



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on : 08.08.2023

Pronounced on: 17.08.2023

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

N.Balasubramanian – 55 years,
S/o.S.Narayanan,
Old No.3, New No.7, Manickavasagam Street,
East Tambaram,
Chennai – 600 059.

... Petitioner/A4

/versus/

State Rep. by Inspector of Police,
CBI/SPE/ACB, 2nd Floor,
Shastri Bhavan,
Haddows Road,
Chennai – 600 006.

... Respondent

Prayer:- Criminal Original Petition is filed under Section 482 of Cr.P.C.,
pleaded to call for the records pertaining to C.C.No.1/1998 pending before the
Principal Special Judge for CBI/13th Additional Special Judge for CBI Cases,
Chennai and quash the criminal proceedings pending against the petitioner and
pass such further or other orders as this Hon'ble Court may deem fit and proper
in the facts and circumstances of the case.



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

For Petitioner : Mr.R.D.Ashok Kumar,
for Mr.K.V.Shanmuganathan

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor (C.B.I)

ORDER

Petition filed to quash the proceedings pending before the 13th Additional Sessions Court, (Special Court for CBI case), Chennai in C.C.No.1/1998.

2. The petitioner the Tapal Clerk in Customs Office is ranked as 4th accused in the said criminal prosecution launched against M/s.Ballarpur Industries Ltd and 5 others in F.I.R.No.RC17/(A)/95 dated 06.04.1995 was registered based on source information. The final report filed on 29.12.1997 after completing the investigation. The trial Court, on considering materials collected, has framed charges, which is self explanatory and disclosed relevant facts necessary to decide this quash petition. Therefore, the charges are extracted below:-

Firstly that, during 1993-1994 at Chennai deceased Shri.N.Gopalakrishnan, the then AC Refunds in the Customs House, Chennai, by abusing his official position committed criminal misconduct and sanctioned



WEB COPY



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

refund knowing fully well that the claims of the M/s.Ballarpur Industries were time barred. A.1 - M/s.Ballarpur Industries (BILT), Pondicherry is a glass making unit of Thappar Group of Companies Thiru.Yogesh Bakshi, General Manager, incharge of the affairs of BILT, preferred ante dated refund claims knowing fully well that the ante dated nature of these claims and the company's ineligibility to receive the refund and enabled the company to obtain refund to the tune of Rs.2,50,37,145/-, A.2 - Thiru. M.A.Narayanan, an employee of BILT and the subordinate of Mr.Yogesh Bakshi filed the ante dated claims in the Customs Departmental knowing fully well that the ante dated nature of these claims along with A.3 - Tmt.Manorama, A.4 - Thiru.N.Balasubramanian, A.5 - Thiru.Arunachalam, A.6 - Thiru.Periyasamy, the then Tapal Clerks, Customs Department, being public servants entered into criminal conspiracy to cheat the Customs Department, entertained these ante dated refund claims and made ante dated endorsements of the claims thereby validating them to receive the refund as though the company was entitled for the said refund and deceased Thiru. Ramesh Kumar, the then Appraising Officer, Audit, by abusing his official position accepted an illegal gratification of Rs.25,000/- as a motive or reward for clearing the Auditing of these claims knowing



WEB COPY



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

fully well that the claims had been ante dated and thereby you A1 to A.6 have committed an offence punishable U/s 120-B r/w 420, 467 468 and 471 IPC and Section 7 and 13(2) r/w.13(1)(d) of P.C Act, 1988 and within my cognizance.

***Secondly,** in pursuance to the said criminal conspiracy, that A.1 - M/s.Ballarpur Industries, Pondicherry is a glass making unit of Thappar Group of Companies. This unit was formed in the year 1991 for the manufacture of light weight glass bottle used for exports. Towards the erection of factory, import of goods i.e., machineries and other items were made by A.1 through Madras Customs House in various consignments, during 1992 A.1 claimed these imported goods as accessories eligible for concessional rate of duties. However, the appraising group of Customs held that the goods imported were not accessories but spares. Thus, a dispute arose with regard to importation of goods under certain Bills of entries. Finally A.1 came forward to pay the prescribed rate of duty and they cleared the goods after paying the higher rate of duty for the goods imported and the bills of entry Nos.026274 dated 31.7.92, 030346 dated 4.9.92, 030661 dated 16.9.92, 030675 dated 8.9.92, 034745 dated 4.9.92. The items imported under the bill of entry numbers 030675,*



WEB COPY



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

34745, 30661 etc., for which the refund was sanctioned holding the majority of the items were accessories. All the above 5 refund claims were signed by Mr.Yogesh Bakshi, the then General Manager of BILT, purportedly on 4.3.93. As is known the date of filing of refund application is "very vital" because any claim or refund is hit by "limitations" if filed after the lapse of 6 months u/s. 27 of Customs Act, 1962. That A.1 did not file the claims on time and the responsibility letter with then General Manager Thiru.Yogesh Bakshi and he wanted to file the refund claims some how ante dating the date of submission. Thus A.1 got the refund of Rs.2,50,37,145/- against its claim which was submitted only in April 1993 i.e., after completion of the time limit of six months with the connivance of A.1 to A.6 as stated above and thereby cheated the Customs Department by causing wrongful loss to the tune of Rs.2,50,37,145/- and thereby you/A.1 and A-2 have committed an offence punishable U/s 420 IPC and within the connivance of A.1 to A.6 my cognizance

Thirdly, in pursuance to the said criminal conspiracy, that A.3 Tmt.Manorama Thiru. N.Balasubramanian, A.5 Thiru.Arunachalam, A.6 Thiru.Periyasamy, the then Tapal Clerks, Customs Department, being public servants, entertained these



WEB COPY



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

ante dated refund claims and made ante dated endorsements of the claims thereby validating receive the refund as though the company was entitled for the .said refund and deceased Thiru.Ramesh Kumar, the then Appraising Officer, Audit by abusing his official position accepted an illegal gratification of Rs.25,000/- as a motive or reward for clearing the Auditing of these claims knowing fully well that the claims had been ante dated and thereby you/A.3 to A.6 have committed an offence punishable under Section 420, 467, 468, & 471 IPC and Section 13(2) r/w.13(1)(d) of P.C Act 1988 and within my cognizance.

3. Thus, from the charges framed and the material documents including statements of witnesses indicates, pursuances to conspiracy two violation of Rules were committed.

(i). The petitioner and other public servants dishonestly and fraudulently received the time barred refund claim made on behalf of A1 Company.

(ii). The refund claim are to be made within 6 months and permissible only to accessories. However, A1 and A2 presented refund claim beyond the time limit for goods imported which are not eligible for refund



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

(spares). This petitioner as Tapal Clerk at IT office, received the claim fixed three receipts and seal laying over one after another to screen the actual date of receipt. However, the Tapal Register does not reflect the receipt of refund claim. Thus, evidently bills were not presented on 05.03.1993 but it is purported to have been submitted on that day to cause undue favour to A1 and A2 by abusing his position as Tapal Clerk and consequently to cause pecuniary benefit to A1 & A2 by getting Tax refund.

4. This petition to quash is filed on the ground that the allegation that five refund claims were made by first accused M/s.BILT. As per Section 27 of the Customs Act, the claim for refund should be submitted within six months from the date of payment of duty. M/s.BILT submitted the refund claim on 07.04.1993, but by affirming multiple stamp, the stamp dated 05.03.1993 has been superimposed on the stamp dated 07.04.1993 is one of the charge the petitioner proceeded by the Department in the Departmental enquiry. The charges framed in the criminal proceedings and the imputation of charge in the departmental proceedings are one and the same. The Enquiry Officer though found one charge proved and one charge not proved, the disciplinary Authority had held the charges not proved and exonerated the delinquent. This order has



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

attained finality.

WEB COPY

5. The Customs, Excise & Gold (Control) Appellate Tribunal, has allowed the refund application of A1 holding that the refund claim was made well within the period of limitation and not barred by limitation as contemplated under Section 27 of Customs Act. Thus, the two violations alleged in the final report being the subject matter of disciplinary proceedings as well as the adjudication proceedings held to be incorrect. Hence, for the same set of facts, the petitioner who was Tapal Clerk who received the refund claim is no way connected with the process or decision of refund claims. The petitioner for the same set of facts and on examination of same witnesses as proposed to be relied by the respondent in the criminal case, faced disciplinary proceedings and got exonerated. The standard of proof required for proving charges in the domestic enquiry is not as strict as it is required for proving the charge in a Criminal Trial. In such facts and circumstances, the Hon'ble Supreme Court in *Ashoo Surendranath Tewari -vs- Deputy Superintendent of Police, EOW, CBI reported in (2020) 9 SCC 636*, has held that for identical set of facts and charges, if the delinquent is held not guilty in the departmental Enquiry and exonerated on merits and if there is a no finding contravention to law, then the



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

Criminal prosecution shall be an abuse of the process of law.

WEB COPY

6. The Learned Counsel for the petitioner placed the computation of charges in the departmental proceedings and the charges framed by the trial Court. The list of witnesses examined in Departmental proceedings and list of witnesses proposed to be examined by the prosecution also been furnished. The order passed by the Joint Commissioner of Customs (P&V), in the Disciplinary proceedings under Rule 14 of the CCS (CCA) Rules 1965, dated 09.09.2010.

7. The Learned Special Public Prosecutor for respondent/CBI filed detailed counter contending that, the refund of the Tax by order of CESTAT or the exoneration in the Departmental Proceedings will not have any effect in the Criminal prosecution. Mere exoneration in Departmental Proceedings would not entitle the accused person for discharge from Criminal proceedings. The criminal proceedings would adjudge the accused person on the scale of, whether the offences under the Prevention of Corruption Act were established or not and on the basis of evidence placed before the Court without the report of CESTAT that, it cannot be concluded that, the claim is not time barred or A1 entitle for the refund claim.



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

WEB COPY

8. Heard the Learned Counsel for the petitioner and the Learned Special Public Prosecutor for the Respondent/C.B.I. Records perused.

9. The computation of charges, list of witnesses enclosed along with the charges framed in disciplinary proceedings and the charges framed by the trial Court and the list of witnesses placed juxtaposition and compared. They are identical. In fact, in the list of witnesses, during the disciplinary proceedings two more witnesses not shown in the list of witnesses by prosecution are added. From the order of Joint Commissioner dated 09.09.2010 in the disciplinary proceedings which has reached finality, we find that the petitioner has faced disciplinary proceedings for corrupt consideration with an intention to validate “time barred” claims failed to maintain absolute integrity and devotion to duty and conduct himself in a manner unbecoming of a Government Servant contravening Rule 3(1)(i)(ii) & (iii) of CCS, (Conduct) Rules 1964.

10. Further, we find from the order that CESTAT which heard the appeal regarding refund has answered the issue that limitation under Section 27



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

WEB COPY

of the Customs Act, will not arise in case protest under Section 22 of the Customs Act made by the Tax payer. In this case, A1 Company has given a letter dated 12.09.1992 tendering the payment of tax under protest. Following the Principle laid by the Hon'ble Supreme Court in ***Indian Piston Limited -vs- Collector of Central Excise, Madras*** reported in (1990) 46 ELT 3, the said protest letter saves limitation.

11. The order of Joint Commissioner concludes that, In view of Tribunals, holding that the refund claims are not time barred, and the protest by way of a letter before payment of duty is acceptable in view of Apex Court order cited, which rendered the time barred factor as redundant and the allegation of failure to maintain absolute integrity will not hold water even on the score of preponderance of probability. Accordingly, the Inquiry Officer's findings regarding charges under Rule 3(1) (i) of CCS (Conduct) Rules, 1964 as not proved beyond the shadow of reasonable doubt merits acceptance. In fact, this petitioner earlier filed discharge petition before the trial Court in Crl.M.P.No.207 of 1999 in C.C.No.1 of 1998. The order of the Collector of Customs rejecting the refund claims, the appeal before Tribunal by A-1 Company and the order passed by CESTAT, South Zone, Chennai, reversing



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

the order of Collector of Customs and allowing the refund claim. Further, the appeal by the Department before the Hon'ble Supreme Court and the dismissal order were considered and the discharge petition was dismissed.

12. On revision before this Court by this petitioner in Crl.R.C.Nos.1020 of 2002, etc., this Court in the common order dated 12.06.2015, dismissed the revision petition. This Court, while dismissing the revision petition filed for discharge on the same ground has concluded that

“22. The contention of the learned Senior Counsel that when the duty was paid under protect, there was no period of limitation for making refund claims and therefore, there was no necessity for the accused to affix the seal date 5.3.1993 in respect of the Applications filed later. I am not inclined to answer that issue and we cannot go by presumptions and conjectures. If the prosecution is able to establish that the Seal date 5.3.1993 on the refund Applications was not affixed on 5.3.1993 and it was affixed later, the prosecution will succeed.”

13. The Learned Counsel for the petitioner submitted that, the



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

WEB COPY

earlier revision filed by the petitioner was dismissed was based on the observation made by the Hon'ble Supreme Court in the appeal preferred against the order passed by CESTAT. At the time of filing the revision petition in the year 2002, the charges were not framed and disciplinary proceedings initiated did not concluded. The Disciplinary proceedings initiated on 16.06.2006. The Inquiry Officer in his report dated 28.05.2008, concluded that the charge that the petitioner as Tapal Clerk failed to maintain absolute integrity is not proved and the charge that he failed to maintain devotion to duty and acted in a manner unbecoming of a Government Servant is proved. However, the Disciplinary Authority, the Joint Commissioner of Customs (P&V) in his order dated 09.09.2010 exonerated the delinquent (the petitioner herein) from the charges.

14. This development after filing of Criminal Revision case not brought to the notice of the Judge while dismissing Criminal Revision Case No.1020 of 2002 dated 12.06.2015. Further, the Learned Counsel for the petitioner contended, when the charges and witnesses in disciplinary proceedings and Criminal trial is identical, the exoneration in disciplinary proceedings which requires less standard of proof i.e., preponderance of probability is sufficient, certainly have impact in the criminal prosecution



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

initiated for the identical charges which requires proof beyond doubt.

WEB COPY

15. Two judgment of the Hon'ble Supreme Court consisting of three Judges were strongly relied upon by the Learned Counsel for the petitioner for the preposition of law stated as below:-

(i). ***Radheshyam Kejriwal -vs- State of West Bengal and another*** reported in ***(2011) 3 SCC 581***.

18. With deepest respect we are entirely in agreement with the conclusion of our learned Brother Sathasivam, J. that the proceedings under Sections 51 and 56 of the Act are independent of each other and the finding in an adjudication proceedings under Section 51 of the Act is not binding in the proceeding for prosecution under Section 56 of the Act and both can go hand in hand. Further, the prosecution can be launched even before conclusion of adjudication proceedings under Section 51 of the Act. In fact, it has explicitly been said by this Court in Standard Chartered Bank (1) v. Directorate of Enforcement [(2006) 4 SCC 278 : (2006) 2 SCC (Cri) 221] which is as follows: (SCC p. 295, para 24)



WEB COPY



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

“24. ... There is nothing in the Act to indicate that a finding in an adjudication is binding on the court in a prosecution under Section 56 of the Act. There is no indication that the prosecution depends upon the result of the adjudication. We have already held that on the scheme of the Act, the two proceedings are independent. The finding in one is not conclusive in the other. In the context of the objects sought to be achieved by the Act, the elements relied on by the learned Senior Counsel, would not justify a finding that a prosecution can be launched only after the completion of an adjudication under Section 51 of the Act.”

19. However, in a case like the present one in which the penalty proceeding under Section 51 of the Act and the prosecution under Section 56 of the Act though launched together but the penalty proceeding culminated earlier exonerating the person, the question would arise as to whether continuance of the prosecution would be permissible or not. In other words, the question with which we are concerned is the impact of the findings which are recorded on the culmination of adjudication proceedings on criminal proceeding and in case in the adjudication proceedings the person concerned is exonerated can he ask for dropping of the criminal proceeding on that ground alone.

.....



WEB COPY



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

.....

24. In the present case, it is not the case of the appellant that he was tried by the Enforcement Directorate and therefore further trial by the criminal court is not permissible but his contention is that in the face of the finding in the adjudication proceedings, his continued prosecution is an abuse of the process of the Court.

.....

26. We may observe that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our opinion, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case.

.....

38. The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;



WEB COPY



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

(iii) *Adjudication proceedings and criminal proceedings are independent in nature to each other;*

(iv) *The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;*

(v) *Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;*

(vi) *The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and*

(vii) *In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.*

39. *In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the*



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.

16. This judgment followed in *Ashoo Surenderanath Tewari -vs- Deputy Superintendent of Police, EOW, CBI and another* reported in (2020) **9 SCC 636**, wherein, the Hon'ble Apex Court reaffirmed the ratio laid in *Radheshyam Kejriwal* case cited supra concluded as below:-

14. From our point of view, para 38(vii) is important and if the High Court had bothered to apply this parameter, then on a reading of the CVC report on the same facts, the appellant should have been exonerated.

15. Applying the aforesaid judgments to the facts of this case, it is clear that in view of the detailed CVC order dated 22-12-2011, the chances of conviction in a criminal trial involving the same facts appear to be bleak. We, therefore, set aside the judgment of the High Court and that of the Special Judge and discharge the appellant from the offences under the Penal Code.



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

WEB COPY

17. Before us, we have two finding of proceedings one the departmental proceedings and another the adjudication proceedings.

18. For the same set of charges, the petitioner has gained an order of exoneration in the departmental proceedings, adjudication by CESTAT and the appeal thereof in Supreme Court. As far as the refund claim which is also the subject matter of the Criminal prosecution is on assumption that, A1 is not entitle for refund since the goods are not exempted from tax and also the refund claim made beyond limitation is barred by limitation. However, the same held to be false accusation by Tribunal (CESTAT) and ordered for refund. The Hon'ble Supreme Court has confirmed the order.

19. This Court, on considering the facts that, this petitioner who received the Tapal and affixed wrong date seal cannot be held responsible for the decision of permitting refund, since limitation not applicable in case of protest. As far as the date seal affixed in the refund claim to show that it was made within time, the prosecution has to prove that the date seal dated 05.03.1993 at two places overlapping in the refund claim letter and other date



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

WEB COPY

seal of 07.04.1993 is to create record as if refund claim made within the expiry of six months. For this allegation, the Inquiry Officer has given a finding that the date stamp freely accessible and at the most, this petitioner as Tapal Clerk had failed to keep the date stamp in safe to avoid misuse. Therefore, it is a failure to maintain devotion to duty. Whereas, the Disciplinary Authority while considering this finding had said that the receipt of the Tapal at Customs House refund section and forwarded it to the Appraisal Section, the acknowledgement generated from the Computer maintained at refund Section, proves that the claims were received on 05.03.1993. The Assistant Commissioner (Refund) admits that the claim petitions were received on 05.03.1993 as per the CPU acknowledgement.

20. The Appraiser who received the refund claims scrutinised it and rejected on merits and not on the ground of limitation. The refund claim rejected by Appraiser appealed before CESTAT. In the appeal, both question of limitation as well as merit of the claim canvassed by the Department but failed. Both the grounds were held against the Department.

21. In view of the above reasons, the prosecution against this



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

WEB COPY

petitioner for receiving Tapal and forwarding to the respective Section cannot be held a crime worth prosecution. For affixing date seal in the letter he received, the material like CPU acknowledgement indicates the Tapals were received on 05.03.1993. The seals over imposed may be for several reasons. When no witness before Disciplinary Proceedings had implicated this petitioner for affixing multiple seal or such affixure was done with dishonest intention criminal prosecution on assumption is not sustainable.

22. In view of the above observation, the F.I.R registered in the year 1995, if continued further as against this petitioner, it will be the worst abuse of law. The finding of the Disciplinary Authorities as well as the finding of the CESTAT cannot be ignored since they directly touch upon the charges framed.

23. In the result, this ***Criminal Original Petition is Allowed.*** The petition to quash the criminal proceedings passed in C.C.No.1 of 1998 against this petitioner/N.Balasubramanian stands quashed. Consequently, connected Miscellaneous Petition is closed.



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

17.08.2023

WEB COPY

Index :Yes/No.

Speaking order/non speaking order
bsm

Copy to:-

1. The Principal Special Judge for CBI/13th Additional Special Judge for CBI Cases, Chennai.
2. The Inspector of Police, CBI/SPE/ACB, 2nd Floor, Shastri Bhavan, Haddows Road, Chennai – 600 006.
3. The Public Prosecutor, High Court, Madras.



WEB COPY



Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

DR.G.JAYACHANDRAN,J.

bsm

Delivery order made in
Crl.O.P.No.5392 of 2023
& Crl.M.P.No.3384 of 2023

17.08.2023