

9. The learned Counsel for the petitioner submits that subsequently the petitioner-society itself has applied for exemption of the land in question from the operation of the Act under the provisions of Sec. 20 of the Act. Therefore, it is prayed that the petition should be entertained. The application under Sec. 20 of the Act can be submitted by the land-holder holding the land in excess of the ceiling limit. The petitioner is not the land-holder at all. Therefore, at the instance of the petitioner no application under Sec. 20 of the Act is maintainable. Hence this submission is also rejected.

10. The learned Counsel for the petitioner submits that the petitioner is a Co-operative Housing Society and therefore, charitable view should be taken by the Court. The facts of the case do not warrant that any charitable view may be taken by the Court. On the contrary there appears to be some force in the submission made by the learned Counsel for the respondents that there is a device to circumvent the provisions of the Act. Entertaining the petition and taking charitable view in the matter may amount to aiding such device. The position of law is very clear. The petitioner-society had no interest in the land on the appointed date and therefore, no charitable view is possible in the matter. If the Government on its own thinks fit to take any action in accordance with law, it may do so. As far as this Court is concerned it would be proper to refrain from making any observation for taking charitable view in the matter.

11. No other contention is raised. In the result, there is no substance in the petition. Hence rejected. Notice discharged. *Ad interim* relief granted earlier stands vacated.

(Rest of the Judgment is not material for the Reports.)

(KMV)

Rule discharged.

* * *

SPECIAL CRIMINAL APPLICATION

Before the Hon'ble Mr. Justice D. C. Gheewala.

M/S. BOMBAY SILK MILLS LTD. & ANR. v. DAYASHANKER,
ASSISTANT COLLECTOR, VALSAD & ANR.*

Criminal Procedure Code, 1973 (II of 1974) - Sec. 482 - If there is a *prima facie* case, prosecution cannot be quashed - Some cases enumerated where prosecution can be quashed.

In proceeding to quash a prosecution under Sec. 482, this Court will only be concerned with finding out as to whether the complaint, if allowed to proceed would tantamount to an abuse of the process of Court or as to whether there is sufficient material *prima facie* to proceed against the petitioner-accused irrespective of the fact as to whether ultimately on appreciation of evidence the complaint may result in conviction or acquittal of the accused. (Para 6)

The law is that where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offences

*Decided on 28-10-1988. Special Criminal Application Nos. 300, 302 and 303 all of 1988 for quashing the prosecution launched before the Chief Judicial Magistrate, Valsad for the offence punishable under Sec. 135 of Customs Act.

alleged, secondly, whether the allegation in the FIR even if taken at their face value do not constitute the offence as alleged and, thirdly whether the allegations made against the accused do constitute an offence alleged but there is either no legal evidence then only in those cases the process should be quashed. (Para 16)

PROSECUTION OF JURISTIC PERSONS - Prosecution of juristic persons i.e. of Companies, Corporations etc. for offences where *mens rea* is an essential element - Where possible - Some light thrown on the question.

Counsel for the Company contended that the intention and acts of the individual Officers cannot be attributed to the Company unless there is something more to indicate that the Officers were acting for and on behalf of the Company. The Articles of Association or Memorandum of any limited Company would not include as its object an illegal act. The accusation made against the Company is, therefore, to be judged from the surrounding circumstances and it appears that in the instant case the premises of the Bombay Silk Mills were utilised for conducting all the negotiations for the alleged illegal acts amounting to offences and it will be significant to note that Mr. H till today continues to be the Managing Director of the Company. If the Managing Director and the Export Manager who are high officials of the Company utilised the premises of the Company for illegal acts, if the Export Manager went to Delhi from Bombay to open the account and get cleared the illegal goods, and if Mr. M the main prosecution witness had collected the papers pertaining to this illegal transaction from the premises of the Bombay Silk Mills then a strong presumption arises that whatever was done by the top officials of the Company, namely, Bombay Silk Mills was done for and on behalf of the Company and as such it will be premature at this stage to quash the complaint against the Company. Ultimately on evidence the Company may be exonerated but for the present it does not appear that prosecuting the Company would tantamount to an abuse of the process of the Court. (Para 7)

Mulchand v. Dayashanker (1), Esso Standard Inc. v. Udham Bhagwandas (2), Smt. Paru Mrugesh v. Assistant Collector of Customs (3), Rajnikant v. Assist. Collector of Customs (4) and Tesco Supermarkets v. Natrass (5), distinguished.

Smt. Nagawwa v. Veeranna Shivalingappa (6), J. P. Sharma v. Vinod Kumar (7) and R. P. Kapur v. State of Punjab (8), followed.

Madhavrao J. Scindia v. Sambhajirao Chandrojirao Angre (9) and Union of India v. Kanchanlal Trikamlal (10), referred to.

Kamal Mehta with *K. S. Nanavati* with *Vikram S. Nankani*, for the Petitioner.
B. B. Naik, for Respondent No. 1.

M. D. Pandya, P.P. for Respondent No. 2.

GHEEWALA, J. The present petitions are filed under Sec. 482 of the Code of Criminal Procedure, invoking inherent jurisdiction of this Court and praying that the complaint bearing No. 3 of 1988 filed by the first respondent, the Assistant Collector of Customs, Bulsar, be quashed. The said complaint is pending before the Additional Chief Judicial Magistrate, at Bulsar.

(1) 1988 Mah. LJ 287 (2) 45 (1975) Company Cases 16 (3) 1988 Cri. LJ 963
(4) 14 Excise Customs Cases 36 (5) 1971 (2) AH ER 127
(6) AIR 1976 SC 1947 (7) AIR 1986 SC 833
(8) AIR 1960 SC 866 (9) 1988 (1) SCC 692 (10) 1977 GLR 289

2. The prayer for quashing the complaint is advanced on the ground that the complaint tantamounts to an abuse of the process of the Court and the complaint does not disclose any offence as alleged in the complaint. The three petitioners are original accused Nos. 7, 9 and 10 before the learned Chief Judicial Magistrate.

3. The facts leading to the said complaint can be briefly summarised as under :

M/s. International Marketing of Delhi had procured advance licences for importing polyester filament. Ultimately it was found that the said polyester filament was not utilised for the purpose for which it was imported and as such the accused named in the complaint had committed an offence punishable under Sec. 135 of the Customs Act.

In the complaint, these three petitioners have been named as accused Nos. 7, 9 and 10. The accused No. 7 is M/s. Bombay Silk Mills, Bombay, accused No. 9 is one Trikam Bhogilal Khatri and accused No. 10 is Balkrishna T. Rajgor. Accused Nos. 9 and 10 are employees of one Vaishali Textiles, of which accused Hemant Vyas was a Director and he is also Managing Director of original accused No. 7 Bombay Silk Mills. Mr. K. S. Nanavati, the learned Advocate for the petitioners assailed the complaint on numerous grounds and put forth two main grounds on which he prayed that the complaint requires to be quashed *qua* the present petitioners.

4. Mr. Nanavati's first contention was that the allegations made in the complaint do not suggest any breach of provisions of Chapter IV-A of Customs Act. Chapter IV-A deals with detection of illegally imported goods and prevention of the disposal thereof. Mr. Nanavati's second contention was that these allegations made in the complaint *qua* accused Nos. 7, 9 and 10 do not amount to acts or omission constituting sale, transport or storage of goods in disregard of provisions of Chapter IV-A.

5. As against this Mr. B. B. Naik, the learned Advocate appearing for the respondent No. 1 urged that while exercising powers under Sec. 482 of the Criminal Procedure Code the High Court will not enter into meticulous thread-bare dissection of the complaint and the High Court would not be concerned with the finding out as to whether on appreciation of evidence the complaint is likely to result in conviction or not. Mr. Naik, urged that if there is *prima facie* triable case put forth in the complaint then the High Court would be slow in quashing the said complaint.

6. Numerous decisions were cited by both the sides in support of their contentions, but as the scope of the present inquiry is limited and falls within a narrow compass reference to all the decisions *in extenso* is not necessary and this Court will only be concerned with finding out as to whether the complaint, if allowed to proceed would tantamount to an abuse of the process of Court or as to whether there is sufficient material *prima facie* to proceed against the petitioner-

accused irrespective of the fact as to whether ultimately on appreciation of evidence the complaint may result in conviction or acquittal of the accused.

7. Mr. Nanavati's main thrust was directed against the involvement of accused No. 7 *i.e.* Bombay Silk Mills Ltd. and Mr. Nanavati urged that there must be an averment in the complaint that an officer of the Company who has been implicated in an offence has links with the Company and is responsible for the conduct of the business of the Company. In the instant case it may be mentioned at the outset that against petitioner-Balkrishna T. Rajgor and Trikamlal Bhogilal Khatri there are definite averments in the complaint and they do not appear to be associated with the Bombay Silk Mills in any official capacity. However, Balkrishna Rajgor is a partner of Shri Ganesh Silk Mills and Trikamlal B. Khatri is also concerned with the yarn business. Mr. Nanavati urged that Hemant Vyas whose petition for quashing the complaint was dismissed at the admission stage, though he is Managing Director of the Company, namely, Bombay Silk Mills, and though T. Ramchandran who is another accused is an Export Manager of the Bombay Silk Mills, they can be said to have acted in their individual capacity and not in any way as officer of the Bombay Silk Mills. It must be noted that the Company functions through its officers and officers of the Company may act even outside their relation with the Company as individuals on their own. If as an individual they have committed some offence then in all cases it may not be necessary to come to a conclusion that they had acted in their official capacity as officers of the Company and in such cases the Company cannot be held responsible. This would always depend upon the facts and circumstances of each case. In the instant case one Tandon of Delhi was holding the licence in question. He met Hemant Vyas in the office of the Bombay Silk Mills. Another accused T. Ramchandran who is the Export Manager of the Bombay Silk Mills went to Delhi and opened an account and got the goods cleared. Not only that but the notified register of goods is in the handwriting of T. Ramchandran. Mr. Nanavaty argued that these accusations by themselves would not establish that either Shri Hemant Vyas or T. Ramchandran had acted for and on behalf of the Bombay Silk Mills. Mr. Nanavaty's contention was that the intention and acts of the individual officers cannot be attributed to the Company unless there is something more to indicate that the officers were acting for and on behalf of the Company. The Articles of Association or Memorandum of any limited Company would not include as its object an illegal act. The accusation made against the Company is, therefore, to be judged from the surrounding circumstances and it appears that in the instant case the premises of the Bombay Silk Mills were utilised for conducting all the negotiations for the alleged illegal acts amounting to offences and it will be significant to note that Mr. Hemant Vyas till today continues to be the Managing

Director of the Company. If the Managing Director and the Export Manager who are high officials of the Company utilised the premises of the Company for illegal acts, if the Export Manager went to Delhi from Bombay to open the account and get cleared the illegal goods, and if Mahavir Chaudhari the main prosecution witness had collected the 'papers pertaining to this illegal transaction from the premises of the Bombay Silks Mills then a strong presumption arises that whatever was done by the top officials of the Company, namely, Bombay Silk Mills was done for and on behalf of the Company and as such it will be premature at this stage to quash the complaint against the Company. Ultimately, on evidence the Company may be exonerated but for the present it does not appear that prosecuting the Company would tantamount to an abuse of the process of the Court.

8. Referring to the numerous cases referred to by the learned Advocates appearing for the rival sides, it may be mentioned that my attention was drawn to a case reported at 1988 Mah. LJ 287 (*Mulchand v. Dayashanker*) where the Court held that complaint under Sec. 135 of Customs Act filed only on basis of statement made under Sec. 108 by co-accused should be quashed in a petition under Sec. 482 of the Code of Criminal Procedure, 1973. As stated above every case would depend upon the facts and circumstances of each case and in the instant case it cannot be said that the complaint is based only on the statement of a co-accused. Again statement recorded under the provisions of the Customs Act would be admissible in evidence and as such this decision will not help Mr. Nanavati.

9. Mr. Nanavati also drew my attention, to a case reported at 45 (1975) Company Cases 16 (*Esso Standard Inc. v. Udham Bhagwandas Japanwalla*). In the said case the Bombay High Court held that if the allegations in the complaint only disclosed a breach of contract, no *mens rea* could be attributed to a Company and, under these circumstances the complaint was quashed. The ratio of the said decision would not be of any avail to the petitioner inasmuch as in the instant case the allegations do not tantamount only to allegations suggesting the breach of contract but there are definite allegations which go to allege *mens rea*. The decision, therefore, cannot be of any assistance to Mr. Nanavati.

10. Similarly in a case reported at 1988 (1) SCC 692 (*Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre*), the quashing of the complaint by the High Court was upheld by the Supreme Court. However, in that case, the ingredients of a criminal offence were wanting, and the High Court while quashing the complaint had justifiably taken into consideration the strained relationship between the parties. In the instant case the ingredients are not wanting and there are no allegations that the respondent No. 1 was motivated by any vengeful attitude against the petitioners.

11. Similarly in a case reported in 1988 Cri. LJ 963 (*Smt. Paru Mrugesh Jaikrishna v. Assistant Collector of Customs*), the learned

single Judge of the Bombay High Court while quashing the complaint held that the only material against the accused was confessional statement of co-accused and even the said confessional statement was not making out a case under the Customs Act. As even the confessional statement was not making out any case the High Court had no alternative but to quash the complaint. However it is not so in the present case.

12. Mr. Nanavati heavily relied upon a case reported at Vol. 14 Excise Customs Cases 36 (*Rajnikant Maganbhai Patel v. Assistant Collector of Customs*). In the said case the complaint was filed for violation of the Foreign Exchange Regulations and original accused No. 7 had challenged the said complaint and had prayed that it should be quashed under Sec. 482 of Cri. Pro. Code. On the facts and circumstances of the said case the learned single Judge of the Bombay High Court came to the conclusion that the circumstances alleged against the said petitioner even if taken at their maximum face value would fall short of the most curtail element under which accused No. 7 was tagged with the involvement in the criminal conspiracy. On the facts of the said case it was found that the said petitioner *i.e.* accused No. 7 had only limited knowledge regarding particular transaction of purchase of foreign exchange by accused Nos. 5 and 6. The said petitioner as an employee was only asked to do some overt act of watching the brief case or the suit case and attending to the phone call in the hotel room. He was, therefore, held not associated in the conspiracy and the process was quashed against him. I fail to appreciate as to how in the instant case the observations made by the learned single Judge of the Bombay High Court in the said case can be of any avail to any of the petitioners. The petitioner Nos. 9 and 10 in the present case were not mere pegs. They had actively participated in various transactions. It, therefore, cannot be said that the case against them taken at its maximum face value will not reveal that they were part and parcel of the conspiracy.

13. Mr. Nanavati also argued that in the instant case reference to Bombay Silk Mill is only descriptive and hence it cannot be held that the Company is responsible for the act of any of its officers. In this behalf Mr. Nanavati relied upon a decision reported at 1971 (2) All England Reporter 127 (*Tesco Supermarkets Ltd. v. Natrass*). In the said case a nationally known public company owned several hundred supermarkets. At one of these supermarkets they displayed an advertisement regarding a particular brand of washing powder which advertisement said that on the particular packet one shilling less was being charged. On account of the mistake of a Sales Girl the packets were displayed which were tagged with the higher price. A customer was informed that no packets were in stock for sale at a lower price. Information was lodged with the authorities for an offence punishable under Trade Description Act, 1968. The Courts below upheld the conviction of the Company but on an appeal the House of Lords held that :

“In the case of a large-scale business, the owner, whether natural person or a limited Company, could not personally supervise the activities of all his servants which might lead to the commission of an offence under the 1968 Act; it would therefore be consistent with the taking of reasonable precautions and the exercise of due diligence to institute an effective system to avoid the commission of offences under which superior servants were instructed to supervise inferior servants whose acts might otherwise lead to the commission of an offence; this was not the delegation of the duty to exercise due diligence but the performance of that duty; when the owner was a limited Company a failure to exercise due diligence on its part would only occur where the failure was that of a director or senior manager in actual control of the Company’s operations who could be identified with the controlling mind and will of the Company; whether the Company had exercised all due diligence was a question of fact but, if it had done so, there was no rule that it was nevertheless liable for the act or default of one of its subordinate managers who was not identifiable with the Company if that act or default consisted of a failure on the manager’s part properly to exercise supervisory functions over other servants of the Company; the manager’s failure would, on the contrary, constitute an act or default of another person, *i.e.* a person other than the Company.”

The appeal filed by the Company was allowed by the House of Lords. Mr. Nanavati tried to press in service the above quoted observation. However, the facts in the instant case are so different that the ratio of the said case can in no way be made applicable. In the instant case the top officers of the Company were involved and premises of the Company were utilised by these top officers for conducting these nefarious activities. Even papers pertaining to these transactions had been collected from the premises of the Company. Under the circumstances, it cannot be held that the default was made by some subordinate person who was not identifiable with the Company and hence the ratio of this case would be of little avail to Mr. Nanavati.

14. As against this Mr. Naik, drew my attention to a case reported at AIR 1976 SC 1947 (*Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi*) where the Supreme Court summarised the instances where an order of Magistrate issuing process against the accused can be quashed and set aside. In para 5 of the judgment the Supreme Court held as under :

“(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible, and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.”

As in the instant case according to Mr. Naik, none of the four categories are applicable, the process issued by the learned CJM does not require to be quashed.

15. Similarly in a case reported at AIR 1986 SC 833 (*J. P. Sharma v. Vinod Kumar Jain & Ors.*) the Supreme Court held that if taking all the allegations in the complaint to be true without adding or subtracting anything, it cannot be said that no *prima facie* case for trial has been made out this Court would not be justified in quashing the complaint under Sec. 482 of Cri. Pro. Code.

16. Similarly in a case reported at AIR 1960 SC 866 (*R. P. Kapur v. State of Punjab*), the Supreme Court while dealing with the provisions of Sec. 561-A Cr. P. C. 1898 which is exactly identical with Sec. 482 of Cr. P. C. 1973 illustrated the categories of the cases where the inherent jurisdiction to quash proceedings can and should be exercised. The Supreme Court held firstly that where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offences alleged, secondly, whether the allegation in the FIR even if taken at their face value do not constitute the offence as alleged and, thirdly whether the allegations were made against the accused do constitute an offence alleged but there is either no legal evidence then only in those cases the process should be quashed. Mr. Naik urged that in the instant case the allegations constitute an offence and there is *prima facie* case to go to the trial.

17. Lastly, Mr. Naik drew my attention to a case reported at 1977 [XVIII] GLR 289 (*Union of India v. Kanchanlal Trikamlal & Ors.*) wherein the learned single Judge (A. D. Desai, J.) held that *mens rea* is not anecessary ingredient in an offence under the Customs Act and the existence of the criminal intention would be presumed, and burden is cast on the accused to displace the presumption. Relying upon this observation Mr. Naik urged that to quash the process at a stage when even the evidence has not been adduced, in such type of cases where alleged offences have a tendency to jeopardise the economic stability of the Company would nip the prosecution case in the bud. I can see the force in Mr. Naik's contention and as I have already held that there is sufficient evidence atleast for the case to be allowed to go to trial and as there are triable allegations made against each of the petitioners, I feel that no case has been made out to quash the proceedings.

18. Regarding petitioner-accused No. 7 *i.e.* Bombay Silk Mills have already held above that the top officers of the Company had utilised the premises of the Company for doing the alleged illegal acts, papers were collected from the premises of the Company and as such there is sufficient ground to proceed against the Company as well. In view of the above discussion, the petitions are required to be dismissed and they are accordingly dismissed. Rule is discharged and the interim relief is vacated in all the petitions.

(KMV)

Rule discharged.

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