

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1216 OF 2002

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| 1. | M/s. Raymon Glues & Chemicals) | |
| | having their office at 91/92, Reclamation) | |
| | Nariman Point, Mumbai 400 021.) | |
| 2. | Shri Narayanbhai Bhailal Patel) | |
| | (Partner)) | |
| 3. | Shri Ramniklal Bhailal Patel) | |
| | (Partner)) | |
| 4. | Shri Manubhai Bhailal Patel) | |
| | (Partner)) | |
| | All residing at 82, Gold Mine Nutan) | |
| | Co-operative Housing Society Ltd.) | |
| | Juhu Vile-Parle Development Scheme) | |
| | Mumbai 400 069.) | Petitioners |
| | vs. | (Orig. Accused Nos. 1 to 4) |
| 1. | Shri I.P. Yadav) | |
| | Deputy Director of Export Inspection) | |
| | Agency – Mumbai (Ministry of) | |
| | Commerce, Government of India,) | |
| | Aman Chambers, 4 th floor, 113, M.Karve) | |
| | Road, Mumbai 400 004.) |)..Respondent No.1
(Orig. Com.Plffs) |
| 2. | The State of Maharashtra) |)..Respondent No.2 |

Mr. Y.P.Toprani, h/f Mr. P.H.Toprani, Advocate for the petitioners.
Ms.A.A.Mane, APP, for the State.

CORAM: RAVINDRA V.GHUGE, J.

DATE : 14th July, 2016.

ORAL JUDGMENT:

1. This petition was admitted by this Court on 18.12.2002 and interim relief in terms of prayer clause (b) was granted. Prayer clause

(b) reads as under :-

“(b) That pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to stay the proceedings of the said case No.209/S of 1996 pending before the Chief Metropolitan Magistrate, Esplanade, Mumbai, and the operation of the Order dt. 9th April, 2002 (Ex.”F”) passed by his Honour Additional Sessions Judge in Revision Application No.858/2000 therein.”

2. The petitioner seeks to challenge the judgment and order dated 9.4.2002 delivered by the learned Addl. Sessions Judge, Greater Bombay, in Criminal Revision Application No.858 of 2000.

3. At the outset, it needs to be noted that petitioner Nos. 2 and 4 have passed away. This Petition, therefore, abates to the extent of petitioner Nos. 2 and 4. Petitioner No.1 is the business entity. Petitioner No.3, a partner in Petitioner No.1, is said to be completing 94 years of age on 21st July July, 2016. This Petition, therefore, survives only to the extent of Petitioner No.1 and its representative Petitioner No.3.

4. Petitioner No.1 is a business house and manufacturer of Ossoin, Gelatine and Dicalcium phosphate from animal bones. The by-product of these products manufactured, is meant for use as animal food.

5. The issue is as regards export of those consignments of such animal food to Japan in August 1990. The grievance made by the concerned Excise Department is as regards the violation under Section

6(d) and Section 7 of the Export (Quality Control & Inspection) Act, 1963. (for short, “the said Act”).

6. As a consequence of the above, the Petitioner was served with a show cause notice dated 3.4.1991, calling upon the said entity to explain as to why it should not be construed that they have committed an offence. The Petitioner submitted its reply on 11.7.1991 contending that the goods exported were not required to be inspected and the Excise Department had cleared the said consignment without insisting for a ‘pre-export inspection’ certificate. It is contended that the Petitioner-entity has been registered on 1.11.1989 bearing registration No.1307.

7. Thereafter, considering the reply of the Petitioner, the Competent Authority passed an order dated 13.2.1992 concluding that the Petitioner has committed an offence and is liable to pay a penalty of Rs.14,000/-.

8. The Petitioner preferred an appeal on 25.3.1992 before the

Appropriate Authority, which was rejected by order dated 24.7.1992. It is not in dispute that its decision of concluding that the Petitioner has committed an offence and imposing a penalty of Rs.14,000/-, has not been challenged by the Petitioner before any Court or Authority.

8. The Petitioner has therefore, contended that once the appeal of the Petitioner has been rejected on 24.7.1992, any prosecution to be launched against the Petitioner could have been permissible only within three years of the limitation period, taking into account that the punishment for non-payment of penalty would be an imprisonment for a term not exceeding two years and or with fine or both. The learned Advocate for the Petitioner has therefore strenuously submitted that as the Memo of Appeal was rejected on 24.7.1992, the Respondent-Department could have prosecuted the Petitioner by initiating appropriate proceedings on or before 23.7.1995 i.e. within 3 years.

9. It is further submitted that the Petitioner moved an application before the learned Chief Metropolitan Magistrate in the said proceedings on 7.6.2000 praying for the dismissal of the

application/proceeding as the prosecution launched by the Respondent was beyond three years. By order dated 4.10.2000, the said application was rejected. The Petitioner approached the Court of Sessions, Greater Bombay, in Criminal Revision Application No.858 of 2000 and the same has been rejected by order dated 9.4.2002 which is impugned in this Petition. It is not in dispute that Criminal Case No.209/S of 1996 is still pending adjudication before the Chief Metropolitan Magistrate's Court at Esplanade, Mumbai.

10. Learned APP has strenuously opposed this Petition. The contention is that the main proceedings for prosecuting the Petitioner under Section 11 of the said Act are still pending adjudication. On account of the interim relief granted by this Court to the Petitioner, the proceedings have been stayed.

11. She further submits that the contention of the Petitioner is misconceived that when the Memo of Appeal was rejected, the limitation begins. In fact, the Department expected the Petitioner to comply with the order of penalty. By the order dated 24.7.1992, the

petitioner was given 30 days to pay the penalty. The Department waited till September 1993 and finally served a letter on 13.9.1993 by way of a reminder to pay the penalty within 15 days.

12. Since the Petitioner did not pay the said amount, the Department applied for sanction. After the sanction was granted on 8.2.1995, the complaint before the learned Magistrate was filed on 20.8.1996. It is, therefore, submitted that the period from 24.7.1992 till 13.9.1993, will have to be overlooked since the time period of 15 days by way of a reminder expired on 28.9.1993 and the complaint was filed on 20.8.1996. It is, therefore, submitted that considering the effect of Section 468(2)(c) of the Cr.P.C., the limitation would be three years.

13. It is submitted that the first witness of the Respondent-Department was examined sometime in 1999 and thereafter, as the Petitioner pursued its remedies, the proceedings have come to a standstill after the said witness was partly cross-examined.

14. I have considered the submissions of the learned Advocates

and I have gone through the Paper-book with their assistance.

15. The learned Chief Metropolitan Magistrate, Esplanade Court, Mumbai, has observed in paragraph No.8 of his order dated 4.10.2000 as under :-

“8) The Advocate for prosecution drew attention of this Court to the provisions of Section 14 of the Export (Quality Control and Inspection) Act, 1963, wherein it is laid down that no prosecution for an offence punishable under this Act shall be instituted except by or with the consent of an Officer authorised by the Central Government by general or Special Order in this behalf. The prosecution has produced the consent order in the Court as Exh.”P-3” and this consent Order of the competent authority was passed on 8/2/1995. In respect of this Order it was submitted by the Advocate of the Accused that the prosecution has to show and prove that they had applied immediately to the competent authority for getting the consent Order. The prosecution has not closed the evidence in this Case and the prosecution can give evidence on this point also. At this stage it cannot be said that the prosecution did not apply to the competent authority immediately or within the reasonable time for getting the consent Order. On the other hand there is the record showing that on 13/9/1993, the Joint Director informed to the Accused that various points raised by the Accused persons in the letter were again duly considered by the Government and no merit was found in the points raised by the Accused persons. It was submitted before me that the Accused persons had applied to the Government for reviewing of the penalty Order. If that is so, then it can be said that the consent Order was not

given at least upto 31/9/93, as the review application filed by the Accused persons was pending. Thus, if at all the Complainant had moved for getting the Consent Order, the Complainant must have moved it after 13/9/1993. Even if it is presumed that on 13/9/1993 itself the Complainant ought to have applied to the Competent authority for getting the consent order then the period of limitation would start on 13/9/1993. The Complaint is filed on 20/8/1996 i.e. well within 3 years from 13/9/1993. Thus, it cannot be said that the Complaint is not filed within 3 years from the date of Offence.”

16. Having considered the above, and having gone through the impugned judgment of the Addl. Sessions Court dated 9.4.2002, I do not find that the impugned orders could be termed as being perverse or erroneous. This Petition, being devoid of merits, is therefore dismissed. Rule is discharged.

17. Before I part with this matter, it needs mention that for a paltry amount of Rs.14,000/- by way of penalty, the Petitioners have locked themselves in a battle with the Respondent, though admirably on account of their principles, as is contended by the learned Counsel for the Petitioner. Two of the representatives of the Petitioner-Company have passed away.

It is stated that the surviving Petitioner is not able to move out of his wheel-chair, has no control over certain important and vital functions of his body and is also unable to attend Court hearings. He would be 94 years of age on 21.7.2016 and he is based in Baroda.

18. Considering the above, I deem it appropriate to direct the learned Chief Metropolitan Magistrate, Esplanade Court, Mumbai, to deal with Criminal Case No.209/S of 1996 on day-to-day basis. The next date of hearing before the trial Court is said to be 30.8.2016.

19. I find it appropriate to observe that considering the above fact situation, the Petitioner could move the learned Magistrate for compounding of the said offence.

20. The learned Advocate for the Petitioner submits that there is a possibility that the Petitioner may offer to pay even Rs.1,00,000/- (Rupees one lakh only) before the learned Magistrate for settling the entire issue and for seeking a disposal

of the proceedings.

21. I, therefore, find that the said offer being made by the Petitioner is reasonable and in the event the said amount is sought to be paid by the Petitioner before the Chief Metropolitan Magistrate, as a payment towards the penalty with all interest from 1992 till 2016, the learned Magistrate may accordingly pass an appropriate order.

(RAVINDRA V.GHUGE, J.)