T.J. Stephen & Ors vs Parle Bottling Co.(P) Ltd. & Ors on 22 March, 1988

Equivalent citations: 1988 AIR 994, 1988 SCR (3) 296, AIR 1988 SUPREME COURT 994, 1988 (25) STL 107 SC, 1988 (1) JT 606.2, (1988) 34 ELT 409, (1988) ALLCRIC 181, (1988) 1 JT 606(2) (SC)

Author: Misra Rangnath

Bench: Misra Rangnath, M.M. Dutt

PETITIONER:
T.J. STEPHEN & ORS.

Vs.

RESPONDENT:
PARLE BOTTLING CO.(P) LTD. & ORS.

DATE OF JUDGMENT22/03/1988

BENCH:
MISRA RANGNATH
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MISRA RANGNATH
DUTT, M.M. (J)

CITATION:
1988 AIR 994 1988 SCR (3) 296
1988 SCC Supl. 458 JT 1988 (1) 606
1988 SCALE (1)562
CITATOR INFO :
E 1992 SC1701 (38)

ACT:
lmports and Exports (Control) Act, 1947: Section 5-Prosecution of Company and its Managing Director-Examination of complainant, the Deputy Chief Controller of Imports and Exports-Whether necessary-Whether complaint can be quashed by referring to records of investigation.
Criminal Procedure Code , 1973: Section 200 Prosecution of Company and its Managing Director under section 5 of the Imports and Exports (Control) Act, 1947-Examination of complainant-Whether necessary and relevant.

HEADNOTE:

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A complaint filed in the court of the Chief Metropolitan Magistrate by the appellant, Chief Controller of Imports and Exports, against respondents Nos. 1 and 2, a private limited company and its Managing Director for the alleged commission of an offence under s. 5 of the Imports and Exports (Control) Act, 1947 was subsequently transferred to another court and cognizance of the offence alleged was taken without examining the appellant as proviso (a) of s. 200 of the Code of Criminal Procedure was applicable to this complaint.

An application filed by the accused persons for recall of summons and dismissal of complaint was dismissed by the trial Magistrate. An appeal against the aforesaid order was dismissed by the High Court. A special leave application filed against the High Court's order was dismissed by the Supreme Court.

An application made at the trial stage for the discharge of respondent No. 2, the Managing Director on the plea that there was no allegation of any criminal misconduct against him and the Company-respondent No. 1 was prepared to admit its guilt and may be appropriately penalised, was dismissed by the trial court.

On appeal, the High Court quashed the process issued against respondent No. 2 on the ground that the order of issuance of process

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was clearly as a result of non-application of mind by the trial Judge because when the process was issued against the petitioners, the Department and the State had merely filed a complaint case along with list of witnesses and documents, and none of the statements of witnesses or copies of documents was produced before the trial Judge, and that respondent No. 2 could not be prosecuted under s. 5 of the Act, as the prosecution intended to charge him as principal offender alongwith respondent No. 1 the Company and there were no allegations in the complaint that respondent No. 2 either aided or abetted in the contravention of the licence conditions by respondent No. 1 Company.

Allowing the Department's appeal,

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HELD: 1.1 The High Court had not cared to look into procedural law applicable to the factual situation before it. If a reference had been made to section 200, Proviso (a) of Code of Criminal Procedure , the proceedings against respondent No. 2 could not have been quashed. [299G-H]

1.2 Records of investigation are not evidence in the instant case, and a complaint could not be quashed by referring to the investigation records, particularly when the petition of the complainant did allege facts which prima facie show commission of an offence. [300B]

The High Court overlooked the fact that similar objections raised earlier were rejected by the same High

Court, and this decision was upheld by the Supreme Court, and drew a distinction between the two situations, by saying that records of investigation were not available on the earlier occasion. [300A-B]

1.3 The licensee was a company and a company by itself could not act, and has to act through someone. Since there was clear allegation that the Managing Director had committed the offence, acting on behalf of the licensee, there was no justification for quashing the proceedings against respondent No. 2. [300C]

Order of the High Court is vacated. However, since the offence was committed 20 years back, it would not be in the interest of justice to allow a prosecution to start and the trial to be proceeded with at this belated stage even though respondent No. 2 has no equity in his favour and the delay has been mostly on account of his mala fide move. Hence the case against respondent No. 2 is directed to be closed forthwith. [300E,G]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 175 of 1988.

From the Judgment and order dated 10.2.86 in the High Court of Bombay in Crl. Writ Petition No. 295 of 1986.

Kuldeep Singh, Solicitor General, Ms. A. Subhashini, Mrs. Sushma Suri and B. Parthasarthy for the Appellants.

C.L. Sareen, O.K. Khuller, R.C. Kohli and Mrs. H. Wahi for the Respondents.

The following order of the Court was delivered:

O R D E R Special leave granted.

This appeal is by special leave. The appellant who is Deputy Chief Controller of Imports and Exports filed a complaint in the Court of Chief Metropolitan Magistrate, Bombay alleging commission of offence under Section 5 of the Imports and Exports (Control) Act, 1947 by the respondents 1 and 2. The said case got transferred to the Court of the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Estate, Bombay and was numbered as 82/S of 1983. The respondent No. 1 is a private limited company with its registered office at Bombay and the respondent No. 2 is its Managing Director. To this complaint proviso (a) of Section 200 of the Code of Criminal Procedure was applicable.

Therefore, cognizance was taken of the offence alleged without examining the appellant. On 17.1.1983, an application was filed on behalf of the two accused persons for recall of the summonses and dismissal of the complaint. On 12th of May 1983, the learned Magistrate dismissed the petition. The order of the learned magistrate was assailed before the High Court and on 2.9.1983, the High Court dismissed it. Then the matter was brought to this Court by filing an application for special leave on 12.12.1983, this Court dismissed the leave application. The case set down for trial after charges were framed. An application was made to the trial court at this stage to discharge the Managing Director, Respondent No. 2 in exercise of inherent powers by contending that the company was prepared to admit its guilt and may be appropriately penalised and the Managing Director against whom there was no allegation of any criminal conduct should be discharged. The learned Magistrate by a reasoned order dated 17th February, 1986, dismissed the application and directed that the trial should proceed against both. That order was assailed by the respondents before the Bombay High Court by filing a criminal writ petition. The High Court by its order dated 10th July, 1986, which is impugned in this appeal, held:

> "On perusal of the averments it is seen that at the time the learned Trial Judge issued/processed against the petitioners accused, the Department and the State had merely filed a complaint case along with list of witnesses and documents. None of the statements of witnesses or copies of documents were produced before the Trial Judge. The complainant's verification statement is also not recorded. As such the order of issuance of process is clearly a result of non-application of mind by the trial Judge. Such order would mean that merely on filing a complaint the process could be issued. It would be unjust to the accused if process is issued against him by the Magistrate without first satisfying himself about the nature of the case and whether there exists sufficient grounds for proceeding with the case. Since this is not done, then in the instant case the process issued against petitioner No. 2 (Managing Director) is liable to be quashed on this ground alone. Without short circuiting the other grounds it must be pointed out that perusal of the complaint and in particular page 23 of the complaint shows that the prosecution intends to charge petitioner No. 2 as the principal offender along with the petitioner No. 1-company. That is not possible for the simple reason that offence under Section 5 of the Imports and Exports (Control) Act is done Principally by the licencee (Company in this case) and/or by the abetter to the offence. There are no allegations in the complaint that the petitioner No. 2 either aided or abetted in the contravention of licence conditions by the petitioner No. 1-Company. As such on this ground also the process issued against petitioner No. 2 is liable to be and is quashed and set aside."

The criticism advanced by the learned Judge against the trying Magistrate is wholly untenable and is perhaps applicable to the learned Judge. If reference had been made to Section 200 Proviso (a) of the Code of Criminal Procedure, what has been advanced as the most impressive ground for quashing the proceedings against the respondent No. 2 could not at all have been accepted. The learned Judge obviously has not cared to look into the procedural law applicable to the factual situation before him. The learned Judge also lost sight of the fact that similar objections had once been raised and his High Court had refused to entertain the same and the order of the High Court

had been upheld here by dismissing the special leave petition. The portion we have extracted from the order of the High Court suggested that the learned Judge wanted to draw a distinction between then and now by saying that the records of investigation had not then been available. Records of investigation are not evidence in this case and a complaint could not be quashed by referring to the investigation records particularly when the petition of the complainant did allege facts which prima facie show commission of an offence. The learned Judge did note the fact that the licencee was a company but lost sight of the fact that a company by itself could not act. Obviously the Company has to act through some one. In the petition of the complainant there was clear allegation that the Managing Director had committed the offence acting on behalf of the licencee. If the complainant's petition had been properly scrutinized the second ground advanced in the impugned order for quashing the proceedings against the Managing Director could not have been utilised in the impugned order. Both the grounds are wholly untenable and, therefore, the order of the High Court has got to be reversed. We allow the appeal and vacate the order of the High Court.

Once the order of the High Court is vacated the order of the learned Magistrate would revive and the prosecution as directed by the learned Magistrate has now to continue. The petition of the complainant at page 21 of the paper-book shows that the offence was committed between 1967 and 1969 which is some 20 years back. While we have no sympathy for the respondent No. 2 and we are clearly of the opinion that he has no equity in his favour and the delay after the complaint had been filed has been mostly on account of his mala fide move, we do not think it would be in the interest of justice to allow a prosecution to start 20 years after the offence has been committed. If we could convict the respondent No. 2 in accordance with law, we would have been prepared to do so taking the facts of the case and conduct of the respondent into consideration but that would not be possible within the framework of the law of procedure. We, therefore, do not propose to allow the learned Magistrate to proceed with the trial of the case at this belated stage.

We accordingly direct the case to be closed against respondent No. 2 without further delay. Ordinarily, in a criminal case of this type there would have been no order for costs. But keeping in view the background of the case, the manner in which the respondent No. 2 has behaved and the fact that he is squarely responsible for delaying the proceedings by reiterating the same contention twice over. We are of A the definite opinion that the respondent No. 2 should be made to suffer exemplary costs. We accordingly direct that he shall be called upon to pay a sum of Rs. 10,000 by way of costs and the said amount is to be deposited in the trial court within one month hence failing which the trial court shall have a direction to recover the same as fine and pay the amount to the complainant. Compliance shall be reported to the Registry of this Court. N.P.V.