

CASE NO.:
Appeal (crl.) 676 of 2003

PETITIONER:
Hira Lal Hari Lal Bhagwati

RESPONDENT:
C.B.I., New Delhi

DATE OF JUDGMENT: 02/05/2003

BENCH:
Brijesh Kumar & A.R.LAKSHMANAN.

JUDGMENT:

JUDGMENT

(arising out of S.L.P. (Crl.) No. 1356 of 2002)

WITH
CRIMINAL APPEAL NO. OF 2003
(arising out of S.L.P. (Crl.) No. 1363 of 2002)

BRIJESH KUMAR, J.

I have the benefit of going through the detailed and elaborate judgment prepared by brother Lakshmanan, J. I am in respectful agreement with the same. I would, however, like to emphasise yet another aspect of the matter by reason of which also it does not lie for the respondent, to initiate or continue the criminal proceedings against the appellants.

Since the facts have been set out in detail, in the judgment of brother Lakshmanan, J., it is not necessary to dwell upon the factual position anymore. It is true, so far the scheme and the terms under which determination of liability is made thereunder, provides for immunity from initiation of criminal proceedings under the Customs Act, in respect of the matters covered under the declaration u/s 88 of the Scheme but more important in that regard for this case is Section 95 of the Kar Vivad Samadhan Scheme, Chapter IV of Finance (No.2) Act, 1998, which is quoted below :

"95, The provisions of this Scheme shall not apply

(i) xx xx xx

(ii) in respect of tax arrear under any indirect tax enactment -,

(a) in a case where prosecution for any offence punishable under any provisions of any indirect tax enactment has been instituted on or before the date of filing of the declaration under section 88, in respect of any tax arrear in respect of such case under such indirect tax enactment;

(b) xx xx xx

(c) xx xx xx

(iii) to any person in respect of whom prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code (45 of 1860), the Foreign

Exchange Regulation Act, 1973 (46 of 1973), the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Terrorists and Disruptive Activities (Prevention) Act, 1987 (28 of 1987), the Prevention of Corruption Act, 1988 (49 of 1988), or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any such enactment;

xxx

xxx

xxx"

According to the above provision, a person will not be eligible or entitled to take benefit of the Scheme against whom a prosecution for punishment of an offence under Chapter IX or XVII of the IPC is pending on or before the date of the declaration or such person has been convicted for any of such offences indicated above. There is no dispute on the fact that on the date the appellants submitted their declaration under Section 88 no prosecution was pending nor they stood convicted for an offence falling in Chapter IX or XVII of the IPC. Section 420 IPC falls in Chapter XVII of the IPC. The other condition of eligibility so as to be entitled to take the benefit of the scheme is that where any proceeding is pending in the High Court or the Supreme Court against any order in respect of tax arrear, the declarant is obliged to withdraw such appeal or proceeding and is further liable to furnish the proof of such withdrawal as provided under Section 90 of the Scheme of 1998. The case of the petitioner was settled, the tax liability was determined on 10.2.1999 by the Designated Authority, and the certificate of full and final settlement was issued on 19.7.1999. The appeal pending in this Court against the order of the CEGAT was withdrawn by the appellants on 16.3.1999. It is thus obvious that certificate of full and final settlement was issued in view of the fact that the conditions enumerated above were fulfilled.

It appears that despite the statement of settlement having been filed under Section 88 of the Act of 1998, an FIR was lodged and a case was registered on 6.1.1999 on the basis of which, later on a charge sheet was also submitted. On the one hand final settlement was made after determining the tax liability on the premises that the appellants were neither convicted nor criminal proceedings were pending, relating to any offence under Chapter IX or XVII of the IPC, yet the criminal proceedings are being prosecuted which is apparently against the very spirit of the Scheme promulgated under the Finance (2) Act of 1998. If a person against whom criminal proceedings were pending, relating to offence under Chapter IX or XVII of the IPC or who stood convicted under any of the provisions of those chapters, he would not have been eligible to seek benefit under the Scheme and after accepting that position and the due settlement, there was no occasion to initiate and continue the criminal proceedings, which could bring about the conviction of the same persons, in case prosecution ended successfully in favour of the State and against the appellants. If such a condition is provided that on a particular date a criminal proceeding should not be pending against a person nor he should have been convicted of an offence, as a condition precedent for a settlement, and on that basis a settlement is brought about, it does not mean that later on, one could turn around and get the declarant convicted for a criminal offence too, after settlement of the liability. More so, when in view of Section 90 clause (iv) of the Scheme the declarant is obliged to withdraw an appeal or proceedings regarding tax liability pending before the High Court or the Supreme Court, which had also been done in the case in hand. That is to say on one hand declarant is not permitted to pursue the remedy, regarding tax liability, which is already pending before the courts of law, as they are either deemed to be withdrawn by operation of law or they have to be withdrawn by a positive act of the party and yet prosecute such persons for their conviction as well. The declarant could not be dragged and chased in criminal proceedings after closing the other opening making it a dead end. It is highly unreasonable and arbitrary to do so and initiation and continuance of such proceedings lack bonafides.

In the background given above, there is every reason to legally infer that the position as it stood, in regard to the criminal prosecution and conviction on the date the declaration was filed, as conditions precedent to settlement under the Scheme, would also stand finalized on full and final settlement of the matter under the Scheme. That is to say the position that no criminal prosecution was pending against the declarant on the date of filing of the declaration nor he stood convicted for such an offence in relation to the matter covered under the declaration, it would stand finalized with acceptance of the declaration and settlement of the matter fully and finally. Later on, the declarant could not be or continued to be subjected to criminal prosecution to alter the position as it stood on the relevant date of the submission of declaration and get him convicted for such offences in respect of which, if he stood convicted earlier while filing statement he would not have been entitled to seek the benefit under the Scheme. The appellants virtually foreclosed their right to further pursue the proceedings before the authorities or courts of law challenging the legality, validity or the tax liability in terms of the Scheme. Undoubtedly, if the appellants' appeal which was pending in this Court against the order of CEGAT relating to the tax liability, had been allowed it might have affected the criminal proceeding too on merits. In certain circumstances, it could be put up as a defence by the declarant, in the criminal case but in terms of the scheme he was bound to withdraw his appeal. The criminal prosecution could not be allowed to proceed by putting an end to a possible defence, before hand. It certainly amounts to abuse of process of law. The appeals thus deserve to be allowed.

..., J.
(Brijesh Kumar)

In the result, we allow the appeals and the order of the High Court is set aside and the FIR No. R.C.1 (E)/99/EOW-1/DL1 and the proceedings initiated in pursuance thereto against the appellants in the Court of Chief Metropolitan Magistrate, Delhi under Section 420 read with 120-B of the Indian Penal Code are quashed.