleging violation / contravention of the provisions of the Act on the part of the accused persons. However, if the departmental authorities themselves, in adjudication proceedings, record a categorical and unambiguous finding that there is no such contravention of the provisions of the Act, it would be unjust for such departmental authorities to continue with the criminal complaint and say that there is sufficient evidence to foist the

accused persons with criminal liability when it is stated in the departmental proceedings that ex facie there is no such violation. The yardstick would, Therefore, be to see as to whether charges in the departmental proceedings as well as criminal complaint are identical and the exoneration of the concerned persons in the departmental proceedings is on merits holding that there is no contravention of the provisions of any Act.”

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“14. If on the basis of the evidence and material produced a finding is reached by the adjudicatory authority on merits, it cannot be said to be a technical finding. To accept the plea of learned Counsel for the respondents would imply that the Department would have the right not to produce material before the adjudicating authority, invite an unfavorable decision and yet prosecute the complaint on the basis that it would produce further evidence in support of its case.”

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“18. In the end, it must be observed that in view of the findings of the adjudicatory process, it was a fit case where the Department ought to have conceded the matter on the basis of the settled legal position. The Department had failed in the adjudicatory process against the petitioners and yet continued to contend that the criminal proceedings must go on. The legal system by which we are governed is adversarial in nature, but there is a special responsibility on the Government and public authorities to act reasonably and in a fair manner. The over-burdened legal system

cannot be further burdened by unnecessary cases or contest in the form of luxury litigation on the part of the Government authorities. Learned Counsel for the respondents, in fact, pleaded that no one had even come to instruct him after the brief had been handed over to him, which itself shows the lack of seriousness on the part of the Department in defending the present case. It appears that only the formality of a seal of approval from the Court is sought to be obtained without the Department acting in a just and fair manner resulting in unnecessary wastage of time of the Court. I, thus, deem it appropriate to burden the respondents with costs of the present petition and it is open to the Department to recover the same from any Officer, who may be negligent in the performance of his duties.

19. The petition is accordingly allowed, the impugned order of framing charges is quashed and the petitioners are discharged. The petitioners shall be entitled to costs from the respondents quantified at Rs. 20,000/-."

22. On the other hand, Mr.Narender Mann, learned counsel for the respondent/CBI submits that petitioner has been exonerated by the learned Tribunal only under the provisions of the Customs Act, and not for the offences punishable under Section 420/468/471 of the Indian Penal Code. Therefore, the proceedings pending before the trial court cannot be set aside.

23. Ld. counsel for the respondent has further referred to the order on charge dated 25.04.2009 passed by the Special Judge, CBI, New Delhi and submits that the pay orders issued on the basis of said fake bills were got discounted on commission of one per cent of the value of pay order and as such a wrongful loss of ₹ 2,64,52,950/- was caused to the Customs Department and thereby all the accused including the present petitioner committed offences punishable under Section 120B read with Section 420/468/471 of the IPC. As alleged, the petitioner along with the accused Shri Rajesh Bhasin forged various papers say D-161, D-51, D-52, D-53 and various other papers for the purposes of aforesaid cheating and also used them in causing wrongful pecuniary loss to the Customs Department as aforesaid and thereby committed offences punishable under Section 420/468/471 of the IPC.

24. Further submits that even there are sufficient allegations in the charge-sheet against the petitioner that the petitioner along with other co-accused with common intention to cheat the Customs Department and causing wrongful pecuniary gain to themselves and causing wrongful

pecuniary loss to the Customs Department to the tune of ₹ 2.64 crores by allowing the said private concerns to export rags as premium garments under duty drawback scheme on the basis of forged documents and the acts and omissions committed by the said persons were revealed during the investigation.

25. Further submits that the investigation has revealed that all the five firms were non-existing and proprietor shown in the account of the firms were fictitious persons. Therefore, there are sufficient allegations against the petitioner and the prosecution cannot be quashed against the petitioner. Further submits, that the petitioner is a law graduate and post-graduate who can understand the consequences of the acts and deeds committed along with other co-accused persons.

26. To support his arguments, Id. counsel for the respondent relied upon the judgment of the Hon'ble Supreme Court, on the identical facts, in the case of **State through SPE and CBI, A.P. vs. M. Krishna Mohan & Anr.** AIR 2008 SC 368, wherein the Hon'ble Supreme Court has observed as under:-

“29. Furthermore, the enquiry report has not been brought on record. The factum of exoneration of respondent No. 2 in the departmental proceedings was raised by way of defence. It was, therefore, obligatory on his part to bring on record all the relevant documents, namely, the charge-sheet, the other materials brought on record by the department and the findings of the Enquiry Officer. If the statement of the Investigating Officer (PW-23) is to be accepted and there is absolutely no reason as to why it should not be; there was no occasion for the enquiry officer to have the benefit of the depositions of the purported loanees, namely, PW-21 and PW-22, the opinion of the fingerprint expert and other material brought on record by the prosecution which clearly established the involvement of the respondents herein.

31. The said decision was, therefore, rendered on the facts obtaining therein and cannot be said to be an authority for the proposition that exoneration in departmental proceeding *ipso facto* would lead to a judgment of acquittal in a criminal trial

33. In a case of this nature where departmental proceeding was initiated only as against respondent No. 2, the enquiry officer did not have the benefit to consider all the materials which could be brought on record by the Department in the light of the investigation made by a specialized investigating agency, the evidence of experts and deposition of witnesses to show that forgery of document has been committed by forging thumb impression and handwriting, we are of the opinion that exoneration of respondent No. 2 in the departmental proceedings cannot lead to the conclusion

that he was not guilty of commission of the offences where for he was charged.

34. The High Court also committed a manifest error in purporting to hold that the specimen fingerprints and handwritings could not have been taken from Respondent No. 1.”

27. Ld. Sr. Counsel for the petitioner submits and has clarified that first of all the petitioner is neither a law graduate nor a post-graduate. He further submits that he is not even a graduate. Therefore, the contention of the Id. counsel for the respondent is totally false and it amounts to misleading the Court.

28. Ld. Sr. Counsel for the petitioner submits, since, the adjudication order has obtained finality and the learned Tribunal has exonerated the petitioner, therefore, the proceeding pending in the Trial Court would be injustice to petitioner.

29. I note, in addition to the provisions of the Customs Act, the criminal proceedings under Section 420/468/471 read with Section 120B of the Indian Penal Code were also pending against the petitioner.

30. I find no force in the contention of Id. counsel for the respondent that the petitioner has been exonerated under

the Customs Act by the learned Tribunal, however, the independent sections of the IPC are there. Therefore, the complaint pending before the trial court against the petitioner cannot continue.

31. Additionally, the aforesaid sections of the IPC were imposed for the offences of forgery, cheating, misappropriation of Government money by playing fraud with the Customs Department. If the offences under the Customs Act, are washed away in the adjudication proceedings, against the petitioner, then the consequences thereof, if any, shall be automatically vanished. In the instant case the learned Tribunal found no evidence against the petitioner in any manner, whether, it is fraud played, forgery or cheating by the petitioner or his getting any pecuniary gain, therefore, in the present circumstances, this Court cannot allow the criminal proceedings to go on against the petitioner, pending before the trial court under Sections 420/468/471 read with Section 120B of the Indian Penal Code.

32. In view of the above discussion and as has been held by the Supreme Court in the case of **Anil Mahajan (supra)**

in case of converse situation, namely, where the accused persons are exonerated by the competent authorities / Tribunal in adjudication proceedings, one will have to see the reasons for such exoneration to determine whether these criminal proceedings could still continue. If the exoneration in departmental adjudication is on technical ground or by giving benefit of doubt and not on merits or the adjudication proceedings were on different facts, it would have no bearing on criminal proceedings.

33. If, on the other hand, the exoneration in the adjudication proceedings is on merits and it is found that allegations are not substantiated at all and the concerned person(s) is/are innocent, and the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution cannot be allowed to continue.

34. The reason is obvious, criminal complaint is filed by the departmental authorities alleging violation / contravention of the provisions of the Act on the part of the accused persons. However, if the departmental authorities themselves, in

adjudication proceedings, record a categorical and unambiguous finding that there is no such contravention of the provisions of the Act, it would be unjust for such departmental authorities to continue with the criminal complaint and say that there is sufficient evidence to foist the accused persons with criminal liability, when, it is stated in the departmental proceedings that ex facie there is no such violation. The yardstick would, therefore, be to see as to whether charges in the departmental proceedings as well as criminal complaint are identical and the exoneration of the concerned persons in the departmental proceedings is on merits holding that there is no contravention of the provisions of any Act.

35. The instant case is even on a better footing. As discussed above, the allegations against the petitioner are fully adjudicated by the Id. Tribunal and it found no evidence at all of any violation under the provisions of the Customs Act.

36. In my opinion, it is a fit case where the Department ought to have conceded the matter on the basis of the settled legal position. The Department had failed in the

adjudicatory process against the petitioners and yet continued to contend that the criminal proceedings must go on. The legal system by which we are governed is adversarial in nature, but there is a special responsibility on the Government and public authorities to act reasonably and in a fair manner. The over-burdened legal system cannot be further burdened by unnecessary cases or contest in the form of luxury litigation on the part of the Government authorities.

37. That apart, it appears that only the formality of a seal of approval from the Court is sought to be obtained without the Department acting in a just and fair manner resulting in unnecessary wastage of time of the Court.

38. Accordingly, the criminal case No. RC-DAI-1999-A-0025 pending before the Special Judge, CBI, Patiala House Courts, New Delhi and the criminal proceedings emanating therefrom qua the petitioner/accused No.5 are quashed and set aside.

39. The CRL.M.C. 3970/2010 is allowed.

40. No order as to costs.

CrI. M.A. No.18859/2010

Since the main petition has been disposed of, this application has become infructuous.

Dismissed as infructuous.

SURESH KAIT, J

August 23, 2011
RS