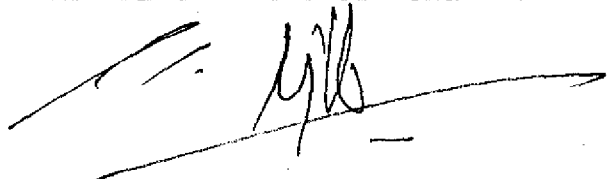


ORDER

This Criminal Petition by the accused filed under Section 482 Cr.P.C., praying the Court for quashing the proceedings in C.C.No.87/2001 on the file of the I Addl. C.J.M., Mangalore, wherein the process had been ordered against the petitioners for offence under Section 135 of the Customs Act on the complaint submitted by the respondent herein under Section 200 Cr.P.C., challenging the legality and validity of the proceedings impugned.

2. The Court has heard the arguments of Sri Mohammed Ali, the learned Counsel appearing on behalf of the petitioners and Smt.Shireen Zafrullah, the Addl. Central Government Standing Counsel.

3. The learned Counsel for the petitioners, strenuously contended that the material on record clearly shows that the entire proceedings impugned before this Court are illegal and improper. The complainant was not at all justified in filing the complaint before the learned Magistrate. He also contends that the



fact finding authority i.e., the tribunal constituted under the provisions of the Customs Act, after a detailed enquiry, had set aside the order of the Commissioner of Customs, wherein the Commissioner had imposed duty and also penalty in respect of the contravention of the provisions of Customs Act. The learned Counsel also contends that in view of the findings of the tribunal, which is the fact finding authority, the learned Magistrate was not at all justified in taking cognizance of the case against the accused.

4. The learned Counsel also relies upon the following decisions in support of his contentions:

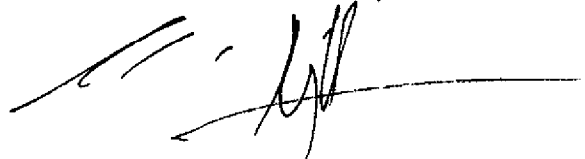
1. 1999 (113) ELT 375 (A.C.)
2. 1994 (73) ELT 269
3. 1996 (81) ELT 479
4. 1999 (113) ELT 37
5. 1999 (108) ELT 16 (S.C.)
6. 2002 (139) ELT 498
7. AIR 1992 SC 1815

5. Placing reliance on the ratio laid down in the said decisions, the learned Counsel prays for allowing the Criminal Petition.



7. The Court has carefully gone through the material on record and has given its anxious thoughts over the rival contentions raised at the Bar.

8. From the material on record, it is seen that there is no dispute that the accused have got themselves engaged in the manufacture of precision tools i.e., components of watches. The firm is a 100 per cent Export Oriented Unit. On 23.02.1998, the officials of D.R.I., Mangalore had conducted a search in the premises of the 1st petitioner, on the ground that there had been misuse of spares and raw-materials which were imported in 100 per cent E.O.U. The D.R.I. officials had also seized the documents and goods under a Mahazar. The Commissioner of Customs had issued Show Cause Notice on 14.08.1998 and after considering the Show Cause Notice, the Commissioner had passed an order on 10.12.1999, imposing penalties of payment of duties and also confiscation of the seized goods. The petitioners herein, feeling aggrieved had preferred an appeal before the tribunal, under



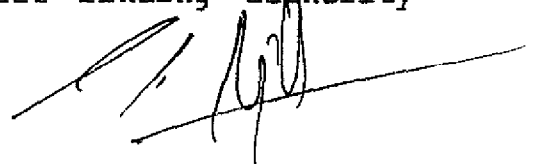
compliance of binding Circular of Board are void and are required to be set aside for that reason alone.

3. In view of our findings, the order is set aside and appeals allowed with consequential relief."

9. When things existed so, the respondent had filed a private complaint before the trial Court, alleging the same facts and in particular, it was contended that the accused had committed offence punishable under Section 135 of the Customs Act. The accused feeling aggrieved by the order of the Commissioner, have come up before this Court with the instant Criminal Petition.

10. It is a settled principle of law that the inherent powers of this Court are to be exercised with great care, caution and circumspection and in rarest of rare cases.

11. At this stage, it is necessary to mention that the bone of contentions of the petitioners is that in view of the findings of the tribunal, the final fact finding authority

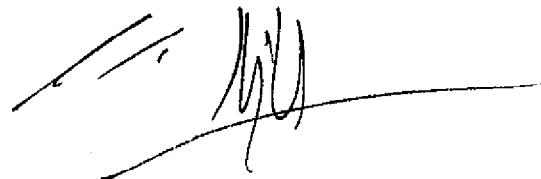


under the act, the criminal prosecution is totally uncalled for. This aspect has been disputed by the other side and according to the respondent, the prosecution of the accused for offence under Section 135 is totally justifiable.

12. The point at issue falls into a very narrow compass for this Court to see whether the criminal proceedings launched against the petitioners for the said offence is legal and proper.

13. At this stage, it is necessary to refer to a decision of the Delhi High Court, reported in 1994 73 ELT 269, wherein the Delhi High Court had held that the tribunal having found that the petitioners were innocent and completely exonerated them of the charge of smuggling. The Criminal prosecution under Section 135 of the Customs Act was not maintainable and the same was liable to be quashed.

14. It is also necessary to refer to another decision of the Kerala High Court, reported in 1996 81 ELT 479, wherein it has been held that



exercise inherent powers and allow the petition,
as prayed.

21. For the foregoing reasons, the petition
stands allowed and consequently, the proceedings
in C.C.No.87/2001 on the file of the I Addl.
C.J.M., Mangalore, is hereby quashed.

Sd/ 
Judge

SNN/MSUL