2025 INSC 901

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 268 OF 2017

M/S RIMJHIM ISPAT LIMITED AND OTHERS ... APPELLANT(S)

VERSUS

UNION OF INDIA & ANOTHER ... RESPONDENT(S)

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. The present Criminal Appeal is moved against concurrent findings of dismissal of discharge application by the Special Chief Judicial Magistrate at Kanpur Nagar, Uttar Pradesh (hereinafter, "Trial Court") and the High Court of Judicature at Allahabad (hereinafter, "High Court") as moved by M/s Rimjhim Ispat Limited, M/s Juhi Alloys Limited, and Shri Yogesh Aggarwal (hereinafter, "Appellants") in the criminal proceedings that were initiated

against it under Section 9 and 9AA of the Central Excise Act, 1944 (hereinafter, "CEA 1944").

2. Against the Judgment dated 05.02.2016 passed by the High Court (hereinafter, "Impugned Judgment"), the strength of the argument for discharge application, as raised by the Appellants has primarily been the quashing of departmental proceedings initiated by the Respondent No.2 herein (hereinafter, "Respondent-Department") against the Appellant by the High Court in Writ Tax No.771 of 2015 on similar grounds, the criminal proceedings are, not sustainable against the Appellants.

3. The factual matrix, as selectively presented by the Appellants, reveals that on 22.11.2007, a search was conducted at the premises, offices and factories, of Appellant No.1, unearthing serious irregularities that culminated in the initiation of proceedings via two separate Show Cause Notices (hereinafter, "SCNs"). The first,

dated 16.05.2008 (hereinafter, "First SCN"), alleged clandestine manufacture and illicit removal of excisable goods. The second, dated 06.03.2009 (hereinafter, "Second SCN"), attributed direct and vicarious liability to the Director(s) of Appellant No.1 (specifically, Appellant No.3) and M/s Juhi Alloys Limited, being Appellant No.2 herein, for such unlawful removal of excisable goods during the Financial Year 2006-07, along with evasion of excise duty, interest, and penal consequences.

4. While the proceedings under the First SCN were dropped by the Additional Commissioner of Central Excise at Kanpur, the seized goods were released vide Order dated 14.07.2009. The said decision was subsequently affirmed by the Commissioner (Appeals) on 18.01.2010, and this outcome appears to have emboldened the Appellants, who overlooked the serious and distinct liabilities arising under the Second SCN.

5. In relation to the Second SCN, the Commissioner of Central Excise at Kanpur, vide Order dated 31.03.2011, upheld a substantial demand amounting to INR 6,68,94,028/- (Rupees Six Crores Sixty-Eight Lakhs Ninety-Four Thousand and Twenty-Eight only) along with interest against Appellants No.1 and 2, and further imposed a penalty of INR 25,00,000/- (Rupees Twenty-Five Lakhs only) upon Appellant No. 03 under Section 11AC of the CEA 1944, indicative of the gravity of their violations.

6. The Appellants sought relief before the Customs Excise and Service Tax Appellate Tribunal at New Delhi (hereinafter, "CESTAT"), which, while setting aside the said order on procedural grounds vide Order dated 25.02.2013, rather than addressing the merits of the findings, remanded the matter for *de novo* consideration, inter alia, observing that joint confirmation of duty against separate legal entities was impermissible, and liability was required to be assessed individually.

7. Exploiting the CESTAT's procedural indulgence, the Appellants then proceeded to contest the initiation of criminal proceedings by the Respondent-Department. These proceedings stemmed from the Sanction Order dated 03.05.2013 by Directorate General of Central Intelligence (hereinafter, "DGCEI") for prosecuting the Appellants under Sections 9 and 9AA of the CEA 1944, a sanction that was said to be based on the Commissioner's findings dated 31.03.2011, which the Appellants allege was relied upon through suppression of the CESTAT's remand order by the very same Commissioner.

8. An inquiry letter dated 07.10.2013 was issued by the concerned Assistant Commissioner seeking clarification regarding the validity of the Sanction Order dated 03.05.2013, particularly given that it was premised on a now-set-aside adjudication order. Nevertheless, the Commissioner reiterated his direction to proceed with prosecution,

persisting in his stand despite the procedural setback.

9. Consequently, Complaint Case No. 841 of 2014 was instituted before the Trial Court under Sections 9 and 9AA of the CEA 1944 (hereinafter, "Complaint"), and summons were issued against the Appellants on 02.05.2014, signalling the commencement of criminal proceedings based on the evidence then available.

10. In response, the Appellants sought to stall the criminal trial by invoking the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter, "CrPC 1973"), through Criminal Misc. 482 Application No. 31300 of 2014. The High Court, while granting interim protection, refused to quash the proceedings outright and directed the Appellants to avail the remedy of discharge before the Trial Court vide Order dated 21.08.2014.

11. Following this direction, the Appellants moved a discharge application under Section 245(2) of CrPC 1973 before the Trial Court. The matter was heard on 24.08.2015 and listed for orders on 01.09.2015, with the Appellants attempting to shield themselves from prosecution based on technicalities.

12. Meanwhile, the re-adjudication pursuant to the Order dated 25.02.2013 of the CESTAT, culminated in a fresh Order dated 28.08.2015 by the Commissioner of Central Excise at Kanpur, again recording adverse findings against the Appellants, including reimposition of demands and penalties. This order was duly submitted as an addendum in the pending Complaint.

13. A writ petition being Writ Tax No. 771 of 2015 was thereafter filed by the Appellants challenging this second adjudication. It was only after the Trial Court rejected the discharge applications, the High Court vide Judgment dated 17.11.2015 intervened in the writ, not

due to any exoneration on the merits of the claim put forth on the part of the Appellants, but primarily due to procedural lapses and conduct attributable to the Commissioner of Central Excise at Kanpur. The High Court set aside the Order dated 28.08.2015 and directed the matter to be re-adjudicated afresh this time by the Commissioner at Lucknow, instead of Kanpur.

14. During the pendency of the above writ petition, as stated above, the Trial Court dismissed the discharge application of the Appellants vide Order dated 09.10.2015, holding that adjudication and prosecution were independent processes and that the Appellants had not yet been absolved of the underlying liabilities in the departmental proceedings.

15. Dissatisfied with the rejection of their discharge plea, the Appellants preferred Criminal Revision No. 4581 of 2015 before the High Court, seeking to overturn the Order dated 09.10.2015 of the Trial Court. This

approach to the High Court again reflected the Appellants' repeated attempts to evade prosecution without securing a clean slate on merits from the Respondent-Department.

16. The High Court, while passing the Impugned Judgment, relied on decision of this Court in ***Radheshyam Kejriwal v. State of West Bengal and Another***[1] to reiterate the findings of the Trial Court. It went on to observe that the objection(s) to taking of Order dated 28.08.2015 on record have no force as there exists *prima facie* evidence against the Appellants to proceed with the concerned Complaint. It is not for the Trial Court to determine whether matter will lead to conviction or not, rather only material on record is to be analyzed to determine sufficiency of a *prima facie* case while issuing the summons. Therefore, observing that the adjudication is still not settled in favour of the Appellants and that there is a *prima facie* case against the Appellants, the Criminal Revision

[1] (2011) 3 SCC 581

No. 4581 of 2015 was dismissed by the learned Single Judge of the High Court vide judgment dated 05.02.2016.

17. Challenging the said Impugned Judgment, the Appellants moved this Court vide Special Leave Petition (Criminal) No. 2583 of 2016 for which leave was granted, leading to the instant Criminal Appeal.

18. Assailing the Impugned Judgment, it is argued by the learned Senior Advocate on behalf of the Appellants that the basis of the Complaint was solely the sanction granted on the strength of the Order dated 31.03.2011, which had been set aside already, making it non-maintainable. Even the Order dated 28.08.2015, which was passed behind the back of the Appellants, was also set aside with harsh observations against the Commissioner of Central Excise at Kanpur. This fact was ignored by both the Trial Court and the High Court while considering their discharge application, and revision petition respectively.

19. It is further brought on record that the subsequent order passed by the Commissioner of Central Excise at Lucknow vide Order dated 31.03.2017 was also conditionally stayed by the High Court in Writ Tax No. 370 of 2017 vide Order dated 31.05.2017. Collectively, it is argued that there is a violation of Article 21 for dealing the instant case in contravention or violation of the procedure established by law.

20. Taking exception to the approach adopted by the Trial Court, learned Senior Counsel contends that the Trial Court failed to maintain the mandatory distinction in approach while dealing with an application for discharge under Section 245(1) of CrPC 1973 and that under 245(2) of CrPC 1973. For this, he submits that, as is the case for Section 245(1) of CrPC 1973, the Trial Court considered and relied upon evidence that emerged subsequent to filing of the Complaint. Reference is also made to the observation vis-à-vis Section 8 of the CEA 1944, wherein, allegedly, the non-existent

application by the Appellants was relied upon by the Trial Court. Instead, it is the case of the Appellants that only the contents of the Complaint and the application for discharge should have been considered. To substantiate the aforesaid claim, reliance is placed on the aspect of this legal distinction as elaborated by this Court in ***Ajoy Kumar Ghose v. State of Jharkhand and Another***[2].

21. Moving on to the approach of the High Court, he assailed the non-appreciation of fact that no order existed which could be made the basis of the prosecution against the Appellants. Even the Order dated 28.08.2015 had already been quashed by the Division Bench of the High Court. Even further, the learned Single Judge did not take note of the erroneous approach as adopted by the Trial Court while dealing with the application for discharge. Had it been so done, the Appellants would have been successful in their application for discharge, as the Complaint would have been recorded as

[2] (2009) 14 SCC 115

"groundless", as was defined in ***State of Tamil Nadu v. R. Soundirarasu and Others***[3].

22. Having said that, the learned Senior Advocate, placing reliance on ***Ram Prakash Chadha v. State of Uttar Pradesh***[4], further asserts that owing to no legal evidence, the charge would be groundless and thereafter compelling the Appellants to face the trial is contrary to the procedure established by law as envisaged under Article 21 of the Constitution of India, 1950. He further asserts that having lost the case before the CESTAT, the Respondent-Department had only acted in vindication against the Appellants and has not followed the principles of natural justice, which would, held in the decision of this Court in ***A.R. Antulay v. R.S. Nayak and Another***[5], render the act or proceedings a nullity.

23. Finally, in his attempt to distinguish the decision in ***Radheyshyam Kejriwal (supra)***,

[3] (2023) 6 SCC 768
[4] (2024) 10 SCC 651
[5] (1988) 2 SCC 602

learned Senior Counsel submits that unlike in this case, the dispute involved in the said case was under the Foreign Exchange Regulations Act, 1973, which cannot be equated to CEA 1944. Moreover, the criminal prosecution and the adjudication proceedings were initiated almost simultaneously, with independent specific averments of facts. Even the application for discharge was not filed under Section 245(2) of CrPC 1973. Furthermore, while the adjudication proceedings were not held as binding on the criminal proceedings, herein, the entire Complaint is based on a non-existent Order as it stood quashed by the High Court.

24. On the basis of the above submissions, prayer has, thus, been made for allowing the appeal by setting aside the Impugned Judgment and allowing the application for discharge of the Appellant.

25. The learned Additional Solicitor General (hereinafter, "ASG") appearing on behalf of the

Union of India, has primarily placed reliance on the observations made in the decision of this Court in ***Radheyshyam Kejriwal (supra)*** to assert the legality of having parallel and continuation of adjudication proceedings and criminal proceedings against the Appellants. Reference was also made to the decision in ***Air Customs Officer IGI, New Delhi v. Pramod Kumar Dhamija***[6] wherein the aforesaid decision was relied upon to observe that when exoneration in the adjudication proceedings was not based on merits or that the accused was not yet found to be innocent, the concerned High Court had committed an error in accepting the prayer for quashing of the proceedings.

26. Further reliance is placed on the contents of the Complaint to assert and reiterate the liability of the Appellants. While denying the assertions made by the Appellants, the learned ASG denies that the proceedings were vindictive, there is no independent basis for the

[6] (2016) 4 SCC 153

Complainant, or there was suppression of facts by the Commissioner of Central Excise at Kanpur as contended by the Appellants. He further contends that there is no prescribed time limit for launching of prosecution. Accordingly, the learned ASG has prayed for dismissal of the instant Criminal Appeal, holding the Impugned Judgment as good in law.

27. We have perused the pleadings, materials and documents on record, including the Complaint as also the submissions rendered before us by the parties.

28. Considering the contentions of the Appellant on the aspect of reliance on a non-existent Order dated 31.03.2011, on it having been set aside, even assuming the said contention to be so, it is clear from the materials on record that investigation and the Complaint are still in sustenance against the Appellants. The contents of the Complaint reveal that there is no reliance placed on the now-set aside Order

dated 31.03.2011 rather it was only referred as an addendum to complete the sequence of facts of the case of the Respondent-Department. The irregularities which came to light on search and the contents of the investigation report, are sufficient to observe and opine *prima facie* on the existence of allegations as mentioned in the complaint against the Appellants, at the time of the consideration made by the Trial Court justifying the passing of the summoning order.

29. Even the contention on the conditional stay of the Order dated 31.03.2017 passed by the Commissioner of Central Excise at Lucknow by the High Court in Writ Tax No. 370 of 2017 does not come to the assistance of the Appellants. The above Order dated 31.08.2017 has been passed on merits by the Commissioner of Central Excise at Lucknow in pursuance to and in compliance with the directions issued by the High Court vide Order dated 31.05.2017. Further, stay thereof, was subject to the payment of the liability imposed

on the Appellants by impugned order in the pending writ and submission of surety on the penalty imposed.

30. The Order dated 31.03.2017, impugned in the aforesaid writ has been passed on merits, and that too not by the concerned Commissioner of Central Excise at Kanpur, against whom there were allegations of vindication, but by that of Lucknow. Further, stay thereof, was still subject to the payment of the liability imposed by the Commissioner of Central Excise at Lucknow on the Appellants and submission of surety on the penalty imposed.

31. Collectively, in the light of aforesaid perusal of the relevant orders, a reference to ***Radheyshyam Kejriwal (supra)*** reveals that, as in the present case, there is no bar on parallel proceedings, with one being by the Respondent-Department and the other being criminal in nature, under the CEA 1944. Further, the attempt of the Appellants to distinguish the said decision, is primarily

reliant on the observation that the Complaint was solely based on the Order dated 31.03.2011, which, at the time had been set-aside. However, a direction for *de novo* proceedings on technical or procedural grounds cannot be assumed to be in equivalence to having been set-aside on merits, when it was specifically mentioned that the merits have not been considered. Hence, we are inclined to accept and adopt the decision in ***Pramod Kumar Dhamija (supra)*** as referred by the learned ASG.

32. Reiterating further, the contention of the Appellants that the allegations for the purpose of criminal complaint, were therefore, not rendered "groundless" as has been contented on behalf of Appellants through reliance on decision in ***R. Soundirarsu (supra)***, is again, on the assumption and contention that the Order dated 31.03.2011 or even the concerned subsequent Order dated 28.08.2015 was on merits. We are, therefore, in the light of our aforesaid observations, unable to appreciate

the submissions to this effect. Even the decision of this Court in ***Videocon Industries Limited and Another v. State of Maharashtra and Others***[7] reiterated the merit of criminal proceedings when the orders on the civil side, proceedings by the Respondent-Department in the instant case, were passed on merits and not on technical foundation.

33. Moving on to the contentions raised and rendered on behalf of the Appellants on jurisprudence of discharge and the reliance thereof placed on ***Ajoy Kumar Ghose (supra)*** are misconceived and outside the scope of adjudication in the present case as the said objections were never raised before the courts below. Despite the same, even placing reliance on the decisions of this Court, which have determined or reiterated the jurisprudence on law of discharge, such as the ***Vishnu Kumar Shukla and Another v. State of Uttar***

[7] (2016) 12 SCC 315

Pradesh and Another[8] and ***State of Tamil Nadu v. N. Suresh Rajan and Others***[9] have been complied with while considering the case of the Appellants as the contents of the Complaint *prima facie* makes out an offence under the statute for which it had been preferred.

34. Ergo, having perused the alleged conduct and the orders passed by the concerned authorities and the Courts below, the authorities relied upon by the Appellants are unable to substantiate their claim in the present facts and circumstances.

35. We are in favour of the submissions made by the learned ASG and accordingly, are not inclined to interfere with the Impugned Judgment.

36. Hence, the instant Criminal Appeal is dismissed and the Impugned Judgment dated 05.02.2016 passed by the High Court of

[8] (2023) 15 SCC 502
[9] (2014) 11 SCC 709

Judicature at Allahabad is good in law, calling for no interference by this Court.

37. Any observations made hereinabove are for the purpose of disposal of this case only and shall have no bearing, whatsoever, on the merits of the proceedings before any court.

38. Pending applications, if any, also stand disposed of.

.....CJI.
[B.R. GAVAI]

.....J.
[AUGUSTINE GEORGE MASIH]

NEW DELHI;
JULY 24, 2025.