



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.07.2018

DELIVERED ON: 26.07.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.No.2212 of 2011

and

Crl.M.P.Nos.1 of 2011

S.Saikrishnan

... Petitioner

//vs//

The Assistant Collector of Customs,
Special Investigation Branch,
Custom House, Chennai.

... Respondent

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in E.O.C.C.No.1100 of 1990 on the file of the Additional Chief Metropolitan Magistrate, (E.O.-I), Egmore, Chennai 600 008 and quash the same.

For Petitioner : Mr. M.Abdul Nazeer

For Respondent : Mr.M.Venkateswaran,
Special Public Prosecutor
for Customs Act.

ORDER

The complaint against the petitioner was filed by the Assistant Collector of Customs, Special Investigation Branch, Customs House, Chennai and in brief is as follows. The accused No.1, which is a company in the name of Cosmos Commercial Company was an export firm with an exclusive export code. The petitioner is the IV accused in E.O.C.C.No.1100 of 1990 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai. The II accused misused the name of the I accused company and also its export code and indulged in an attempt to export sandal wood and red sanders logs, which are prohibited goods for export. The III, IV and V accused facilitated this transaction and the III accused having helped in getting all the relevant paper work done and the IV accused i.e. the present petitioner being a shipping services agency attending to customs



clearance facilitated the easy entry to the shipping vessel and he was assisted by the V accused, who was customs officer and who connived with all the other accused. The complainant acting on a specific intelligence input intervened in a timely manner and ensured the seizure of the goods and also made an elaborate criminal complaint before the Additional Chief Metropolitan Magistrate, Egmore, Chennai in C.C.No.1100 of 1990 against the accused for the offences punishable under Sections 120B of the Indian Penal Code read with Section 135(1)(a)(ii) of Customs Act, 1962 as amended and under Section 120B of the Indian Penal Code and Section 5(a) of the Imports and Exports (Control) Act, 1947 and under Section 136(1) of the Customs Act.

2. In the present petition, the petitioner has brought to light the fact that all the accused, except him are no more and he is the only accused alive. Furthermore, his contention is that, having a Shipping Services Company, facilitating the custom clearing is his profession and he cannot be charged of conspiracy or falsifying the declaration, since the exporter himself declares the goods exported by him and is certified after verification by a customs officer himself. It is also his plea that he is a victim of deception clearly planned by all the other accused and the prosecution case shows many loopholes like the container lying in the harbor for more than a week and detection of the declared goods much later, always leading to possibility of subsequent tampering with the goods. However, it has been pleaded that due to his family circumstances and having already served in the prison as an under trial for 8 1/2 months and when all the other accused already dead, the court may be pleased to quash the criminal proceedings against him. It is his contention that his case may be one of a doctrine of double jeopardy especially in view of the fact that he had been already convicted by the IX Additional Special Judge for CBI cases, City Civil Court in C.C.No.75 of 1997 by levying a fine of Rs.10,000/- on two counts and imprisonment till the raising of the court and he cannot be tried again in this case for the same offence.

3. The aforesaid circumstances narrated by the petitioner may deserve sympathy on humanitarian grounds but cannot be a ground for quashing the criminal complaint for the simple reason that such offences as alleged against the petitioner are white colour crimes, which lead to depletion of natural resources and affects the country seriously. Legislations like COFFEPOSA and FERA and Imports and Exports (Control) Act 1947 etc. are special legislations in order to curb and eradicate such offence, which cause serious damage to the economy of the country and need to be dealt with an iron hand. The plea that the other accused have already expired, cannot be a good reason for quashing this Calender Case and the



doctrine of double jeopardy would not also apply because, the case in which he was convicted was for the corrupt practices adopted by him and the other accused by bribing the 5th accused Suyamani which necessarily a criminal offence punishable under different Act and the sections in the present calendar case are totally different and therefore, there is no trying the accused for the same offence twice.

4. Mr.M.Abdul Nazir, learned counsel for the petitioner would contend that since the case in E.O.C.C.No.1100 of 1990 on the file of the Additional Chief Metropolitan Magistrate, (E.O.-I), Egmore, Chennai 600 008 is pending for a long time, the same may be quashed. He relied on the following decisions in

1. Herald Stephen Benson V. State of M.P. reported in 1988 CrL.L.J.1008
2. Ram Parshad and others V. The State of Haryana reported in 1993 CrL.L.J.508
3. Dr.N.V.Raghava Reddy Vs. The Inspector of Police-II, Anti-Corruption Bureau reported in 1991 CrL.L.J.2144

and contended that denial of right to speedy trial is violative of petitioner's fundamental right guaranteed under Article 21 of the Constitution of India. In the decisions referred to above, it was found that the delay in trial was not due to any fault on the part of the petitioner. As far as the present case is concerned, several witnesses have been examined and since the petitioner filed the present petition to quash the entire proceedings in E.O.C.C.No.1100 of 1990 on the file of the Additional Chief Metropolitan Magistrate, (E.O.-I), Egmore, Chennai 600 008 and an order of stay was also granted by this court, the trial court could not proceed further in the matter. Therefore, it cannot be said that there is a failure on the prosecution to dispose of the case in E.O.C.C.No.1100 of 1990 on the file of the Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai. The offences alleged here are heinous in nature and the Supreme Court in the decisions in Dr.N.V.Raghava Reddy Vs. The Inspector of Police-II, Anti-Corruption Bureau reported in 1991 CrL.L.J. 2144 has held that the court should assess in determining whether a particular accused has been deprived of his right to a speedy trial. It has also identified the factors as 1] length of delay, 2] the reasons for the delay, 3] the accused's assertion of his right, and 4] prejudice to the accused. In the instant case, though the petitioner filed the Criminal Original Petition in the year 2011, did not come forward to argue the case, especially when an order of stay has been granted by this court not to proceed further in E.O.C.C.No.1100 of 1990 on the file of the



Additional Chief Metropolitan Magistrate, (E.O.-I), Egmore, Chennai 600 008 and thus also contributed for protraction of the proceedings before the trial court. For all the reasons stated above, I hold that there is no good reason to quash the proceedings in E.O.C.C.No.1100 of 1990 on the file of the Additional Chief Metropolitan Magistrate, (E.O.-I), Egmore, Chennai 600 008 .

5. In the result, this criminal original petition is dismissed. Consequently, connected criminal miscellaneous petition is closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

mst

To

1. The Additional Chief Metropolitan Magistrate, (E.O.-I),
Egmore, Chennai 600 008
2. The Assistant Collector of Customs,
Special Investigation Branch,
Custom House, Chennai.
3. The Special Public Prosecutor, for customs,
Madras High Court.

+2cc to Mr.M.Abdul Nazeer, Advocate SR.No.50962

Cr.O.P.No.2212 of 2011

GN(06/08/2018)