IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1473 OF 2016

Peeyush Kamalkumar Pandey … Applicant

vs.

Central Bureau of Investigation & anr. … Respondents

Mr. V. B. Singh, Advocate for the applicant.
Mr. H. S. Venegaonkar, Advocate for respondent no.1/CBI.
Mr. S. R. Agarkar, A.P.P. for respondent no.2/State.

Coram : Smt. R. P. SondurBaldota, J.
Date : 5th January, 2017

P.C. :

1. This application filed under Section 482 of Criminal Procedure Code is for quashing the charge-sheet and other related proceedings in Special Case No. 101 of 2014 pending in the Court of Special Judge, CBI, Mumbai. The applicant also challenges the order dated 25th November, 2016 by which the Special Judge, CBI, Mumbai rejected his application for discharge.

2. The sole ground on which the applicant seeks quashing of the proceedings is that the same are barred under Section 155(2) of the Customs Act, 1962 ('the Customs Act', for short). In that circumstance before alluding to the facts of the case, it would be convenient to take note of Section 155 of the Customs Act. The same reads as under :

Section 155 : Protection of action taken under the Act –

(1) No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Government or local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the rules or regulations.

(2) No proceeding other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of such cause.

3. The applicant was posted as a Superintendent, Customs Javaharlal Nehru Custom House, District Raigad. The prosecution alleges that during the course of his service from 1st January, 1998 to 4th February, 2014 he has acquired assets worth Rs.1,02,70,386/-, which are disproportionate to his known sources of income. As such the case was registered against him in CBI, ACB, Mumbai and was investigated. After investigation charge-sheet came to be filed. Apparently the applicant was earlier involved in a trap case and the offence RC No.5(A)/2013 was registered against him with CBI, ACB, Mumbai, which subsequently resulted into a closure report. Presently the applicant is being prosecuted for the offences punishable under Sections 13(2) r/w 30(1)(e) of the Prevention of Corruption Act.

4. The charge-sheet shows that on receiving reliable information and a complaint of demand for illegal gratification the premises of the applicant were searched. During the search apart of documents of various investments, cash of

Rs.96,92,101/- was found at his residence. The investigation revealed that the assets acquired by the applicant prior to the check period of 1st January, 1998 to 4th February, 2013 were of worth of Rs.26,000/- whereas those at the end of the check period were of worth Rs.1,21,10,836/-. The total income of the applicant during the check period was of Rs.44,39,622/- and his expenditure was of Rs.26,25,172/-. Therefore his likely savings could have been of Rs.18,14,450/-. As per the charge-sheet the percentage of disproportionate assets possessed by the applicant and his family members worked out to be 231%.

5. The Special Court on perusal of the record found that prima face, a case for disproportionate asset was made out against the applicant. As regards applicability of Section 155 of the Customs Act, the Special Court has observed that by no stretch of imagination it could be said that amassing of disproportionate assets is an act to be done or purporting to be done under the Customs Act. Therefore the provision of Section 155 was not applicable.

6. Mr. Singh, the learned advocate for the applicant relying upon two decisions of the Punjab and Haryana High Court and a decision of Calcutta High Court submits that the provision of Section 155(2) would be applicable to the prosecution of the applicant and as such the prosecution is defective. The three decisions relied upon by him are as under :

1] ***Sunil Kumar vs. Central Bureau of Investigation reported in 2016 (335) E.L.T. 399 (P & H).***

2] ***J. L. Batra vs. Dharam Dev & ors. reported in 1981 C. L. R., page 126 (P & H).***

3] ***Ashok Kumar Singh vs. State of West Bengal, reported in 2016(338) E. L. T. 255 (Cal.)***

Perusal of the decisions of Punjab and Haryana High Court in ***J. L. Batra's case and Sunil Kumar*** case shows that there is virtually no discussion as regards applicability of Section 155 in the two decisions. The two decisions are mere orders passed in the respective proceedings and cannot be treated as precedent. Therefore the same are of no assistance to the submission advanced by Mr. Singh. As regards the decision of Culcatta High Court in ***Ahsok Kumar Singh's*** case, petitioner before Culcatta High Court was an Examining Officer of the Customs. He was alleged to have omitted to perform his duty in order to assist the principal accused in his attempt to export goods improperly from India. These allegations were found concerning an act in pursuance to the provision of the Customs Act and hence Section 155(2) of the Customs Act was made applicable.

7. Bare perusal of the provision of Section 155 of the Customs Act is sufficient to note that it is meant to provide protection to the Central Government or any Officer of the Central Government or Local Authority is in respect of an act done or intended to be done in good faith in pursuance of the Customs Act or Rule or Regulations. In the case on hand, the allegations are of indulging in corruption and holding assets disproportionate to the known sources of income. The learned Sessions Judge has therefore rightly observed that indulging into corruption cannot be said to be an act done in good faith in pursuance of the Act or Rules or Regulations. Consequently, there could be no application of Section 155(2) of the Customs Act to the facts and circumstances of the case. Hence, the application is dismissed.

[Smt. R. P. SondurBaldota, J.]