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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 2910/2011

KARAMVEER SINGH

..... Petitioner

Through: Ms. Sangita Bhayana, Advocate.

versus

RAJESH ARORA

AIR CUSTOM OFFICER

..... Respondent

Through: Mr. G.S. Kanojia, Advocate.

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Date of Decision: 13th December, 2012

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J : (Oral)

1. By the present petition, petitioner has challenged the order dated 25th November, 2010 passed by the Additional Sessions Judge and prayed for quashing of proceedings pending before the Additional Chief Metropolitan Magistrate in Criminal Complaint No. CC 971/1/02 under Sections 132 and 135 of the Customs Act, 1962 (for short "Act, 1962").

2. It is pertinent to mention that the Additional Chief Metropolitan Magistrate vide order dated 18th March, 2010 had discharged the petitioner on the ground that there was no possibility of conviction even if the

prosecution case brought on record remained un-rebutted.

3. However, the Special Judge, NDPS, Patiala House Courts, New Delhi vide order dated 25th November, 2010 set aside the aforesaid discharge order and directed the parties to appear before the Additional Chief Metropolitan Magistrate on 06th December, 2010. Consequently, the present petition has been filed challenging the Additional Sessions Judge's order.

4. The relevant facts of the present case are that the petitioner was intercepted on 26th September, 2001 at the IGI Airport, New Delhi when he along with his mother Smt. Chinta Devi were returning from Hong Kong. During the search of his baggage, 4.160 kg of white medicinal powder, which on chemical analysis was found to be Desxamethasone, was allegedly recovered from the shampoo and talcum powder bottles. According to the petitioner, the CIF value of white powder was ₹ 3,55,680/- ,while its market value was of ₹ 6,24,000/-.

5. After the search was conducted, the medicinal powder in question was confiscated under Section 111(b) and (m) of the Act, 1962 and penalty was imposed on the petitioner and his mother by the Additional Commissioner of Customs.

6. Upon Appeals being filed, the Commissioner of Customs (Appeals) maintained the confiscation order, but reduced the penalty amount to ₹50,000/-.

7. Subsequently, upon revision petitions being filed by the petitioner and his mother before the Joint Secretary, Government of India, the petitioner and his mother were exonerated on the ground that they had no knowledge regarding the concealment of medicinal powder in the Shampoo and Talcum Powder bottles. The Joint Secretary, Government of India held that it would be difficult to fully establish mens rea in the case of petitioner and his mother. The Joint Secretary, Government of India, came to this conclusion on the basis that petitioner and his mother did not at any stage have any knowledge of the contents, namely, Dexcamethasone powder in the talcum powder boxes.

8. According to the Joint Secretary, Government of India, the absence of knowledge was apparent from the statements made by the petitioner and his mother at the initial stage of seizure under Section 108 of the Act, 1962, as well as subsequent statement given by the prime accused Mr. Kuldeep Chopra under Section 108 of the Act, 1962.

9. Consequently, the Joint Secretary, Government of India, did not levy any penalty upon the petitioner.

10. The order passed by the Joint Secretary, Government of India has not been challenged by the respondent and as such has attained finality.

11. Ms. Sangita Bhayana, learned counsel for petitioner submits that petitioner has been falsely implicated in the present case as he had no knowledge regarding the concealment of the medicinal powder in the Shampoo and Talcum Powder bottles. She submits that since the petitioner

has been exonerated in the adjudication proceedings, he cannot be prosecuted in a complaint filed by the Department under Section 132 and 135(1)(a) of the Act, 1962.

12. On the other hand, Mr. G.C. Kanojia, learned counsel for respondent-Department relies upon Section 138A of the Act, 1962, which reads as under:-

“Section 138-A Presumption of culpable mental state.-- (1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation. - In this section, “culpable mental state” includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.”

13. Upon a perusal of paper book, this Court finds that another learned Single Judge of this Court in a petition filed by the mother of petitioner Mrs. Chinta Devi in ***Crl.M.C. 520/2011*** titled as ***Chinta Devi Vs. Rajesh Arora Air Custom Officer*** had quashed the proceedings in the aforesaid criminal complaint on the ground that her exoneration by the Joint Secretary, Government of India, had attained finality.

14. While quashing the proceedings qua the petitioner’s mother, the

learned Single Judge had rejected the respondent-Department's arguments with regard to Section 138A of the Act, 1962 by observing as under:-

“19. A perusal of the aforesaid Section shows that it requires a culpable mental state of the accused. The Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

20. Learned counsel for petitioner submits that the Joint Secretary to the Government of India has accepted the contention of the petitioner that she had no knowledge about the substances in the aforesaid shampoo and talcum powder bottles, therefore, in this case there cannot be any mens rea since the petitioner had no knowledge about the substance found in the aforesaid bottles. The Joint Secretary has maintained the order of confiscation and the same has not been challenged by the petitioner since the said two bottles were of the substances which are not permissible to be given to the petitioner. Under the Customs Act, 1962 there is complete restriction on the aforesaid substance, which the petitioner has brought from Hong-kong, without her knowledge, therefore, her state of mind cannot be said to be having an intention to import or smuggle the aforesaid substance.

21. While relying on the aforesaid two judgments of this Court, which are affirmed by the Supreme Court, the ld. counsel for the petitioner has prayed that since there is no adjudication pending against the petitioner and the petitioner has been exonerated, in the adjudication proceedings, therefore, the criminal proceedings pending before the trial court cannot go on.

22. While allowing the case of Sunil Gulati & Anr. V. R.K. Vohra, [145 (2007) DLT 612] this Court held that 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 should still continue. If the exoneration in departmental adjudication is on technical ground or by giving benefit of doubt and not on merits of the adjudication proceedings were on different facts, it would have no bearing on criminal proceedings.

23. In the instant case also the Joint Secretary to the Government of India, Department of Revenue has exonerated the petitioner fully on the basis that the petitioner had no intention of smuggling or knowledge of the substances in the aforesaid two bottles.

24. Keeping in view, the view taken in Sunil Gulati & Anr.(supra), I am of the opinion, that the criminal proceedings pending before the trial court cannot go on, against the petitioner, since the petitioner has been fully exonerated by the Joint Secretary to the Government of India, and same has attained the finality.

25. In view of the above submissions and discussions, I quash the proceedings in the criminal complaint dated 08.08.2002, under Sections 132 & 135 (1)(a) of the said Act, pending against the petitioner in the Court of Ld. ACMM, New Delhi.”

15. Even otherwise, this Court is of the view that the argument raised by the learned counsel for respondent-Department is no longer res integra in view of the judgment of the Supreme Court in **Radheyshyam Kejriwal vs. State of West Bengal & Anr., JT 2011 (2) SC 443**. In the said judgment, the Supreme Court has held as under:-

*“22.1 The Delhi High Court also considered this question arising out of a case under Foreign Exchange Regulation Act, in detail in the case of **Sunil Gulati & Anr. V. R.K. Vohra** [145 (2007) DLT 612], and held as follows :-*

“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 should 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 the concerned person(s) is/are innocent, and 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 person in the departmental proceedings is on merits holding that there is no contravention of the provisions of any Act.

22.2 We respectfully endorse the view taken by the Bombay High Court in the case of Hemendra M. Mothari (*supra*) and Delhi High Court in Sunil Gulati (*supra*)”

16. In view of the aforesaid discussion, this Court is of the view that the issue raised by the respondent in the present petition is squarely covered by the judgment passed by a Coordinate Bench of this Court in ***Chinta Devi Vs. Rajesh Arora Air Custom Officer*** (supra).

17. Consequently, present petition is allowed and the impugned order dated 25th November, 2010 passed by the Special Judge, NDPS, Patiala House Courts, New Delhi, is set aside and proceedings in CC No.971/1/02 are also quashed.

MANMOHAN, J

DECEMBER 13, 2012

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