IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :10.01.2018

Pronounced on :18.01.2018

Coram

The Honourable Dr.Justice G.Jayachandran

Crl.R.C.No.765 of 2010 and
M.P.No.1 of 2010

1.Smt.Kamala bai

2.C.Kanthilal

3.Lalith D.Shah .. Petitioners/ Accused 1 to 3

/versus/

State:by CBI
Economic Offences Wing,
Chennai-6. .. Respondent/ Complainant

Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C., against the order dated 29.06.2010 passed in Crl.M.P.No.754/2010 in E.O.C.C.No.331/2005 on the file of the Additional Chief Metropolitan Magistrate (EOI), Egmore, Chennai 600 008.

For Petitioners : Mr.M.Arvind Kumar

For Respondent : Mr.K.Srinivasan,
Spl.P.P. for CBI Cases

O R D E R

This revision petition is directed against the dismissal of discharge petition filed by the petitioners herein, who are the accused in E.O.C.C.No.331/2005 on the file of the Additional Chief Metropolitan Magistrate (EOI), Egmore, Chennai 600 008.

2. The contention of the petitioners before the trial Court for discharge is that they were prosecuted for the offence under Sections 120B r/w 420, 468, 471 IPC and Sections 132 and 135 of the Customs Act for the alleged mis-declaration of goods imported in to India under duty exemption entitlement

certificate scheme[DEEC] using false and fabricated documents as genuine. Pending investigation of the case, Government of India introduced Kar Vivad Samadhan Scheme, 1998 wherein cases of this nature were allowed to be settled under the scheme and such settlement will immune the parties from all prosecutions arising out of such mis-declaration. Since they are immuned from criminal prosecution, in view of the settlement under Kar Vivad Samadhan Scheme 1998, no prosecution could be continued.

3. The contention raised by the petitioners before the trial Court did not find favour. Hence, the present revision petition is preferred on the ground that the facts of the case squarely falls within the ratio laid down before the Hon'ble Supreme Court in Hira Lal Hari Lal Bhagwati v. C.B.I., New Delhi reported in 2003(3)CTC 356. Kar Vivad Samadhan Scheme 1998, which came into force on 22.10.1998 extended immunity to persons, who declared and accepted the claim of the department and the duty determined by the department. Availing the said scheme, the petitions submitted Form 2B under Rule 4(b) of Kar Vivad Samadhan Scheme 1998 and pursuant to that, the Commissioner of Customs Chennai Port had passed proceedings on 22.12.1998 wherein it is certified that full and final settlement of tax arrears under Section 91 of Finance (No.2) Act, 1998 paid under Kar Vivad Samadhan Scheme. Despite the payment of duty assessed by the Department and issuance of certificate for full settlement granting immunity from instituting any proceedings for prosecution for any offence under indirect tax enactment or from imposition of penalty under the said enactment, the prosecution has filed additional final report on 03.05.2002 by including offence under Section 132 and 135 of Customs Act, 1962 besides under Sections 120B r/w 420, 468, 471 of IPC. The trial Court failed to take note of the scope of Kar Vivad Samadhan Scheme 1998 and the extent of immunity granted under the Scheme. It has erroneously dismissed the discharge petition, which requires consideration.

4. Heard the learned counsel appearing for the petitioners and the learned Special Public Prosecutor for CBI Cases and also the counter filed by the respondent.

5. On perusal of the records submitted by the learned respective counsels appearing for both sides, this Court finds that initially CBI has filed final report against these petitioners and others for offence under Section 120B r/w 420, 468, 471 of IPC alleging that they were entered into conspiracy to cheat the Government of India by importing 'cassia' under Duty Exemption Entitlement Scheme (DEEC) without payment of customs duty due to such goods and by dishonestly exporting sub-standard oil instead of 'cassia oil' as required under the scheme. Thereby, the petitioners along with the other accused

have caused wrongful loss to the Government to the tune of Rs.28.7 lakhs and consequently, wrongful gain to themselves.

6. The license was given to the petitioners to import 73.5 Metric Tonne of cassia valued at 90258 US dollars with the obligation to export cassia powder of 735 kgs. The said license was later modified to export 'cassia oil' instead of 'cassia powder'. By misusing the said license, A2 C.Kanthilal, authorised signatory of A1[K.Kamalabai] to import 73.5 metric tonne of cassia under authorised bills between 16.7.1993 and 18.8.1993. Instead of forwarding the cassia, so imported for extraction of cassia oil, A2[C.Kanthilal] had fabricated the document as if the cassia has been transported to Madurai through lorry and fabricated document aas if 74 cartons of cassia oil being exported through Tuticorin Port. Infact instead of cassia oil, mixture of casted oil, cotton seed oil, soya bean oil were filled in 74 cartons and exported through ship bill No.1755 by availing the service M/s Ukkirapandian Pillai and Sons, Custom House Agents, No.60, Beach Road Tuticorin.

7. Subsequently, A2 has created documents as if cassia waste, accumulate in the process of extraction of cassia oil has been destroyed in the presence of Spices Board Officials. Fake destruction had been carried out at the premises of 5th accused [K.R.Ramesh Babu] and destruction certificate has been obtained fraudulently. Thus, after importing cassia without extracting oil and exporting it the accused had diverted the cassia but created the document as if the oil has been extracted and exported. Thereby had committed the offence under Sections 120B r/w 420, 468 and 471 of IPC.

8. Later in the second charge sheet, as a result of further investigation conducted by the respondents, they have found that by the above said criminal act of conspiracy cheating and fabrication of document being used as genuine, the accused persons have also cheated the Government of India its legitimate custom duty of Rs.22.7 lakhs due on the imported cassia valued at Rs.27,97,998/- and had deliberately misused DEEC Scheme for their personal benefit, which attracts the offence punishable under Sections 132 and 135 of Customs Act. After obtaining necessary sanction from the competent authority authorised under Section 177 of Customs Act, 1962, the second final report filed on 03.05.2002.

9. It is contended by the learned counsel appearing for the petitioners that having availed immunity under Kar Vivad Samadhan Scheme 1998, the petitioners are immune from criminal prosecution and in support of his submission, he referred the judgment of the Hon'ble Supreme Court in Hira Lal Hari Lal Bhagwati v. CBI, New Delhi reported in 2003(2) CTC 256.

10. This court on a different occasion had an opportunity to consider the above said judgment to find out whether Kar Vivad Samadhan Scheme 1998 gives a blanket immunity for all prosecution or restricted to prosecution under indirect tax act only?

11. The combined reading of Sections 90,91 and 95 of Kar Vivad Samadhan Scheme 1998 and the judgment of the Hon'ble Supreme Court rendered in Hira Lal Hari Lal Bhagwati cited supra and M.Natarajan v. State reported in [2008(3) SCC Crl.507], it is made clear that any immunity granted under Kar Vivad Samadhan Scheme 1998 is only in respect of instituting any proceeding for prosecution of offence under any indirect tax enactment and not other enactments including IPC. In fact, the form of certificate issued by the Customs Department to first petitioner very specifically mentioned as follows:-

> "(b) granting immunity, subject to the provisions contained in the Scheme, from instituting any proceeding for prosecution for any offence under any indirect tax enactment or from the imposition of penalty under said indirect tax enactment, in respect of matters covered in the aforesaid declaration made by the declaration."

12. In the light of the provision of Kar Vivad Samadhan Scheme 1998 as well as the order passed by the Commissioner of Customs, the plea of the petitioner that by availing the benefit of Kar Vivad Samadhan Scheme 1998 will grant them immunity for all the prosecution under all enactment is unfound. It is to be pointed out that the trial Court had taken note of the immunity granted by the Customs Department and in view of the settlement arrived at, it pointed out that the amount levied under Kar Vivad Samadhan Scheme 1998 had been paid under protest and it has not been tendered unconditionally.

13. In the light of the above fact this Court finds that the petition to discharge the accused is unsustainable. However, if the process under Kar Vivad Samadhan Scheme 1998 initiated through the declaration of the appellants had reached the logical conclusion and the immunity is extended to the petitioners from prosecuting under indirect tax enactment, then no charge under Sections 132 and 135 of Customs Act, can be framed against the petitioners.

14. With these observations, this Criminal Revision Case is disposed of. The trial Court can go through the records submitted by the prosecution and shall frame charge against the petitioners under relevant provision of law except under Customs Act and

proceed with the trial. It is also directed to the trial Court that the trial should be completed within a period of 6 months from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2.The CBI, Economic Offences Wing, Chennai-6.

3.The Special Public Prosecutor for CBI Cases, High Court, Chennai.

4.The Section Officer,Criminal Section,High Court Madras. (2copies)

+2cc to Mr.M.Arvindkumar, Advocate, sr.no.3796 (04/06/18)

Crl.R.C.No.765 of 2010

GJ(CO)

RRK(06/02/2018)