IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M 24662 of 2011(O&M)
Date of decision: 31.05.2016

Pavitar Singh

…..Petitioner

versus

Inspector of Customs (Anti Smuggling) Ministry of Finance

……Respondent

CRM-M 8949 of 2014(O&M)

Gurkirpal Singh

…..Petitioner

versus

Inspector of Customs (Anti Smuggling) Ministry of Finance

……Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.K.S.Dadwal, Advocate for the petitioner in CRM-M 24662 of 2011
Mr.S.S.Narula, Advocate for the petitioner in CRM-M 8949 of 2014
Mr.D.D.Sharma, Advocate for the respondent

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Kuldip Singh, J. (Oral)

By this single judgment I shall dispose of CRM-M 24662 of 2011 and CRM-M 8949 of 2014. Facts of the case are extracted from CRM-M 24662 of 2011.

Petitioners have sought quashing of criminal complaint filed under Sections 132 and 135 of the Customs Act, 1962 (in short, 'the Act') pending in the Court of learned Chief Judicial Magistrate, Jalandhar along with the summoning order dated 13.12.2010. Facts of the case are that a complaint No.120-2-2010 dated 13.12.2010 (original complaint No.6/2.2.2003 at Amritsar) has been filed under Sections 132 and 135 of the Customs Act, 1962 for evasion of customs duty amounting to Rs.1.85 crores by fraudulent means. It is stated that an intelligence input was received that M/s Megna Impex, 7 Sehdev Market, Jalandhar are engaged in fraudulent availment of benefit under Duty Entitlement Pass Book (in short, 'DEPB') scheme by forging the export documents. Investigation was initiated in December 2000 and during the course of investigation it was found that M/s Megna Impex have exported the goods under DEPB Scheme from CFS, Ludhiana. It was also found that said firm is a proprietorship concern in the name of Satbir Singh. The investigation in the matter further indicated that Gurkirpal Singh, Ashok Kumar, Pavitar Singh, Vijay Madan and Satbir Singh floated this concern in the name of Satbir Singh who was working as a Assistant of Pavitar Singh on monthly salary of Rs.6000/-. Accordingly raid was conducted on the business premises of Gurkirpal Singh, Ashok Kumar and Pavitar Singh on 13/14.12.2000 by the officers of Anti Smuggling Wing of Customs Commissionerate Amritsar. Statement of Satbir Singh under Section 108 of the Act was recorded on 13.12.2000 in which he denied that he had ever purchased or exported anything in the name of M/s Megna Impex. He deposed that it was Gurkirpal Singh who purchased and exported goods in his name and that Ashok Kumar also connived with Gurkirpal Singh in this act. It was further disclosed that M/s Megna Impex was financed and exported by Ashok Kumar and Gurkirpal Singh and that Pavitar Singh was engaged in the activity of getting IEC number and other export related work and that Bank Account number of M/s Megna Impex was 681 in OBC Garha Road, Jalandhar and there was other account in State Bank of Bikaner and Jaipur, Jalandhar. He further stated that Gurkirpal Singh and Ashok Kumar might have signed the export related documents. They also might have signed by putting initials of Satbir Singh on some applications. Some applications were signed by him and these were personally submitted by him in the office of JDGFT Ludhiana. Ashok Kumar and Gurkirpal Singh made Satbir Singh to sign blank cheque books of the OBC, Jalandhar and State Bank of Bikaner and Jaipur, Jalandhar. He further disclosed that he had visited Dubai in June 2000 and carried US $ 25000 along with him and gave this money to Ashok Kumar who received him at Dubai Airport. It was further stated that Ashok Kumar used to fill in the columns of the BRCs after getting it signed by him in blank. He further disclosed that all the DEPBs were obtained from JDGFT, Ludhiana by Ashok Kumar and Gurkirpal Singh from his office. The invoice numbers were also disclosed. He further disclosed that some of the DEPBs bear his signatures and other DEPBs are forged by Ashok Kumar. Statement of Pavitar Singh was also recorded. Statement of other accused were also recorded and ultimately, it was established that Ashok Kumar, Pavitar Singh, Satbir Singh, Vijay Madan and Gurkirpal Singh have violated the provisions of Sections 132 and 135 of the Act and that they have also submitted forged/ false export documents by way of substitution and forgery of BRCs for fraudulently obtaining the DEPB licence amounting to Rs.1.85 crore. Hence, the complaint.

The complaint was initially filed before learned Chief Judicial Magistrate, Amritsar. Vide order dated 19.10.2009 learned Chief Judicial

Magistrate, Amritsar returned the complaint to the complainant stating that it has got no jurisdiction. Therefore, the complaint should be presented before learned Chief Judicial Magistrate, Jalandhar or Ludhiana but after giving notice to the accused for 5.11.2009. It comes out that subsequently, after about one year, the complaint was re-filed before learned Chief Judicial Magistrate, Jalandhar, in which, the following impugned summoning order was passed:-

> *"Present: Complainant with counsel.*
> *Complaint presented today. Earlier, it was returned for transfer before this Court by learned Court of CJM, Amritsar. So, it be checked and registered. Earlier, accused were appearing in the said court for the offence punishable u/s 132 and 135 of the Custom Act 1962. So, as per previous order, accused are ordered to be summoned for 4.3.2011."*

I have heard learned counsel for the parties and have also carefully gone through the file.

The allegation against the petitioner Pavitar Singh is that he was Accountant and that Satbir Singh was his employee and that a fake firm was floated in the name of his employee Satbir Singh and that he was involved in preparation of the forged DEPB which is transferable and can be used for setting off against the custom duty.

The plea of learned counsel for the petitioner is that the first complaint was filed before the Amritsar Court, which was returned and was re-filed after about one year before the Jalandhar Court. It is contended that offence under Sections 132 and 135 of the Act are not made out and that the complaint under Sections 132 of the Act is also barred by limitation. It is further argued that complaint could not be returned and the summoning order could not be passed on the basis of the previous order passed by learned

Chief Judicial Magistrate, Amritsar. On merits, statements made by Gurkirpal Singh, Satbir Singh, Pavitar Singh etc. have also been challenged.

On behalf of accused Satbir Singh, additional plea has been raised that on the basis of similar facts, CBI also registered a case and vide judgment by Special Judge, CBI, Punjab, Patiala, he has been convicted and sentenced on 30.3.2013 under Sections 120-B IPC read with Sections 420, 467, 468, 471 IPC and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and has been accordingly sentenced. Appeal against the conviction is pending before this Court. Therefore, for the same offence, he cannot be tried and convicted twice.

First of all, I will take up the case of Gurkirpal Singh. The perusal of the judgment of the learned Special Judge, CBI Court shows that allegations leveled against the present petitioners are that they falsely shown the export of high valued items and obtained DEPB after forging some documents. Allegations of corruption against the officials of the Custom Department were also there. It is stated that with the help of forged and fictitious documents, they obtained DEPB amounting to Rs.1,70,80,314. The perusal of the complaint also shows that almost similar allegations have been leveled regarding submitting false documents and procuring DEPB and cheating the department of Rs.1.85 crore. The Custom Department filed a complaint under Sections 132 and 135 of the Act against various accused, including Gurkirpal Singh whereas CBI also lodged an FIR and presented challan against Gurkirpal Singh and six others under various sections of Indian Penal Code and Prevention of Corruption Act, in which they have been convicted and sentenced.

Under Article 20(2) of Constitution of India it is laid down as under:-

“20. Protection in respect of conviction for offence....

(1) ....

(2) No person shall be prosecuted and punished for the same offence more than once.”

(3) ....

In Section 300 of Code of Criminal Procedure, it is provided as under:-

300.Person once convicted or acquitted not to be tried for same offence

.- (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence

constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 or of section 188 of this Code.

Explanation.- The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.

To properly appreciate the factual position, Sections 132 and 135 of the Customs Act, 1962 are reproduced as under:-

132. **False declaration, false documents, etc.** - Whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

SECTION 135. **Evasion of duty or prohibitions.** - "(1) Without prejudice to any action that may be taken under this Act, if any person -

(a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 or Section 113, as the case may be; or

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under Section 113; or

(d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods, he shall be punishable, -

(i) in the case of an offence relating to, -

(A) any goods the market price of which exceeds one crore of rupees; or

(B) the evasion or attempted evasion of duty exceeding thirty lakh of rupees; or

(C) such categories of prohibited goods as the Central Government may, by notification in the Official Gazette, specify; or

(D) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause (d), if the amount of drawback or exemption from duty exceeds thirty lakh of rupees, with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than one year;

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) If any person convicted of an offence under this section or under sub-section (1) of section 136 is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court such imprisonment shall not be for less than one year.

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than one year, namely :-

(i) the fact that the accused has been convicted for the first time for an offence under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty or the goods which are the subject matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;

(iv) the age of the accused.

Perusal of the said sections show that offence under Section 132 of the Act pertains to false declaration and false documents in the transactions of the business relating to customs and Section 135 of the Acts relates to evasion of custom duty.

In the CBI case against Gurkirpal Singh, allegations under Sections 420, 467, 468 and 471 IPC were also levelled alleging that he has done cheating by evading custom duty to the extent of Rs.1.85 crores has and prepared forged documents. Therefore, charges are substantially same for which accused Gurkirpal has already tried, convicted and sentenced. Therefore, present complaint against Gurkirpal is hit by the principles of double jeopardy and is liable to be quashed.

Now coming to the case against Pavitar Singh. It is claimed that he is merely a Charted Accountant. Satbir was his employee but his involvement is not proved. Further, it is argued that in the case investigated by CBI, Pavitar Singh was found to be not involved in crime.

I am of the view that in this case, CBI recorded statements of some of the witnesses under Section 108 of the Act which are admissible in evidence. Therefore, it is not possible to pre-judge the case before the trial.

Learned counsel for the petitioner has further contended that the maximum sentence for offence under Section 132 of the Act is two years. Therefore, the prosecution under Section 132 of the Act is barred under Section 468 Cr.P.C. as it is beyond limitation. However, it is to be noted that the sentence under Section 135 of the Act may extend to seven years.

It comes out that the complaint was previously filed at Amritsar Court. It was returned and after one year, it was filed at Jalandhar Court. Let the petitioner Pavitar Singh take a plea regarding bar of limitation for offence under Section 132 of the Act and let the lower Court decide the same. In the quashing petition, it is not possible to critically appreciate evidence, which is yet to be produced before learned Chief Judicial Magistrate, Jalandhar.

In these circumstances, I am of the view that there is no ground to quash the complaint qua petitioner Pavitar Singh.

In view of the foregoing discussions, CRM-M 24662 of 2011 filed by petitioner Pavitar Singh is dismissed. However, CRM-M 8949 of 2014 filed by the petitioner Gurkirpal Singh is allowed and the criminal complaint filed under Sections 132 and 135 of the Customs Act, 1962 pending in the Court of learned Chief Judicial Magistrate, Jalandhar qua him stands quashed being hit by principles of double jeopardy.

A copy of the order be placed on the connected file.

31.05.2016 **(Kuldip Singh)**
gk **Judge**