

PETITIONER:
PHIROZE DINSHAW LAM ETC.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 28/02/1996

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
PARIPOORNAN, K.S.(J)

CITATION:
JT 1996 (3) 131 1996 SCALE (2)637

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

B.P.JEEVAN REDDY.J.

These six petitions are filed seeking leave to appeal against a common judgment of the Bombay High Court dated November 29, 1991 directing the Registrar of the High Court to file a complaint against M/s.Godrej and Boyce Manufacturing Company Private Limited and some of its officers and dealers under Section 192 of the Indian Penal Code. This order was made under Section 340 of the Criminal Procedure Code*, on the Court being satisfied prima facie that the said persons have committed an offence punishable under Section 193 of the Indian Penal Code and that it is expedient in the

* 340. Procedure in cases mentioned in Sec.195.-- (1) Where, upon an application made to it in this behalf or otherwise, any court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in Cl.(b) of subsection (1) Of Sec.195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, -- (a) record a finding to that effect; (b) make a complaint thereof in writing; (c) send it to a Magistrate of the first class having jurisdiction; (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate, and (e) bind over any person to appear and give evidence before such Magistrate. (2) The power conferred on a court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised

by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Sec.195. (3) A complaint made under this section be signed-- (a) where the Court making complaint is a High Court, by such officer of the Court as the Court may appoint; (b) in any other case, by the presiding officer of the Court. (4) In this section 'Court' has the same meaning as in Sec.195."

interests of justice that they should be tried therefor. Of the six Special Leave Petitions filed, the petitioner in Special Leave Petition (C) No.20051 of 1991, Sri K.S.Gurumurthy, died pending the Special Leave petition. The said Special Leave Petition has, therefore, become infructuous and is accordingly dismissed. One of the petitioners in Special Leave Petition (C) No 20049 of 1991, Mrs.

Ameen [fourth petitioner] has also expired pending the Special Leave Petition. The said Special

Sections 192 and 193 of the Indian Penal read thus:

"192. Fabricating false evidence.-- Whoever causes any circumstance to exist or makes any false entry in any book or records or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appearing, evidence in a judicial proceeding or in a proceeding taken by law before a public servant as such or before an arbitrator and that such circumstance, false entry or false statement, so appearing in evidences may cause any person who in such proceeding is to form an opinion upon the evidences to entertain an erroneous opinion touching any point material to the result of such proceedings is said to fabricate false evidence'.

193. Punishment for false evidence.-- Whoever intentionally gives false evidence in any stage of a judicial proceedings or fabricate false evidence for the purpose of being used in any stage of a Judicial proceedings shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine;

and whoever intentionally gives or fabricate false evidence in any other cases shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine." Leave Petition accordingly becomes infructuous insofar as the said petitioner is concerned. Of course, so far as other petitioners are concerned the Special Leave Petition still survives.

Leave granted. Heard learned counsel for the parties.

Godrej, one of the corporate giants of this country, manufacturers among other goods, refrigerators. These refrigerators are packed in polythene covering only when they are to be delivered to dealers situated at a short distance from the factory but where they have to be delivered at distant places, they are packed in Corrugated Fibre Containers [C.F.Cs.] to protect them from damage in the course of transport and for convenient handling. In the proceedings relating to valuation under Section 4 of the Central Excise and Salt Acts 1944 for the period 1976-78 the question arose whether the value of C.F.Cs. should be included in the value of refrigerators for the purpose of value under Section 4 of the Central Excise Act. Godrej pleaded for exclusion which plea was rejected by the Assistant Collector. On Appellate Collector [Appeals] upheld Godrej's contention. The matter ended there so far as the said period is concerned. In 1982-83, the Revenue served demand notices for a subsequent period, again including the

value of C.F.Cs. in the value of refrigerators. Godrej went to Bombay High Court by way of Writ Petition No. 1110 of 1983 questioning the said notices. The writ petition came up for final hearing before a learned Single Judge in March, 1984. Meanwhile, this Court had delivered the judgment in Union of India & Ors. v. Bombay Tyre International [1984 (1) S.C.R.347] in May, 1983, laying down the principles governing the said issue among others. At the hearing of the writ petition before the learned Single Judge, Godrej wanted to rely upon certain letters said to have been addressed to it by its dealers to support its claim for exclusion of the value of C.F.Cs. The counsel for the Revenue opposed the admission of the said letters at that stage. In view of the said objection, the learned Single Judge declined to admit or rely upon the said letters. The writ petition was, however, allowed on other grounds. The letters which were actually handed over to the learned Single Judge in the Court, it is stated, remained in the record of the Court.

The Revenue filed a Letters Patent Appeal [No.429 of 1986] against the decision of the learned Single Judge which was dismissed by the Division Bench in June, 1986. The Division Bench too did not refer to or rely upon the said letters. A Special Leave Petition was preferred by the Revenue in this Court against the judgment of the Division Bench in the year 1987. Meanwhile, certain developments took place, which are of immense relevance to the controversy herein. In June, 1987, the premises of Godrej all over the country were searched and several documents seized. One of the documents seized was a letter dated June 1, 1983, written by Sri Hathi [one of the appellants before us] addressed to certain Branch Managers. At that time, Sri Hathi was the General Manager [Marketing] of Godrej. Under this letter, Sri Hathi requested the Branch Managers to obtain from certain trusted dealers antedated letters stating facts which supported Godrej's case for exclusion of the value of the C.F.Cs. The letters from the dealers were to be obtained as if they were written between May, 1976 and February, 1979. It were these letters - prepared with an eye upon the principles enunciated in Bombay Tyre International which were sought to be filed before the learned Single Judge at the hearing of Writ Petition No.1110 of 1983 in March, 1984 but which were not actually looked into or relied upon by the learned Single Judge in view of the objection rallied by the Revenue. At the time the letters were sought to be filed, the Revenue was, of course, not aware that they were fabricated. But the seizure of the said letter written by Sri Hathi (in the course of searches conducted in June, 1987) convinced the Revenue that the said letters were all fabricated to buttress Godrej's case in the light of the decision in Bombay Tyre International. In the Special Leave Petition filed in this Court, the Revenue filed copies of the said letters along with the aforementioned letter of Sri Hathi contending that Godrej was guilty of fabricating evidence and of trying to mislead the Court by producing such fabricated evidence. It prayed that the writ petition filed by Godrej should be dismissed on the said ground alone without going into merits of the case. The Special Leave Petition came up for orders before a Bench of this Court on September 4, 1989, The Special Leave Petition was allowed and the matter remitted to the High Court under the following Order:

"Special leave granted.

We have heard counsel for the parties. Our attention has been

drawn to certain letters (appearing at pages 102 to 122) of the present S.L.P. Paper Book). The said letters were indisputably not before the High Court or the authorities below at any relevant time. We are of the opinion that the questions herein should be considered in the light of these letters. The judgment and order of the High Court in that light require to be set aside. We accordingly set aside the judgment and order of the High Court and remand the matter to the High Court for consideration of the question afresh involved herein in the light of these letters. The High Court will consider the question of admissibility, relevancy & the value of these letters and then come to a conclusion about the question of assessable value of the refrigerators and the consequence of that determination.

The appeal is disposed of accordingly without any order as to costs."

The matter was accordingly posted before a Division Bench of the High Court which thought it appropriate that the matter be heard by the very same learned Single Judge who had disposed of the writ petition earlier. Accordingly, it was posted before the learned Single Judge. By this time, however, Godrej had become thoroughly demoralized. Caught in the act of fabrication of evidence, it chose to abandon its case for exclusion of the value of C.F.Cs. It gave up the fight. It approached the Revenue authorities including the Central Board of Excise and Customs for a settlement. It said it was prepared to accept the Revenue's case and pay up all the duty due on that basis. It also offered to refund the amounts which were refunded to it on the basis of the orders of the Court. It is stated by the learned counsel for Godrej that they even offered to pay up the duty for the period which had become time barred. There was no settlement. At that stage, the writ petition came up for hearing before the learned Single Judge. A few weeks before the writ petition actually came up for hearings Godrej filed an application seeking to withdraw the writ petition. It was opposed by the Revenue who has been contending all along, i.e., before this Court as well as the Bombay High Court that inasmuch as Godrej has indulged in clear fabrication of evidence and has tried to defraud the court on the basis of such documents, it should be dealt with sternly so that it would serve as a lesson to others. It was submitted that any indulgent attitude in such matters will send a wrong signal and would serve as an encouragement to persons similarly minded. The writ petition was however disposed of under what is called "Minutes of the Order" on March 12. The Order reads:

"MINUTES OF THE ORDER

1. Petitioners agree and undertake to pay on or before 15th March 1990 the sum of Rs.3.80 crores (approximately) comprising of the excise duty of Rs.26 lakhs

(approximately) for the period April 1979 to March 1980 and Rs.3.54 crores (approximately) for the period February 1983 to February 1987 being amount of duty payable on secondary packing. The aforesaid payment will be without prejudice to the rights and contentions of both the parties in all pending petitions before High Court (save and except those relating to the question of inclusion of cost of secondary packing in assessable value).

2. In so far as the question whether assessment made on RT-12 (save and except assessment in respect of secondary packing as stated above) are provisional or finals this being a question of fact will be determined on the basis of record and as per the provisions of Central Excise Act & Rules, thereunder.

3 Affidavit in reply dated 8th January 1990 filed by the Respondents on 10th January 1990. Affidavit in Rejoinder dated 28th February 1990 to the aforesaid affidavit handed over by the petitioner to the Respondents and Affidavit in sur-rejoinder dated 9th March 1990 on behalf of the Respondents are all taken on file of the Court and form the part of the record of these proceedings.

4. On the above, Petitioners are permitted to withdraw the petition.

It is agreed before us that the above order was not an agreed order but an order of the Court though it was signed by counsel for both sides for the purpose of identification.

The Order dated March 12, 1990, it is relevant to note, does not contain any reference to Revenue's allegation of fabrication of evidence by Godrej nor to its request not to permit withdrawal - much less to the request of the Revenue, which is supposed to have been made before the learned Single Judge - to prosecute Godrej, its officers and its dealers in a criminal court. The order merely provides for payment of duties due from Godrej subject to certain observations.

Fifteen months later, i.e., on June 25, 1991, the Revenue took out a notice of motion before a Division Bench of the Bombay High Court requesting that appropriate criminal proceedings be initiated against Godrej, its officers and dealers for the aforesaid act of fabrication of evidence and its attempt to defraud the Court on that basis.

We may pause here for a moment and mention as to why the said notice of motion was taken out before a Division Bench and was entertained by it and not before the learned Single Judge. It appears that prior to October, 1990 all the writ petitions in the High Court were being heard by a learned Single Judge but in October, 1990, there was a change in the procedure, according to which writ petitions pertaining to Central Excise were to be heard by a Division Bench alone. It is for this reason that the notice of

mention was taken out before the appropriate Division Bench according to the allocation of work by the learned Chief Justice of prescribes the procedure to be followed on receipt of an application for settlement. The second proviso to sub-section (1) says "provided further that an application shall not be proceeded with under this sub-section if the Commissioner objects to the application being proceeded with on the ground that concealment of particulars of income on the part of the applicant or perpetration of fraud by him for evading any tax or other sum chargeable or impossible under the Indian Income-tax Act, 1922, or under this Act, has been established or is likely to be established by any Income-tax authority, in relation to the case."

Sub-section (4) provides that after examining the entire material including the report(s) of the Commission, the Commission may pass final order in accordance with the provisions of the pact. It is not necessary to refer to other sub-sections in Section 245-D for the purposes of these appeals.

Section 245-E is relevant for our purposes and may be set out in full:

"245E. Power of Settlement Commission to reopen completed proceedings. If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient

which date the matters were directed to be listed for final hearing on February 20, 1996.

The entire thrust of the submissions made by learned counsel for appellants is not with respect to the truth of fabrication aforesaid but with respect to several procedural aspects. It is urged that six dealers aforesaid were not even heard before making the direction to prosecute them and that this omission vitiates the direction with respect to all. It is submitted that the documents were not "tendered" in High Court but in the Supreme Court and that the Supreme Court alone could have taken action under Section 340 of the Criminal Procedure Code but not the High Court. It is submitted alternately that only the learned Single Judge of the Bombay High Court who had heard and disposed of the writ petition could have made that direction but not the Division Bench. It is also argued that in the facts and circumstances of the case, it cannot be said that it is expedient in the interests of justice to direct the prosecution of the said persons. A prosecution should be ordered, it is argued, not merely because there is evidence indicating prima facie guilt; it must also be found expedient to direct the prosecution. It is also submitted that the question of expediency should have been decided only with notice to and after hearing the affected parties. Such an order, it is pointed out, is an appealable one. Lastly, it is suggested that on the facts of the case, Section 192 is not attracted because, at worst, it was a case of fabricating evidence to support a genuine claim - rather an involved argument, we must say, if not a convoluted argument, and in either case, unacceptable.

The learned Additional Solicitor General, Sri Jayaram, appearing for the Revenue, however, supported the reasoning and conclusion of the Division Bench. He disputed the correctness of the several contentions urged by the counsel

for appellants and submitted that persons who indulge in such crimes should be dealt with sternly and deterrent punishment imposed.

For considering the contentions urged before us, it is first necessary to ascertain the facts and the developments in the matter. What are they?

The Godrej did indulge in an act of fabricating evidence which was unworthy of such a major company. It sought to buttress its case before the learned Single Judge on the basis of the said documents. It is another matter that they succeeded in their writ petition de hors the said fabricated material. When, however, the letter of Sri Hathi was discovered during the searches conducted by the Revenue in June, 1987 and its misdeed stood exposed, Godrej was put on the defensive. The initiative passed to Revenue which contended not only that the writ petition filed by Godrej should be dismissed on the said ground but that it should be dealt with in a manner that it serves as a lesson to others. It is for this reason that the Special Leave Petition filed by the Revenue was allowed by this Court and the matter sent back to the High Court for deciding the writ petition in the light of the said letters. The High Court was asked to look into the relevancy, validity and admissibility of the said letters - which admittedly included the genuineness of the letters. With this turn of events, Godrej naturally became nervous. It did not want to proceed with the writ petition. It approached the Central Excise authorities at various levels for a settlement but that did not materialize. It also sought to withdraw its writ petition, which was opposed by the Revenue. But what happened when the writ petition came up for hearing before the learned Single Judge is important. The writ petition was disposed of under what is called "Minutes of the Order" providing for payment of duties by Godrej subject to certain observations. The Order neither refers to the contention of the Revenue relating to fabrication of evidence by Godrej nor does it refer to any request of Revenue to dismiss the writ petition on the ground of fraud sought to be perpetrated by Godrej. The Order does not also say that any request was made by the Revenue to direct the prosecution of Godrej, its officers and dealers responsible for the said Act. This circumstance assumes significance in view of the fact that the last para of the "Minutes of the Order" says that the affidavit dated January 8, 1990 filed by the Revenues affidavit of Godrej dated February 28, 1990 and the sur-rejoinder [dated March 9, 1990] are taken on the file of the Court and are made part of the record. In the affidavit dated January 8, 1990, Revenue had set out its case regarding fabrication by Godrej and asked for dismissal of the writ petition on that ground alone. Neither this affidavit nor the sur-rejoinder, however, contain any request or prayer to direct the prosecution of Godrej and its officers and dealers. Two inferences follow from the above. The Revenue chose not to persist in its submission to dismiss the writ petition on the ground of the aforesaid fabrication and, at any rate, did not also ask for a direction to prosecute Godrej and its officers and dealers for the said act or it did put forward the said submissions but they were rejected. If the first inference is correct, then it is evident that not having asked for the prosecution at the appropriate stage, it cannot be allowed to ask for such prosecution after a gap of fifteen months. Its silence can be construed as abandonment of its pleas for dismissal of writ petition and/or for prosecution. If, on the other hand, the second inference is the correct one, then the Revenue ought to have either

applied for review pressing for appropriate directions or filed an appeal against the order disposing of writ petition. It did neither. It kept quiet for fifteen months and then moved a notice of motion to prosecute Godrej and other persons responsible.

While we agree that the Division Bench was not wrong in making the direction which it did on the merits of the case, it does not appear to have bestowed sufficient attention to the above aspect and its impact while deciding upon the expediency contemplated by Section 340 of the Criminal Procedure Code. The Division Bench should have considered whether it is expedient to direct prosecution when the learned Single Judge had chosen not to make such a direction-for one or the other reason pointed out above and on account of the silence on the part of Revenue for a period of fifteen months. It is quite possible that the Revenue was satisfied with the Order ["Minutes of the Order"] dated March 12, 1990 but changed its minds after fifteen months. It is not a question of jurisdiction or power but one touching the question of "expediency" contemplated by Section 340 of the Criminal Procedure Code.

On a consideration of the relevant circumstances mentioned supra including the fact that Godrej has paid up all amounts due accepting the contentions of the Revenue, we think that an order levying penal interest would meet the ends of justice instead of the direction for prosecution made in the impugned order. We may mention that when during the course of hearings we suggested this alternate course and wanted to know the response of the appellants thereto, they agreed with alacrity to the course indicated by us.

For the reasons given above, we set aside the impugned order and in its place substitute the following order:

Godrej and Boyce Manufacturing Company Private Limited shall pay penal interest at the rate of twenty percent per annum on all the amounts which were withheld by it, for the period commencing March 1, 1979, whether on the basis of the Order of the learned Single Judge of the Bombay High Court dated March 10, 1984 [allowing Writ Petition No.1110/83] or otherwise as well as on the amounts which it had obtained by way of refund but which it ultimately paid back to the Revenue. The interest shall be payable for the period commencing from the date when the said amount/amounts became due and payable and ending with the last date of full payment. The observations in the nature of qualifications or reservations contained in the Order [Minutes of the Order] dated March 12, 1990, insofar as they relate to inclusion of value of C.F.Cs. in the value of refrigerators shall stand deleted. In other words, Godrej shall not dispute the inclusion of the value of C.F.Cs. in the value of refrigerators for the period covered by the demand notices impugned in Writ Petition No.1110/83 and upto March 12, 1990, the date of "Minutes of the Order" aforesaid.

The appeals are disposed of in the above terms. No costs.