IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1289 OF 2017

Union of India
Through the Directorate of
Revenue Intelligence, 13,
Sir Vithaldas Thakersey Marg,
Opp. Patkar Hall, New Marine Lines,
Mumbai 400 020. … Applicant

Versus

1. Shailesh Kantilal Meisuria
British National, Presently Residing
at : (i) A-1004, Ratnakar
4, Prernatirth Derasar Road,
Anand Nagar, Ahmedabad – 380015.

2. State of Maharashtra … Respondents

Mr. R. K. Pathak for Applicant – Union of India.
Mr. N. S. Mundargi I/by A. M. Sachwani for Respondent No.1.
Mr. S. S. Pednekar, APP for State.

CORAM : NITIN W. SAMBRE, J.
DATE : MAY 4, 2018.

P.C. :

. This Application is preferred by the Applicant – Union of India questioning the order dated 13th December 2017 passed by the learned Additional Sessions Judge, Mumbai in Criminal Revision Application No. 1153 of 2017, whereby the Respondent No.1 is permitted to travel to United Kingdom for the period of six months from the date of departure on the conditions which are spelt out in the order impugned.

2. During the course of hearing of the present Application, the matter was adjourned time and again at the behest of Applicant, so as to enable them to make statement as to the period within which the Applicant intent to proceed with prosecution against the Respondent No.1 under the provisions of the Customs Act.

3. In response to the query of the Court, Mr. Pathak, the learned Counsel appearing for the Applicant informed that in all nine show cause notices are issued and the proceedings *qua* the adjudication under Section 24 of the Customs Act are pending and unless the said adjudication attains finality, the prosecution cannot be initiated. According to him, clause – 6 of the Circular issued by the Government of India dated 23rd October 2015 bearing Circular No. F. No. 394/68/2013-Cus (AS) permits initiation of prosecution immediately on completion of adjudication proceedings and in the present case the adjudication proceedings are yet to be completed. Clause – 6 of the said Circular reads as under :

> *"**6**. **<u>Stage for launching of prosecution</u>** : Normally, prosecution may be launched immediately on completion of adjudication proceedings. However, prosecution in respect of cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, Wild life items and endangered species of flora and fauna may preferably be launched immediately after issuance of show cause notice."*

4. In addition Mr. Pathak, the learned Counsel for Applicant would urge that various difficulties are faced by the Applicant in gathering evidence so as to initiate timely prosecution against the Respondent No.1. Hence, more time in the matter is required to initiate the prosecution. He would then urge that if the Respondent No.1 is permitted to leave the country in view of the order of the learned Sessions Judge, further adjudication proceedings and the prosecution will be protracted. He would also emphasis the nature of commercial fraud practiced by the Respondent No.1 by giving false declaration when the goods were imported in the country.

5. Per contra, Mr. Mundargi, the learned Counsel for Respondent No.1 would urge that the circular *referred supra* no where supports the case of the present Applicant, to initiate prosecution only

after the proceedings *qua* adjudication are completed. According to him, there is no statutory embargo which authorizes the present Applicant to delay the filing of prosecution.

6. Mr. Mundargi, the learned Counsel for Respondent No.1 then would urge that there is an extradition treaty between India and United Kingdom of Great Britain which fact is also required to be appreciated by this Court. According to him, there is no blanket permission granted in favour of the Respondent No.1 to travel to United Kingdom as the condition is coupled with rider of strict conditions which he is duty bound to comply with. He would urge that the status of the Respondent No.1 is that of an individual employee of Accused company. Financial liability, if any, can also be enforced against Importer.

7. Considered rival submissions.

8. Clause – 6 of the Circular dated 23rd October, 2015 issued by the Government of India along with clauses 6.1 to 6.4 reads thus :

> *"6. **Stage for launching of prosecution** : Normally, prosecution may be launched immediately on completion of adjudication proceedings. However, prosecution in respect of cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, Wild life items and endangered*

species of flora and fauna may preferably be launched immediately after issuance of show cause notice

6.1 Further, in following cases investigation may be completed in time bound manner preferably within six months and adjudication may be expedited to facilitate launching of prosecution. These cases are :

(a) In case where arrest has been made during investigation for commercial fraud cases as well as outright smuggling cases) or in the case of a habitual offender.

(b) In case <u>where arrest has not been made</u> but it relates to outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under section 11 or goods notified under section 123 of the Customs Act, 1962 or foreign currency where the value of goods is Rs. 20,00, 000 (Rupees twenty lakh) or more.

6.2 In a recent judgment passed by Hon'ble Supreme Court of India in the case of Radhe Shyam Kejriwal [2011(266)ELT 294 (SC)], the Apex Court had, interalia, observed that (i) adjudication proceedings and criminal proceedings can be launched simultaneously; (ii) decision in adjudication proceedings is not necessary before initiating criminal prosecution; (iii) adjudication proceedings and criminal proceedings are independent of each other in nature and (iv) the findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution. In view of aforesaid observations of Hon'ble Supreme Court, it is reiterated that if the party deliberately delays completion of

> *adjudication proceedings, prosecution may be launched even during the pendency of the adjudication proceedings, where offence is grave and qualitative evidences are available.*
>
> *6.3 Prosecution need not be kept in abeyance on the ground that the party has gone in appeal/revision are not unduly delayed because the case record are required for purpose of prosecution, a parallel file containing copies of the essential documents relating to adjudication should be maintained.*
>
> *6.4 The Superintendent in charge of adjudication section should endorse copy of all adjudication orders to the prosecution section. The Superintendent in charge of prosecution section should monitor receipt of all serially numbered adjudication orders and obtain copies of adjudication orders of missing serial numbers from the adjudication section every month."*

It is not in dispute that the nature of offence is financial fraud for which the Respondent No.1 is proceeded against.

9. So far as the clause – 6 of the Circular is concerned, it provides for initiation of prosecution immediately on completion of adjudication proceedings in the cases/contingency, provided therein. Though the offence was registered in January-2017, till today the Applicant has not served the show cause notices *qua* adjudication in all the cases on the Respondent No.1 except for the nine transactions. It is

volunteered by Applicant that adjudication is likely to take substantial time.

10. Upon perusal of clause – 6.1 of the circular dated 23rd October 2015, provides for the completion of investigation in time bound manner preferably within six months in case of commercial fraud. It also provides for expeditious completion of adjudication so as to facilitate the launching of prosecution.

Upon comparing the language applied in clause – 6 and clause – 6.1 (a), the case in hand appears to be not governed by clause – 6 but clause – 6.1.

11. In the present case, the fact remains that the Respondent No.1 was released on bail pursuant to the provisions of Section 167 (2) of the Code of Criminal Procedure, as the Applicant has not initiated the prosecution against Respondent within the statutory time. Be that as it may, even after completion of the period of about 15 months from the date of registration of offence, in response to the court's query, Applicant is not in a position to make a statement as to the period within which the prosecution is likely to be initiated against the Respondent No.1 pursuant to clause – 6.1 of the circular.

12. Having regard to the fact that the Respondent No.1 is booked in commercial fraud cases, the circular dated 23rd October, 2015 issued by the Government of India particularly Clause – 6.1 permits the Applicant to initiate prosecution preferably within six months after completing the investigation. The only reason which is cited before this Court for not completing the investigation is pendency of the adjudication proceedings which are yet to be initiated against the Respondent No.1 in all the transactions, but for nine show cause notices. In my opinion, having regard to the above discussion, I hardly noticed any justifiable reason for the Applicant, for not initiating prosecution against the Respondent No.1.

13. For the above referred default of not completing adjudication and timely initiation of prosecution on the part of the present Applicant cannot be read to the detriment of the Respondent No.1. The fact remains that the Respondent No.1 is an employee of the Importer – Company on whose behalf a false declaration was made. The financial liability of the duty and the penalty thereon, can be taken care of by the Importer – Company and also by the beneficials including that of present Applicant.

14. Taking overall view of the matter, it is the default of the Applicant in initiating prosecution and completing adjudication which

prompted the Applicant to move before the learned Sessions Court seeking permission for travel. The Applicant for its own defaults cannot put an embargo on the right of the Respondent No.1, whereby permission for limited period is sought, for travel to foreign country. On one hand, the Applicant is not completing the investigation, and on the other hand, is trying to use the pendency of the investigation so as to put an embargo on the right of the Respondent No.1 to travel abroad.

15. Apart from above, it is required to be noted that this Court when had tried to show some indulgence, the Applicant who has filed two additional affidavits before this Court is non-committal as regards the initiation of prosecution against the Respondent No.1 in timely manner.

16. That being so, the claim of the Respondent No.1 for permission to travel abroad cannot be put to question in absence of any statutory embargo. In absence of serious steps on the part of Applicant to initiate prosecution, the act of Applicant objecting travel permission is not justifiable.

17. In the aforesaid factual matrix, in my opinion, the powers exercised by the revisional court does not warrant any interference, as the restrictions which are sought to be incorporated on the movement of the

Respondent No.1 cannot be at the cost or leisure of the Applicant – Agency.

18. That being so, I hardly noticed any reason which warrants interference in the order impugned passed by the revisional court particularly when no error of jurisdiction is noticed.

19. However, the only modification in the terms which are imposed *qua* the permission granted to the Respondent No.1 to leave country are as under :

(a) The condition No.6 of the impugned order in respect of deposit of Rs. 50,000/- is modified to Rs. 7,00,000/-.

(b) The condition No.3 of the impugned order is replaced with the condition that the Respondent No.1 shall submit his travel itinerary to the court of learned Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai with an advance copy to the Investigating Officer. Such itinerary should also contained the entire details, viz – Respondent No.1's permanent address in United Kingdom, his e-mail address, his contact numbers (land-line and mobile) etc.

(c) The Respondent No.1 shall be permitted to leave India initially only for the period of six weeks so as to test his *bona fides.*

(d) Respondent No.1 volunteers to deposit passport of his mother, who is an Indian citizen, in the court below within two weeks of this order and in any case while reporting the compliance of these conditions before the court below.

20. The Respondent No.1 is permitted to leave relieving country i.e. India only upon an assurance in the form of undertaking given by the learned Counsel for the Respondent No.1, upon instructions, that – (a) if prosecution is initiated against the Respondent No.1, he shall not seek any adjournment or protract the same; (b) he shall co-operate with the adjudicating authority in expeditious disposal of adjudication proceedings without seeking unnecessary adjournment, so that the adjudicating authority will be in a position to complete the process of adjudication within the period as prescribed in the circular dated 23rd October 2015 issued by the Government of India *referred supra; and (c) a*ny attempt on the part of the Respondent No.1 in protracting or strolling the adjudication proceedings or the prosecution to be initiated against him, will have bearing over his future claim *qua* his travel permission.

21. The Respondent No.1 will be at liberty to apply for permission before the Court of learned Magistrate afresh in case of such contingency.

22. This order is restricted only to the extent of prayer, granting permission for the period of six weeks.

23. With above modifications, the Criminal Application stands dismissed.

(NITIN W. SAMBRE, J.)