

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

% *Date of Judgment : 21.08.2014.*

+ CRL.M.C. 2098/2010
DIRECTORATE OF REVENUE INTELLIGENCE
..... Petitioner
Through Mr. Satish Aggarwala, Adv.
versus
ANIL CHANANA
..... Respondent
Through Mr. R.K. Handoo and Mr.
Yoginder Handoo, Adv.
+ CRL.REV.P. 336/2010
DIRECTORATE OF REVENUE INTELLIGENCE
..... Petitioner
Through Mr. Satish Aggarwala, Adv.
versus
ANIL CHANANA
..... Respondent
Through Mr. R.K. Handoo and Mr.
Yoginder Handoo, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The Directorate of Revenue Intelligence (DRI) is aggrieved by two orders. The first is the order dated 15.01.2007 passed by the learned ACMM which reads herein as under:-

“ I am informed by counsel for the accused that the Chief Commissioner has already compounded the offence pursuant to the application of the accused. Ms. Mala Sharma has no objection for the disposal of the present complaint. In view of

the decision of the Hon'ble High Court in Writ Petition (Civil) NO. 12912 of 2006 dated 17.10.06 the present complaint along with pending applications are disposed off. The accused stands discharged. Surety stands discharged. Documents be returned after cancellation of endorsement. File be consigned to record room."

2 The second is the order dated 20.02.2010 which is also an order passed by the ACMM. It reads herein as under:-

"In this case order of discharge was passed by my learned Predecessor on 15.01.2007 on the ground that the Chief Commissioner of Custom had compounded offence alleged against accused.

Later on an application for requisitioning the file and for proceeding further was moved by the Department on the ground that order of compounding has been ultimately set aside by Hon'ble Supreme Court.

Summons were issued to accused on the said application.

Meanwhile the applicant went to Hon'ble Supreme Court in "IA No. 2/2009 in Civil Appeal No. 683 of 2008". Para 14 of the said IA read as follows:

"That in view of the above a prayer was made by DRI to ACMM, to proceed with the matter as per law. The respondent was summoned. He appeared before ACMM and moved an application that the matter could not be reopened in view of the fact that he had already been discharged by the judicial order dated 15.01.2007."

"Prayer Clause of the IA was as follows:

(a) Direct the Trial Court (ACMM-II, Dwarka, Delhi to proceed further with the trial in Complain case no. 34/2/2004/DZU titled Shri Arvind Kumar Sharma,

intelligence, officer, DRI Vs. Anil Chanana and dispose off the matter expeditiously; and

(b) Pass such further order(s) as may deem fit and proper in the facts and circumstances of the case.”

Following Order was passed by Hon’ble Supreme Court in the petition:

“it will be open to the Union of India to work out its right consequent upon our judgment dated 25th January, 2008 in Civil Appeal No. 683/2008 in accordance with law. I.A. is disposed off accordingly.”

It is rightly submitted by Sh. Handa that the reopening of the present case was not allowed by Hon’ble Supreme Court despite the specific prayer of the Department to this effect.

It is rightly submitted by Sh. Aggarwala that even after discharge of the accused he can be tried again but that does not mean that this Court has power to recall earlier order of discharge.

In view of the judgment of Hon’ble Supreme Court in IA No. 2/2009 in Civil Appeal No. 683 of 2008. In view of the absence of any power to recall its orders, the Court is of the opinion that the accused cannot be tried on the basis of the same complaint for which he was discharged.

Other arguments of Ld. Sh. Aggarwala are not discussed here in as the same are not relevant particularly in view of the order of Hon’ble Supreme Court. File be consigned to record room.”

3 For the disposal of these two petitions, the Court need not go into the detailed facts.

4 Record relevant for the purpose of these petitions reflects that :-

(i) On 25.05.2006, the Chief Commissioner of Customs, Delhi vide his order of the even date allowed the compounding of the offence under Section 132 and Section 135 (1) (a) of the Customs Act; this compounding was allowed on the respondent undertaking to pay a sum of Rs.15 lacs as the compounding fee.

(ii) Aggrieved by this order, the DRI filed a W.P. (C) No.12912/2006 before the High Court. This was dismissed on 17.10.2006.

(iii) Accordingly in view of the aforementioned orders dated 25.05.2006 and 17.10.2006, the ACMM passed the aforementioned order on 15.01.2007.

(iv) Against the order dated 17.10.2006, a Special Leave Petition (SLP) was filed in the Supreme Court which was disposed off vide judgment dated 25.01.2008, in Civil Appeal No.683/2008 titled Union of India Vs. Anil Chanana and Anr. The relevant extract of the aforementioned order reads herein as under:-

“14. Before concluding, it may be mentioned that the compounding mechanism in Section 137(3) is to be allowed only in cases of doubtful benefit to the Revenue and to prevent needlessly proliferating litigation and holding up of collections. Compounding cannot be allowed if there are apparent contradictions, inconsistencies or incompleteness in the case of the applicant before the Compounding Authority. It is the duty of the compounding authority to ascertain such contradictions before compounding is ordered. In the present case, different

versions given by Anil – in his statement under Section 108, in his first bail Application and in his Application for compounding – itself disqualifies Anil from claiming the benefit of compounding under Section 137(3) of the 1962 Act.

15 None of the above aspects have been examined by the Compounding Authority in its order dated 25.05.2006 as well as by the High Court in the impugned judgment dated 17.10.2006 and they are hereby set aside. Consequently, the Department's civil appeal stands accordingly allowed with no order as to costs.”

5 The Apex Court set aside the order of the compounding vide order dated 25.05.2006 as also the order of the High Court dated 17.10.2006. The appeal filed by the Department was allowed.

(v) On 05.02.2008, an application was filed before the ACMM in terms of the order of the Apex Court dated 25.01.2008.

(vi) On 29.02.2008, the respondent was summoned by the ACMM, and put in his appearance for 25.03.2008. Reply was filed.

(vii) On 01.05.2008, the Department moved an application for substitution of the complainant along with the authorization to pursue the complaint. Application was yet pending.

(viii) On 03.08.2009, IA No.02/2009 was filed in Civil Appeal No.683/2008 before the Supreme Court seeking directions. In this application, the order dated 15.01.2007 passed by the ACMM found

mention. This application also averred that in the list of dates filed by the Department in the SLP, the order of discharge dated 15.01.2007 passed by the ACMM stood reflected. This application sought a direction to the following effect:-

- (a) Direct the Trial Court (ACMM-II, Dwarka, Delhi) to proceed further with the trial in Complain Case No.34/2/2004/DZU titled Shri Arvind Kumar Sharma, Intelligence Officer, DRI V/s Anil Chanana and dispose of the matter expeditiously and*
- (b) Pass such further order(s) as may deem fit and proper in the facts and circumstances of the case.*

(ix) This application was disposed of on 03.08.2009 by the Supreme Court which passed the following order:-

“It will be open to the Union of India to work out its rights consequent upon our judgment dated 25 January, 2008 in Civil Appeal NO.683/2008 in accordance with law.

I.A. is disposed of accordingly. “

6 The Department approached the Court of the ACMM but the ACMM vide the aforementioned order dated 20.02.2010 (supra) passed the said order. The ACMM was of the view that although a specific prayer had been made by the Department before the Apex Court seeking a direction for reopening of the case but the same had not been permitted

and the ACMM not being in a position to recall its order, the said application was dismissed.

7 On behalf of the Department, arguments have been addressed in detail. It is pointed out that the order passed by the Supreme Court on 25.01.2008 followed by its subsequent direction passed in IA No.02/2009 on 03.08.2009 having been given effect to by the ACMM, the trial Court has committed a pure illegality; it is not a paper order which was passed by the Apex Court; it had to be given effect to; it can only be implemented if the accused persons were summoned and asked to face trial as the orders of Compounding Authority and the High Court dated 25.05.2006 and 27.10.2006 had been set aside by the Supreme Court while disposing of the Civil Appeal No.683/2008 on 25.01.2008. The impugned orders are accordingly liable to be set aside.

8 Needless to state that the respondent has refuted these submissions. It is pointed out that on no count, does the impugned order call for any interference. It is submitted that the compounding is given effect to under Section 323 of the IPC and it amounts to an acquittal. For this proposition, he has placed reliance upon (2008) 9 SCC 333 Mohd.

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the learned counsel for the respondent being that once an order of acquittal had been passed, the revisional Court is slow in interference of such an order; until and unless, there is a patent illegality or a total perversity in the order passed by the trial Court, such an order cannot be lightly interfered with. To support this submission reliance has been placed upon (2008) 3 SCC 423 Johar and Others Vs. Mangal Prasad and Another. It is pointed out that the inherent powers of this Court under Section 482 of the Cr.PC cannot be abused and the Department by filing CrI. M.C. No.2098/2010 seeking a quashing of the order dated 25.01.2007 is highly belated; it in fact amounts to an abuse of the process of the Court. To support this proposition, reliance has been placed upon AIR 1978 Delhi 138 Gopal Dass Vs. The State. For the same proposition reliance has also been placed upon 26 (1984) DLT 49 Assistant Collector of Customs Vs. Sudarshan Kumar Modi. Attention has also been drawn to the Customs (Compounding of Offences) Rules, 2005. It is pointed out that the procedure is different in the said Notification and once compounding of the offence has taken place which in turn has resulted in acquittal, an accused cannot be summoned to face the trial. On no count, do the impugned orders suffer from any CrI. M.C.No.2098/2010 & CrI. Rev. P. No. 336/2010

infirmity.

9 Arguments have been heard and the legal propositions have also been noted. There is no dispute to the facts. Admittedly, the compounding authority i.e. the Commissioner Customs had compounded the offence of the respondent under Section 132 and Section 135 (1)(a) of the Customs Act vide its order dated 25.05.2006. This order had been endorsed by the High Court on 27.10.2006 by the dismissal of the writ petition i.e. W.P. (C) No.12912/2006 which had been preferred by the Department. It was on the strength of both these orders i.e. 25.05.2006 and 17.10.2006 that the ACMM dropped the prosecution against the respondent. This is clear from the order itself wherein both the orders of the compounding as also the dismissal of the writ petition by the High Court were noted by the ACMM. The Supreme Court however gave a different turn to this story. On 25.01.2008 while disposing off W.P. (C) No.683/2008, it had set aside the order of the Compounding Authority dated 25.05.2006 as also of the High Court dated 17.10.2006. The necessary consequence being that the appeal of the Department stood allowed. The Department moved an appropriate application before the ACMM on which summons were issued to the

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respondent. The ACMM however illegally passed the order dated 20.02.2010. It illegally agreed with the submission of the learned counsel for the respondent that despite a specific prayer made by the Department to reopen the case, the same had not been allowed. The order of the Supreme Court passed in I.A. No.02/2009 on 03.08.2009 had clearly recited that the Department would work out its rights consequent to its earlier judgment dated 25.01.2008 passed in Civil Appeal No. 683/2008. The judgment dated 25.01.2008 (as noted supra) had set aside the order of the Compounding Authority as also of the High Court. As rightly pointed out by the learned counsel for the petitioner it was not a paper order; it had to be given effect to and implemented. The only way and manner they could be implemented was by the ACMM ordering a retrial of the respondent; that was the only manner in which the judgment dated 25.01.2008 could be given effect to. At the cost of repetition, since the order of the Compounding Authority and the High Court (which had endorsed the order of the compounding authority) had been set aside, the necessary corollary would be that the offence under Section 132 and Section 135 (1)(a) of the Customs Act had to be tried. It is also not as if that the first

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complaint which has resulted in discharge of the accused and even presuming that it was an acquittal was on its merits. It was only on the strength of the compounding order which order has been set aside by the Supreme Court.

10 The Supreme Court in CrI. Appeal No.1276/2002 Mahesh Chand Vs. B. Janardhan Reddy and Anr. had noted with approval the observations made by Macleam, C.J. in Queen Empress Vs. Dolegobinda Das wherein it was held as under:-

“.....It held therefore that a fresh complaint can be entertained where there is manifest error, or manifest miscarriage of justice in the previous order or when fresh evidence is forthcoming ellipses. The question was then considered by a Full Bench of the Calcutta High Court in Dwarka Nath Mondul v. Beni MadhabBanerjee and it was held by the full Bench (Ghose, J. Dissenting) that a presidency Magistrate was competent to rehear a warrant case triable under Ch. XXI of the Code of Criminal Procedure in which he had earlier discharged the accused persons.....

The same view was expressed by the Madras High Court in re. Koyassan Kutty and it was observed that there was nothing in law against the entertainment of a second complaint on the same facts on which a person had already been discharged, inasmuch as a discharge was not equivalent to an acquittal. ”

11 In this case, the Apex Court had in fact noted that a second complaint on the same facts is also not barred where the first complaint

has been dismissed without assigning any reason and in such an eventuality, a second complaint can be proceeded with if there is sufficient ground made out in the said complaint.

12 The impugned order dated 15.01.2007 is liable to be set aside. Since the whole foundation of the order on the strength of which the order dated 15.01.2007 was passed has been set aside by the Supreme Court i.e. (order of the Compounding Authority dated 25.05.2006 and order of the High Court dated 17.10.2006) by its subsequent order dated 25.01.2008, the order dated 15.01.2007 cannot be sustained. The order dated 20.02.2010 is also wholly illegal. The orders of the Supreme Court dated 25.01.2008 and 03.08.2009 can be implemented and can be given effect to only by the trial of the accused.

13 Both the petitions are disposed of in the above terms.

14 The respondent is directed to appear before the Court of concerned ACMM to face trial at 10:30 AM on 28.08.2014.

INDERMEET KAUR, J

AUGUST 21, 2014

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