

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2016

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.20401 of 2016

and Crl.M.P.Nos.9523 and 9524 of 2016

1.M/s Vishal Exports Overseas Limited
rep by Pratap S.Mehta

2.Pratap S.Mehta

Petitioners

vs.

The Asst.Commissioner of Customs
Prosecution, Sea Commissionerate
Custom House, Rajaji Salai
Chennai.

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. to set aside the order passed in Crl.R.C.No.32 of 2008 dated 20.04.2016 by the Court of learned Principal Sessions Judge, at Chennai confirming the order of dismissal of discharge petition passed in M.P.No.2249 of 2007 in EOCC No.161 of 2007 on the file of learned Additional Chief Metropolitan Magistrate Court No.2, for Economic Offences at Egmore, Chennai (Allikulam complex).

For petitioners Mr.T.Sivananthan

For respondent Mr.T.P.Sekar

Special Public Prosecutor (CCE)

ORDER

This petition has been filed to set aside the order passed in Crl.R.C.No.32 of 2008 dated 20.04.2016 by the Court of learned Principal Sessions Judge, at Chennai confirming the order of dismissal of discharge petition passed in M.P.No.2249 of 2007 in EOCC No.161 of 2007 on the file of learned Additional Chief Metropolitan Magistrate Court No.2, for Economic Offences at Egmore, Chennai (Allikulam complex).

2. Heard the learned counsel for the petitioners and the learned Special Public Prosecutor appearing for the respondent.

3. The Assistant Commissioner of Customs laid a prosecution in EOCC No.161 of 2007 against the petitioners/accused herein for offences u/s 132 and 135(1)(c) (ii) of the Customs Act, 1962 as amended. It is the case of the

prosecution that the accused had submitted a Bill of Entry on 02.11.2001, for clearance of 90,864 pieces of ladies nightwear covered by invoice dated 13.10.2001 and it was found to be declared as chinese origin, but on inspection by the customs authority, it was found to be of Indian origin. Since it was a private complaint, the procedure under Chapter XIX-B Cr.P.C. - Cases instituted otherwise than on police report, was followed and the prosecution examined three witnesses.

4. At that juncture, the accused filed M.P.No.2249 of 2007 u/s 245 Cr.P.C. for discharge and the trial Court by a well considered order dated 25.02.2008, dismissed the discharge application and held that there are prima facie materials for framing charges u/s 132 and 135(1)(c) of the Customs Act. Challenging the order dated 25.02.2008, the accused preferred Crl.R.C.No.32 of 2008 before the Principal Sessions Judge, Chennai u/s 397 Cr.P.C., which was dismissed by the Sessions Judge on 20.04.2016, holding that there are prima facie materials available on record for charges to be framed. Challenging the orders passed by the Courts below, the accused is before this Court. Under Section 397 (3) Cr.P.C. when once a person has elected to move the Sessions Court, he is precluded from filing a second revision before this Court. However, in extraordinary circumstances where grave injustice has occurred, it is open to this Court to entertain an application u/s 482 Cr.P.C.

5. Mr.Sivanandh, learned counsel for the petitioners fairly conceded that he is not arguing on the merits of the case, but on the very technical point, viz., Section 135(1)(c) of the Customs Act cannot be invoked in this case, inasmuch as Bill of Entry was filed on 02.11.2001, on which date Section 131 (c) was not in the statute and it was introduced by an amendment Act in the year 2003, which came into force on 14.05.2003. Therefore, the petitioners cannot be prosecuted for an offence u/s 135 (1)(c) of the Act in view of Article 20 of the Constitution of India. सत्यमेव जयते

6. Mr.T.P.Sekar, learned Special Public Prosecutor conceded the legal position and submitted that this by itself cannot vitiate the proceedings, as there are sufficient materials on record for appropriate charges to be framed.

7. This Court gave its anxious consideration to the rival submissions.

8. Both the Courts below have held on facts that there are prima facie materials against the petitioners/accused for prosecution under the Customs Act, but the petitioners cannot be prosecuted u/s 135(1)(c) of the Act, in view of the fact that as on 02.11.2001, the same was not in the statute and therefore,

the petitioners are protected by Article 20 of the Constitution of India. Therefore, this point is held in favour of the petitioners/accused. The trial Court is directed not to frame a charge u/s 131 (c) of the Customs Act and frame other charges in accordance with law.

With the above direction, this petition is ordered accordingly. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gms

To

1.The Asst.Commissioner of Customs
Prosecution, Sea Commissionerate
Custom House, Rajaji Salai
Chennai.

2.The Principal Sessions Judge,
Chennai.

3.The Additional Chief Metropolitan Magistrate Court No.2,
for Economic Offences at Egmore,
Chennai (Allikulam complex).

4.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.T.Sivanandan Advocate sr 62983

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