

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

+ CRIMINAL M.C. NO.1412 OF 2004

Decided on : 2nd July , 2012

DIRECTORATE OF REVENUE INTELLIGENCE

..... Petitioner

Through: Mr. Satish Aggarwala, Advocate.

Versus

GURMEJ SINGH & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. By virtue of the present petition under section 482 Cr.P.C., the petitioner, that is, the Directorate of Revenue Intelligence (hereinafter referred to as DRI), has challenged the order dated 8.12.2003 by virtue of which the learned ACMM, New Delhi, had discharged the accused persons on account of lack of territorial jurisdiction, however, liberty was granted to the complainant to file the complaint before the concerned court having the jurisdiction in accordance with law.

2. Briefly stated, the facts of the case are that a complaint under Section 135 (1) (b) of the Customs Act, 1962, came to be filed against four persons, namely, Lakhwinder Singh @ Lukha Pusia, Gurmej Singh, Jagbir Singh and Harkesh Chand. In the present petition, so far as accused Lakhwinder Singh is concerned, he is declared as proclaimed offender by the trial court and, therefore, he is not impleaded as a party. Accused Jagbir Singh and Harkesh Chand (respondent Nos.2 and 3 respectively herein) are stated to be not represented while accused Gurmej Singh (respondent No.1 herein) is the only accused who is represented before this court. The allegations contained in the complaint were that on the basis of a specific information that a white coloured Maruti Van bearing registration No.CH-01A-8195, allegedly carrying contraband gold, would be passing through Panipat and enroute to New Delhi, the officers of DRI, Delhi Zonal Unit, kept surveillance at Kohend Police Post at National Highway (1), Haryana on 23.7.1990. The officers of the DRI noticed that a white Maruti Van with the aforesaid registration number approached the

Police Post at about 9:30 hours on the said date. The driver was signaled to stop but instead of stopping, he sped away towards Panipat side. The DRI officials then chased the white Maruti Van and intercepted it near Panipat at about 10 hours on the same date. One of the occupants of the Van, whose name was later on revealed as Gurmej Singh, respondent No.1, tried to flee but he was over-powered. The Van along with its occupants, Gurmej Singh and Jagbir Singh, the driver, were escorted to Delhi by officials of the DRI at Paryavaran Bhawan, CGO Complex, New Delhi. It is alleged in the complaint that no proceedings could be conducted at the place of interception for security reasons as large crowd had gathered there. On rummaging of the Van in Delhi, in the presence of respondent Nos.1 and 2 and two independent witnesses, three cloth vansalies containing 300 gold biscuits bearing foreign markings were recovered from a secret cavity inside the Maruti Van. The Government approved valuation of the gold bars was fixed at Rs.1,15,48,350/-. The Van was also seized. Statements of the accused persons under Section 108

of the Customs Act were recorded and thereafter, the complaint was filed on 2.7.1991. The learned ACMM took cognizance and directed issuance of summons against the accused persons. Since this was a complaint filed by the officials of DRI, in their official capacity, no pre-summoning evidence was adduced and after the service of all the accused persons, the prosecution started its pre-charge evidence. It was at the stage of pre-charge evidence in the year 2003, that an application came to be filed by the accused Gurmej Singh, respondent No.1, under Section 245 (2) Cr.P.C. for his discharge. The plea which was taken by the accused was that the Delhi Court did not have the jurisdiction as the vehicle was intercepted in Panipat, in Haryana and, therefore, the offence was complete in terms of Section 177 of the Cr.P.C. in Haryana itself.

3. The petitioner herein (DRI) filed the reply to the application and contested the plea of the respondent/accused for discharge on the ground of lack of territorial jurisdiction. A preliminary objection was taken that the application is

hopelessly barred as it is filed after the expiry of more than 12 years from the date of taking cognizance and, therefore, the objection with regard to the lack of territorial jurisdiction by Delhi Court is deemed to have been waived by the respondent/accused.

4. On merits, various grounds were taken that the Delhi Court has the jurisdiction. The grounds which were taken were (i) Detention, recovery and seizure of the gold was affected in Delhi; (ii) there can be no offence without happening of incident in relation to smuggled goods and the offence came into light only when the smuggled gold was detected in the van and the recovery was effected in Delhi and; (iii) the statutory provisions contained in Sections 104 to 106 of the Customs Act, which provided for search, seizure and the arrest of the accused was exercised in Delhi.

5. The learned ACMM, after hearing the learned counsel for the parties has held that the Delhi Court did not have the jurisdiction as the interception of the vehicle had taken place at Panipat, which was admittedly not within the jurisdiction of

Delhi Court. The learned ACMM, in order to hold that the Delhi Court did not have the jurisdiction, has placed reliance on a judgment of Punjab & Haryana High Court in the case titled *Kanwarjit Singh vs. Union of India*; **1994 (1) Crimes 255**. The facts of the said case were held by the learned ACMM to be somewhat similar to the facts of the present case inasmuch as in the said case also there was a specific intelligence report that Kanwarjit Singh @ Pehalwan had arranged for smuggling of 520 foreign marked gold biscuits into Amritsar sector of the Indo-Pak Border which would be reaching Delhi in the evening of 6.1.1988 concealed in Truck No.DIL-1677. In pursuance of the report, the aforesaid Truck was intercepted at Kundli, which happens to be in Panipat but at the Delhi-Haryana Border, by the officials of the DRI. Multan Singh, accused No.3 and Malkeet Singh were the occupants of the said Truck. They were taken to the office of DRI, CGO Complex, Lodhi Road, New Delhi. The Truck was searched in the presence of two independent witnesses. Statements of the accused persons were also recorded under Section 108 of the Customs

Act and thereafter, the complaint was purportedly filed in Delhi and the ACMM had taken cognizance and issued non-bailable warrants against the accused persons for procuring their attendance.

6. It was at that stage, that the accused persons had gone to Punjab & Haryana High Court challenging the issuance of warrants and one of the plea which was taken by the accused persons in the said case was that the Delhi Court did not have the jurisdiction, which plea had been accepted by the High Court with the following observations :-

"7. Since there is a manifest defect of jurisdiction in the court of the ACMM, New Delhi, to take cognizance of the offence committed at Kundli within the State of Haryana, the execution of the warrant against the petitioner will amount to interfering with his liberty otherwise in due course of law. The respondents are, thus, restrained from giving effect to the warrants of arrest issued against the petitioner by the court of ACMM, New Delhi and from arresting him and also from proceeding further with this complaint. This order shall, however, not debar the respondent from seeking legal remedies against the petitioner before the proper

forum. With these directions, this petition stands disposed of.”

7. It is on the basis of this judgment that the learned ACMM, New Delhi, has, in the present case, observed since the facts of the said case are similar and the point of territorial jurisdiction has been raised and notwithstanding the fact that it has been raised after 12 years, the learned ACMM, in exercise of his power under Section 245 (2) Cr.P.C., discharged the accused persons for lack of jurisdiction.

8. I have heard the learned counsel and have gone through the record. At the outset, it must be said that the learned ACMM seems to have fallen into grave error in rejecting the complaint after a lapse of 12 years on the ground of lack of jurisdiction and discharging the accused/respondents. Firstly, the learned ACMM has completely ignored the fact that the factual matrix in the reported case and the present case, no doubt, were somewhat similar, but the stage at which the court's jurisdiction was invoked for discharging the accused on account of lack of territorial jurisdiction was totally different.

In the reported case, it was at the stage of summoning itself though, it is not clear but the operative portion of the observations passed by the Punjab & Haryana High Court would make it amply clear as it had quashed the issuance of non-bailable warrants against the accused persons in the said case, therefore, that makes one to draw an inference that at the stage of threshold itself, the accused was vigilant to raise the question of territorial jurisdiction of the court taking the cognizance. While as in the instant case, the accused has not only participated in the proceedings by subjecting the witnesses to cross-examination at the pre-charge stage itself, but has continued to do so for a long 12 years and it is only after expiry of these years that the accused has woken up to file an application under Section 245 (2) Cr.P.C. seeking discharge for lack of jurisdiction. It is not only the lack of jurisdiction which would have been relevant at the stage when the application was filed, but it was incumbent for the learned ACMM to see as to what was the serious prejudice being caused to the accused persons by proceeding ahead with the

trial at that stage because the fundamental question of setting aside a conviction or a sentence or even abandoning the trial, if I may say so, on the ground of lack of jurisdiction, the accused must show that there is some serious prejudice caused to him by such proceedings. Conversely, we can say that the Code of Criminal Procedure recognizes a difference between irregularities which may vitiate the trial and irregularities which may not vitiate the trial at all. In this regard, one needs to refer to Section 460 of the Cr.P.C. which deals with irregularities which do not vitiate the proceedings. Section 460 sub-Clause (e) of the Cr.P.C. specifically lays down taking of cognizance of an offence under clause (a) or clause (b) of sub-section (1) of Section 190 Cr.P.C., if the Magistrate does not have the jurisdiction, it will not vitiate the proceedings meaning thereby that even if the Magistrate, that is, the ACMM in Delhi did not have the jurisdiction to take the cognizance but had actually taken the cognizance, the trial proceedings could not be vitiated on account of the lack of competence of the learned ACMM in taking the cognizance

unless and until some serious prejudice is shown by the accused/petitioner.

9. Further, the word used in Section 177 Cr.P.C. is 'ordinarily' which according to the Oxford Dictionary means regular, normal, customary, usual and not exceptional. Thus, the basic rule contained in Section 177 Cr.P.C. is that crime is essentially local in nature but this is not the absolute rule. Sections 178 to 185 Cr.P.C. lay down exceptions to this rule apart from the exceptions which may be provided in special statutes. Section 462 Cr.P.C. specifically lays down that no finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings, in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

10. Therefore, the aforesaid two provisions make it abundantly clear that law has gone to such an extent that even if the cognizance is taken where the learned Magistrate

does not have the competence to take such a cognizance on account of the lack of territorial jurisdiction or lack of competence to deal with the subject, the proceedings do not get vitiated *ipso facto*. The law is extended even to such an extent that the conviction and sentence in such a contingency cannot be set aside, unless and until a failure of justice is shown by the accused. If this failure of justice would have been shown by the accused to the learned ACMM only then, in my opinion, the learned Magistrate could have discharged the accused under Section 245 (2) Cr.P.C. for the lack of jurisdiction of the Delhi Court. Because of the above reasons, I feel the learned ACMM's order is not sustainable in law.

11. Secondly, the learned Magistrate has failed to notice the subtle difference between the Panipat case and the Delhi case inasmuch as it does make lot of difference in a case where said question is raised at the threshold, in comparison to a case where it is raised after inordinate delay of 12 years.

12. Thirdly, even on merits, I feel that the Delhi Court will have jurisdiction. This is because of the fact that only

detention of the vehicle and the accused person in Panipat does not make the offence complete. The substantial action which constitute the offence of carrying the contraband was committed by them in Delhi because vehicle was searched in Delhi, gold was seized in Delhi and *panchnama* was prepared in Delhi, therefore, the Delhi Court has the jurisdiction, in my view.

13. There is another aspect to the matter that Section 245 (2) Cr.P.C. lays down that if the charges against the accused are groundless then, he may be discharged. The language of the Section 245 Cr.P.C. use the term 'groundless', the charges must be groundless, meaning thereby a perusal of the allegations levelled against the accused must not *prima facie* constitute the offence which is alleged to have been committed by him. Only then it can be said that the charges against him are groundless meaning thereby that while discharging the accused under Section 245 (2) Cr.P.C., the court will cursorily look at the merits of the allegations and come to the finding as to whether it *prima facie* holds the ingredients of the offence

being established or not and accordingly, either discharge the accused holding that the charges are groundless or decide to proceed further in the matter. This exercise has not been done by the learned ACMM. In other words, if the complaint is being returned by a court on account of lack of jurisdiction, it could not be done under Section 245 (2) Cr.P.C. under the heading that the charges are groundless. It may be done by the learned court in some other provision or by the accused by invoking the powers of the High Court.

14. For the reasons mentioned above, I set aside the order of the learned ACMM dated 8.12.2003 and remand the matter back to the learned trial court, who will start the complaint from the place where it had discharged the accused persons. The parties are directed to appear before the learned ACMM on 31st July, 2012.

V.K. SHALI, J.

JULY 02, 2012
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