

J.P. Sharma vs Vinod Kumar Jain on 8 April, 1986

Equivalent citations: 1986 AIR 833, 1986 SCR (2) 382, AIR 1986 SUPREME COURT 833, 1986 (3) SCC 67, 1986 (1) COM LJ 1 SC, 1986 SCC(CRI) 216, 1986 CRIAPPR(SC) 98, 1986 (2) SCC 281, 1986 CURCRIJ 199, 1986 (2) COM LJ 1, (1986) SC CR R 127, (1986) 2 CRILC 184, (1986) 2 CRIMES 1, (1986) EASTCRIC 409, (1986) 2 RECCRIR 75, (1986) 2 SUPREME 194, (1986) 30 DLT 313

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, R.S. Pathak

PETITIONER:

J.P. SHARMA

Vs.

RESPONDENT:

VINOD KUMAR JAIN

DATE OF JUDGMENT 08/04/1986

BENCH:

MUKHARJI, SABYASACHI (J)

BENCH:

MUKHARJI, SABYASACHI (J)

PATHAK, R.S.

CITATION:

1986 AIR 833 1986 SCR (2) 382

1986 SCC (3) 67 1986 SCALE (1) 859

CITATOR INFO :

RF 1992 SC 604 (106)

ACT:

Code of Criminal Procedure, 1973 :

Section 482 - Quashing of Complaint - Jurisdiction of High Court to quash - Facts subsequently found out to prove truth or otherwise of allegation in complaint - Not a ground for quashing.

HEADNOTE:

On 13th May, 1981 M/s. Aurn Kumar & Co. applied for import of 'diamonds unset and uncut' for the purpose of re-

export of cut and polished diamonds. On 2nd June, 1981, there was an alleged oral agreement entered into between Jain Shudh Vanaspati Ltd. and Alugul and Jain Shudh Vanaspati Ltd. made an application for opening Letter of Credit. On 5th June, 1981 import of beef tallow was canalised through State Trading Corporation. On 6th June, 1981 there was a written confirmation from Alugul of their contract with Jain Shudh Vanaspati Ltd.

On 8th June, 1981, the Bank refused to open Letter of Credit as beef tallow import was allowed only through canalised agency. On 26th June, 1981 Alugul was established in Singapore. On June 29, 1981, Joint Controller of Imports and Exports, Bombay issued imprest licence to M/s. Arun Kumar and Co. for the import of 'diamonds unset and uncut' with the condition of re-export of cut and polished diamonds within a period of six months from the date of first consignment. After the export of cut and polished diamonds was made, this licence could be utilised for import of OGL items within 12 months and further extension of 6 months, if granted.

Shri V.K. Jain, Managing Director of M/s. J.S.V.L. obtained a letter of authority from Arun Kumar for the full face value of imprest import licence on 9th March, 1982 for the import of OGL items. An application was made to the Joint Chief Controller of Imports and Exports for the endorsement of OGL items as per paragraph 185(3) of the Import Policy of 1982-83 on August 2, 1982. The licence was revalidated for 6

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months on 10th September, 1982. On 20th September, 1982 an additional slip was attached to import licence for import of OGL items. On this date no import of beef tallow was permitted under OGL except through canalised agency STC.

In a writ petition filed by J.S.V.L. for directing the New Bank of India that it might open Letter of Credit, the High Court of Delhi passed an order on 16th March, 1983 that the Bank may open the Letter of Credit.

Accused No. 2 to 9, Directors of J.S.V.L., were alleged to have entered into a conspiracy to contravene the provisions of s.5 of the Imports and Exports (Control) Act, 1947 by participating in the Board's Meetings of M/s. J.S.V.L. on 28th March, 1983 and 30th June, 1983 for illegally and unauthorisedly importing beef tallow. By a resolution dated 28th March, 1983 of the Board, the Board resolved pursuant to the order of the Delhi High Court that the New Bank of India be requested to issue irrevocable letter of credit in favour of M/s. Alugul Pvt. Ltd. Singapore duly supported by a Letter of Guarantee given by the Punjab National Bank.

On 30th June, 1983 New Bank of India opened Letter of Credit. On 18th April, 1983, relevant invoice for the sale of beef tallow by M/s. Alugul to J.S.V.L. was issued.

It was alleged that the accused persons in criminal

conspiracy with each other and also with other persons, illegally and unauthorisedly imported beef tallow of the total value of the licence. On 3rd May, 1983, show-cause notice under s.124 of the Customs Act, 1962 was issued and on 24th May, 1983 the Collector of Customs passed orders confiscating the consignment for home consumption.

A complaint was filed by the appellant, Deputy Chief Controller of Imports and Exports, in the Chief Metropolitan Magistrate's Court, Delhi for offences under s. 120B of the Indian Penal Code read with s.5 of the Imports and Exports (Control) Act, 1947, against 12 accused persons named in the complaint. The Magistrate took cognizance and summoned the accused persons.

The accused persons filed petitions under s. 482 of the Criminal Procedure Code in the High Court for quashing the complaint, which were allowed.

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On the question whether the High Court under s. 482 Criminal Procedure Code was justified for quashing the complaint: Allowing the appeal of the Department,

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HELD : 1. The grounds upon which the High Court seems to have quashed the complaint in the instant case was the subsequent report by the CBI which had not yet been proved and considered in the background of the allegations made and secondly that some of the parties alleged to be in the conspiracy were not made parties. These are no grounds for quashing the criminal proceedings where on prima facie being satisfied the Metropolitan Magistrate had taken cognizance. Taking all the allegations in the complaint to be true, without adding or subtracting anything, at this stage it cannot be said that no prima facie case for trial had been made out. That is the limit of the power to be exercised by the High Court under s. 482 of the Code of Criminal Procedure. The High Court in the instant case has exceeded that jurisdiction. The Order and Judgment of the High Court quashing the proceedings are set aside. [408 A-D; F]

2. The power under s. 482 of the Code of Criminal Procedure should be used very sparingly. [406 H; 407 A]

3. The facts subsequently found out to prove the truth or otherwise of the allegations is not a ground on the basis of which the complaint can be quashed. [406 C]

4. Whether a conspiracy in the facts and circumstances of a particular case can emanate from the Directors' meeting would depend upon the examination of the entire facts and circumstances and the conduct of the parties. [405 E-F]

Bennett Coleman & Co. & Ors. v. Union of India & Ors., [1973] 2 S.C.R. 757, Municipal Corporation of Delhi v. Ram Krishan Rohtagi & Ors., [1983] 1 S.C.R. 884, Raj Kapoor & Ors. v. State & Ors., [1980] 1 S.C.C. 43 and Pratibha Rani v. Suraj Kumar and Anr., A.I.R. 1985 S.C. 628, relied upon.

JUDGMENT :

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 223 of 1986.

From the Judgment and Order dated 8.2.1985 of the Delhi High Court in Criminal Misc. (Main) NO. 1266 of 1984.

K. Parasaran, Attorney General, B. Datta, Additional Solicitor General, V.P. Sarathy, K.C. Mittal, R.D. Agarwala and C.V. Subba Rao for the Appellant.

Ram Jethmalani, Rajinder Singh, R. Narasimhan, Miss Kamini Jaiswal, Ashok Desai, B.R. Agarwala, M.M. Jayakar and Miss V. Menon for the Respondents.

The Judgment of the Court was delivered by SBYASACHI MLKHARJI, J. This is a petition for special leave to appeal under Article 136 of the Constitution from the judgment and order dated 8th February, 1985 of the High Court of Delhi. We grant special leave and dispose of this appeal as hereunder.

By the judgment and the order impugned, High Court of Delhi under section 482 of the Code of Criminal Procedure, has quashed the complaint as also the summoning order at the instance of the Petitioners and the complaint was dismissed.

Three petitions arose out of a complaint under section 120B of the Indian Penal Code and section 5 of the Imports and Exports (Control) Act, 1947 (hereinafter called the 'Act') which had been made by the Deputy Chief Controller of Imports and Exports, Shri J.P. Sharma of which the learned Metropolitan Magistrate, Delhi took cognizance and issued summons against the accused persons. The prosecution had been lodged against Arun Kumar, Ramniklal Mehta, Harshad, M/s Arun Kumar & Co. a partnership concern of the aforesaid persons also against Shri Vinod Kumar Jain, Shri Rakesh Jain, Ramanand Jain, Jagdish Rai Jain, Shri Ram Jain, Swaraja Kumar Jain, Pyarelal Aggarwal, Pyarelal Malhotra, Ashok Kumar, M/s Jain Sudh Vanaspati Ltd. All the aforesaid persons were at all material time directors and Vinod Kumar Jain was the Managing Director of the company mentioned aforesaid. The allegation was that the accused had entered into a conspiracy to contravene the provisions of the Act.

Accused Nos. 2 to 9 in the said complaint were alleged to have entered into a conspiracy to contravene the provisions of section 5 of the Act by participating in the Board's meetings of the company on 28th March, 1983 and 30th June, 1983. By a resolution of the Board of Directors of M/s Jain Sudh Vanaspati Ltd. (hereinafter called as J.S.V.L.) dated 28th March, 1983, the Board has resolved pursuant to the order of Delhi High Court dated 16th March, 1983, that New Bank of India, Janpath Branch, New Delhi be requested to issue an irrevocable letter of credit for US Dollars 1,29,60,613 in favour of M/s Alugul Pvt. Ltd. Singapore (hereinafter called as Alugul) duly supported by a letter of guarantee given by the Punjab National Bank, Chawari Bazar Delhi undertaking to pay on demand all bills drawn under the said letter of credit in the event of failure on their part to pay the same to the extent of Rs. 10 crores. The letter of credit was to be operative for

Rs. 10 crores in the first instance in view of letter of guarantee of Punjab National Bank (hereinafter called as PNB) Delhi. Shri Vinod Kumar Jain was alleged to have authorised to sign and execute all documents as would be required by the Bank.

In order to appreciate the complaint, it is necessary to understand the background of the complaint. On 13th May, 1981, M/s Arun Kumar and Co. applied for import of 'diamonds unset and uncut' for the purpose of re-export of cut and polished diamonds for F.O.B. value of Rs. 10,04,97,000. On 2nd June, 1981, it was alleged in the complaint there was an alleged oral agreement entered into between J.S.V.L. and Alugul, not yet then incorporated. On 2nd or 3rd June, 1981, application was made by J.S.V.L. for opening letter of credit. On 5th June, 1981, public notice No. 29-ITC(PN)/81 canalising the import of beef tallow through State Trading Corporation was issued. On 6th June, 1981, there was a written confirmation from Alugul of the alleged contract between J.S.V.L. and Alugul.

On 8th June, 1981, the Bank refused to open letter of credit as beef tallow import was allowed only through canalised agency, S.T.C. It is stated that on 26th June, 1981, Alugul was established in Singapore. On 29th June, 1981, Joint Controller of Imports and Exports, Bombay issued imprest licence to M/s Arun Kumar & Co. for Rs. 6,53,23,200 for the import of 'diamonds unset and uncut' with the condition of re-export of cut and polished diamonds for Rs. 10,04,97,000 within a period of six months from the date of first consignment. After the export of cut and polished diamonds was made, this licence could be utilised for import of OGL items within twelve months after the date of licence and further extension of six months, if granted. In this connection reference may be made to paragraph 185 of Import Policy 1982-83. Clause (5) and (7) of the said paragraph are relevant and these are as follows :

"(5) Export Houses who wish to take advantage of this facility of import of OGL items should get the licences concerned endorsed by the licensing authority as under :-

'This licence will also be valid for import of OGL items under para 185 of Import-Export Policy, 1982-83, subject to the conditions laid down, and shall be non-transferable.' (7) Import of OGL items by Export Houses under these provisions shall be subject to the condition, inter alia that the shipment of goods shall take place within the validity of OGL i.e. 31st March 1983 or within the validity period of the import licence itself (without any grace period), whichever date is earlier. This restriction will also apply to licences issued before 1.4.1982 in respect of items which continue to be on OGL in 1982-83 policy. (The restriction regarding grace period will not, however, apply in cases where shipment can be made within the permissible grace period on or before 31.3.1983)."

Shri V.K. Jain obtained a letter of authority from Arun Kumar for the full face value of the imprest import licence for Rs. 6,53,23,200 on 9th March, 1982 for the import of OGL items as mentioned in Appendix 10 Item I. Shri Harshad R. Mehta being accused No.12 in the complaint made an application requesting the Joint Chief Controller of Imports and Exports for the endorsement of OGL items as per paragraph 185(3) of the Import Policy of 1982- 83 on 2nd August, 1982.

The licence was revalidated for six months on 10th September, 1982. On 20th September, 1982, an additional slip was attached to import licence for import of OGL items. On this date no import of beef tallow was permitted under OGL except through canalised agency, STC.

In a writ petition filed by J.S.V.L. for directing the New Bank of India that it might open letter of credit, the High Court of Delhi passed an order on 16.3.1983. It is appropriate to refer to the terms of the order of the Delhi High Court in C.W. No. 313 of 1983 which are as follows :

"Rule DB (In view of the judgment of the Full Bench of this Court in Bansal Exports (P) Ltd. v. Union of India and others CW 310 of 1980, CM 630/1980).

The petitioners are permitted to press their application dated 3.6.1981 moved to respondent No.5, which may open the L/C, asked for on the basis of that application.

With regard to Import, it is not possible at this stage to grant the prayer made in the application that on import clearance of the goods imported be permitted. Clearance of goods on import can only be made after Customs clearance and fulfilling other necessary formalities, as contemplated by rules and regulations. Liberty to the petitioners to move the Court for directions as to clearance as and when the goods either reach a port in India or are about to reach a port in India. If any such application is moved with regard to directions for clearance of goods sought to be imported, the same will be moved after giving a notice of motion to counsel for the respondents. As and when that application comes up before us it will be decided on its own merits.

It will be open to respondents No. 1 to 3 in the meanwhile to make such verification as they think fit regarding the averments made in the affidavit filed before us to the validity and genuineness of the contract under which the petitioners claim to import.

Liberty to the petitioners to move for early hearing of the petition."

Thereafter shipments started for Canadian Port. On 30th June, 1983, New Bank of India opened letter of credit. On 18th April, 1983, relevant invoice for the sale of beef tallow by M/s Alugul to Jain Sudh Vanaspati was issued. On 3rd May, 1983, show-cause notice under section 124 of the Customs Act, 1962 was issued. Cause was shown on 11th May, 1983. On 24th May, 1983, Collector of Customs, Bombay passed orders confiscating the consignment for home consumption. An appeal was preferred against the said order of the Collector and the same was stated to be pending. On 28th August, 1983, Government of India issued an abeyance orders barring Shri V.K. Jain from getting import licence and allotment of canalised items.

Complaint was filed by the Deputy Chief Controller of Imports and Exports in the Court of Chief Metropolitan Magistrate for offences under section 120B of Indian Penal Code read with section 5 of the Act. This was the matter of challenge before the Delhi High Court. It may be appropriate to refer to the relevant portions of the said complaint. The complaint was under section 120B of Indian

Penal Code and the substantive offence alleged was under section 5 of the said Act. It was stated that the complaint was being filed on the basis of investigation conducted by Special Police Establishment, Central Bureau of Investigation and facts collected by it. After setting out the relationship between the parties and the participation of the persons named in the complaint at the Board's meeting on 28th March, 1983 and 30th June, 1983 and referring to the resolution passed therein, allegations were set out in the complaint and it was alleged that all these were done knowing that the Bank had refused to open letter of credit applied by J.S.V.L. On the ground that beef tallow was canalised. It is further stated that M/s Alugul Pvt. Ltd. was established in Singapore on 26th June, 1981 and started in July, 1981. They opened their account with Swiss Bank Corporation with effect from 1st August, 1981. It could, therefore, be seen that on 2nd June, 1981, the day on which M/s J.S.V.L. was alleged to have entered into a contract for the import of 25,000 M.Ts. inedible beef tallow from them, the firm M/s Alugul was not existing. Thereafter it was mentioned in the complaint about the grant of imprest licence for Rs. 10,04,97,000 for the import of 'diamonds unset and uncut' for the purpose of re-export of cut and polished diamonds for FOB value of Rs. 10,04,97,000 and against this application, imprest licence No. P/L/K/0452196 dated 29th June, 1981 for Rs. 6,53,23,000 was issued. It was alleged that the accused No. 1, Shri Vinod Kumar Jain entered into a contract on 4th March, 1982 with M/s B. Arun Kumar and Co. and signed the same with Shri Arun Kumar R. Mehta for obtaining letter of authority against import licence number mentioned above. In furtherance of the said criminal conspiracy and under the said agreement, it was alleged that, Shri Vinod Kumar Jain obtained a letter of authority on 9th March, 1983 from Shri Arun Kumar R. Mehta partner of M/s B. Arun Kumar & Co. Reference was made to the provisions of Para 383 (2) of the Hand Book of Imports and Exports Procedure, 1982-83 and in view of that it was stated that the licensee could not issued letter of authority after 20th September, 1982 for import of any OGL item permitted by the said endorsement. If any letter of authority had been issued earlier to 20th September, 1982, permitting letter of authority holder to import diamonds unset and uncut, that letter of authority, according to the complaint, would not be valid for import of OGL items endorsed on 20.9.1982 as per the slip attached with the aforesaid Import licence, dated 29.6.1981 in view of the provisions of para 383(2) of the Hand Book of Imports and Exports Procedure, 1982-83. Reference was made to the said para in the complaint.

Thereafter mention was made of the writ petition referred to hereinbefore and it was stated that in the said writ petition, several prayers were made and the substance of the order was stated in the complaint. We have already set out the order. Thereafter the complaint went on to state that Shri V.K.Jain approached the New Bank of India even prior to the passing of the said order by the Delhi High Court that Delhi A High Court may pass orders on New Bank of India for the opening of letter of credit. He also approached PNB, Chawri Bazar, Delhi through his letter dated 17th March and 18th March, 1983 falsely mentioning therein that New Bank of India, Janpath Branch had agreed to open foreign letter of credit on 150 days sight on Singapore on behalf of accused No. 10 requesting PNB to give the requisite undertaking/indemnity to the New Bank of India, Janpath Branch to the extent of Rs. 10 crores by earmarking their ILC/FLC Limited, sanction being in their favour although till 18th March, 1983, Janpath Branch of New Bank of India had not agreed to the opening of any letter of credit in their favour. Shri V.K. Jain by making false representation in his letter dated 18th March, 1983, induced the Chawri Bazar branch of PNB to issue necessary undertaking, according to the complaint, to the New Bank of India to the extent of Rs. 10 crores by their letter No.

PNB/CBD/JSV-ILC dated 19th March, 1983. That the New Bank of India, Janpath Branch considering the High Court orders as binding on them to open letter of credit applied by JSVL under their application dated 3rd June, 1981 and also considering the undertaking given by Chawri Bazar Branch of PNB opened foreign letter of credit on the evening of 30th March, 1983 after office hours for U.S. Dollar 12,246,250 for the import of 25,000 M.Ts. + 10% inedible beef tallow of Newzealand /Australian/USA/Canadian origin. The telex advice for the opening of this letter of credit was sent to Swiss Bank Corporation, Singapore, bankers M/s Alugul Pvt. Ltd. Singapore on the telex machine of M/s J.S.V.L. using secret test cypher of New Bank of India. In their application dated 3rd June, 1981, M/s. J.S.V.L. and Shri V.K. Jain who had signed the letter on behalf of his company did not indicate the canadian origin nor did they mention the particulars of any import of any beef tallow that was contemplated. While opening the letter of credit, it was alleged that particulars of five Import Licence numbers were furnished to the Bank. The said particulars had been set out in the complaint. It was stated thereafter that the said import licences were issued after the Government of India issued Public Notice No. 29-ITC(PN)/81 dated 5th June, 1981 by which import of beef tallow was canalised and its import by private parties was prohibited. The complaint stated thereafter:

"As per the contract entered into by J.S.V.L. under the signatures of Sh. V.K. Jain (A-1) with M/s Alugul Pvt. Ltd. Singapore, the shipment of goods (inedible beef tallow) was to take place within 6 months from the date of establishment of letter of credit in their favour whereas shipment of beef tallow started from Canadian and US ports on 16th and 18th March, 1983 i.e. much before the establishment of letter of credit (As the letter of credit was opened on 30th March, 1983)."

It was therefore alleged that accused persons in criminal conspiracy with each other and also with other persons, illegally imported beef tallow of the total value, the particulars whereof were set out in the complaint.

It was further alleged that J.S.V.L. and other accused persons also unauthorisedly imported consignments of inedible beef tallow which were shipped from U.S., Canadian and Australian ports, particulars whereof were mentioned in the complaint .

It was further alleged that in furtherance of the said criminal conspiracy, the said J.S.V.L. appointed M/s Damani Bros. to clear the consignment of inedible beef tallow illegally imported by them and other accused and that in fact M/s Damani Bros., Bombay preferred following two Bills of Entry, particulars whereof were mentioned in the complaint. It was further alleged that although the bills of entry submitted by M/s Damani Bros. On behalf of M/s. J.S.V.L. for the clearance of 12 consignments mentioned 5 import licences as detailed in the complaint, yet the clearance was sought against import licence No.P/L/K/0452196 dated 29th June, 1981. The said consignments were not cleared by the Customs Officials at Bombay Port as there was no valid licence with M/s J.S.V.L. to cover the import of beef tallow.

Then the detention and adjudication were mentioned and particulars were mentioned and it was alleged that there was conspiracy between the accused persons. It is further alleged as follows :

"That in pursuance of the above said criminal conspiracy and as per terms of agreement executed between J.S.V.L. and M/s B. Arun Kumar & Co. (A-13), M/s Arun Kumar and Co. (A-13) issued 10 sale invoices for the sale of 997.847 Mts of beef tallow to M/s Godrej Soap Ltd., Bombay, 1000 M.Ts. B of beef tallow to M/s. Majoj Container & Chemicals Pvt. Ltd., Bhatinda, 2247.890 Mts of beef tallow to M/s Reliable Extraction, Industries Pvt. Ltd., Bombay and 1500 M.Ts. Of beef tallow to M/s. Arun Chemicals(Bombay) Pvt. Ltd., Bombay. m e details of the invoices raised by M/s B. Arun Kumar & Co., the rate per M-T. in rupees, the quantity sold and the invoice Nos. and Bills of Lading of the foreign supplier regarding the supply of beef tallow to Indian Importer from out of which the sale was made to the aforesaid four parties are given."

Particulars of these were also mentioned in the complaint. It is alleged that M/s J.S.V.L. paid Rs.12 lakhs through certain cheque and M/s. B. Arun Kumar & Co. realised the amounts authorised in two cheques in their account. Other consignments illegally imported by M/s. J.S.V.L. were mentioned and it was stated that they were lying at Bombay Port. It was alleged that import licence No.P/L/K/0452196 dated 29th June, 1981 in favour of M/s B. Arun Kumar & Co. did not cover import of beef tallow as the import of the same had been canalised through STC vide Public Notice. It was further alleged that M/s B. Arun Kumar & Co. could not issue the said letter of authority dated 9th march, 1982 authorising J.S.V.L. to import any OGL items whose import had been canalised. Therefore M/s B. Arun Kumar & Co. could not legally authorise J.S.V.L. to import OGL items under the said licence.

It was stated that from the facts stated in the complaint it was apparent that the accused had committed substantive offences under section 5 of the Imports and Exports (Control) Act. It was prayed to summon the accused persons for the trial in accordance with law. It was mentioned that Sh. Vinod Kumar Jain was arrested by CBI/SPE/CIU(E) II on 20th September, 1983 and was released on that date under the orders of the High Court of Delhi.

The complaint was filed by Shri J.P. Sharma, Deputy Chief Controller of Imports and Exports. Chief Metropolitan Magistrate accepted the complaint and issued summons. On 14th December, 1983, summons were issued to the accused. Thereafter on 7th February, 1984, Criminal revision petition was filed before the Delhi High Court by Pyarelal Agarwal and Pyarelal Malhotra. Thereafter on 23rd May, 1984, Criminal Miscellaneous (Main) No. 145 of 1984 was filed by Arun Kumar & Co. for quashing the complaint. This was admitted by the Delhi High Court. Remaining accused also filed petitions under section 482 Criminal Procedure Code for quashing the complaint.

There was a supplementary investigation made by CBI on July, 1984. According to the present respondents, the accused before the High Court, this was very relevant and it showed that there was no basis for the complaint. According to the Government, this was not relevant or necessary for justifying prosecution. Delhi High Court by its judgment dated 8th February, 1985 quashed the complaint as mentioned herein before. The present Special Leave Petition was filed on 8th July, 1985. Certain remarks were made by the High Court which are considered to be adverse and an order was passed by the Delhi High Court. expunging certain adverse remarks with which we are not

concerned at this stage.

The question involved in this case is whether the High Court under section 482, Criminal Procedure Code was justified in quashing the complaint at this stage.

As mentioned hereinbefore, section 5 of the said Act deals with contravention of any order made or any condition of a licence granted under the Act or any authority under which imported goods were received, he shall, without prejudice to any confiscation or penalty to which he may be liable under the provisions of the Customs Act, 1962 be punishable as indicated in the said Act. Contravention of condition of a licence or any order made under the Act is a penal offence, therefore, punishable under the Act.

The High Court has set out the allegation of conspiracy and has observed that no overt act was alleged to have been committed by the accused. Beef tallow was prohibited. Attempt to import beef tallow by virtue of transfer of licence is one of the main basis of the complaint. From the complaint, the learned judge noted that the part attributed to accused Nos. 2 to 9 in the commission of offence was for their having sat in the Board of Directors' meeting and approving the letter of credit and the deed of hypothecation which in fact had been executed by accused V.K. Jain, Managing Director of JSVL.

As indicated before the substance of the facts had been alleged. It is apparent that the allegation was that V.K. Jain made an application to the National Bank of India, Janpath Branch, New Delhi on 3rd June, 1981 to establish a letter of credit in favour of Alugul Singapore which was a non-existent firm without indicating the licence against which the proposed letter of credit was to be opened. The main allegations in the complaint were

- (a) that the said Alugul was not in existence on the relevant date i.e. 2nd June, 1981.
- (b) that National Bank of India refused the letter of credit for want of original contract and thereafter on the ground that the item had been canalised as per public notice dated 5.6.1981.
- (c) that Alugul was established in Singapore on 28th June, 1981 and started functioning in July, 1981. It opened its account with Swiss Bank Corporation w.e.f. 1.8.1981.

Therefore on the allegation, it appears that the charge was that it was a non-existent firm with which the contract was entered into in order to facilitate import of prohibited articles under licence under circumstances which were not permissible. All these are in short the substance of the charges. It has also been alleged that M/s B. Arun Kumar & Co. being Accused No. 13 in the complaint in their capacity as Export House and Merchant Exporter had applied to the Joint Controller of Imports and Exports for grant of imprest licence for Rs. 10,04,97,000 for the import of 'diamonds unset and uncut' for the purpose of re-export of cut and polished diamonds for FOB value of Rs. 10,04,97,000. Against this application, the Joint Controller had issued the imprest licence indicated hereinbefore.

Another charge was that somewhere in March, 1982, the accused Nos. 1 to 10 had entered into a criminal conspiracy. In para 10 of the complaint it was alleged that according to the provisions contained in para 383(2) of the Hand Book of Imports and Exports Procedure 1982-83, the licensee could not issue any letter of authority after 20th September, 1982, for import of any OGL items permitted by the said endorsement dated 20th September, 1982 and if any letter of authority had been issued earlier to 20th September, 1982 permitting the letter of authority holder to import diamonds unset and uncut, that letter of authority would not be valid for import of OGL items endorsed on 20th September, 1982 as per the slip attached to the said import licence dated 29th June, 1981.

The learned judge in the impugned judgment has recorded that during the course of the arguments, counsel on behalf of the government had conceded that the statement made in paragraph 10 of the complaint could not be relied upon in view of I.P.O. Circular No. 14/82 wherein it was stated :

"Attention is invited to para 383(2) of the Hand Book of Import-Export Procedures, 1982-83 under which the facility of giving letters of authority is not available to export houses and trading houses in the case of non-transferable licensee issued to them.

It is clarified that the above provision will not affect letters of authority issued, before 5th April, 1982 in respect of licences issued prior to 1.4.1982."

We have set out the complaint and in paragraph 10 of the complaint it was alleged contraventions of the provisions of para 383(2) of the Hand Book of Imports and Exports Procedure, 1982-83, the licensee could not issue a letter of authority after 20th September, 1982 for the import of OGL items permitted by the said endorsement.

It was submitted before us that what was conceded was that the issue of IPO Circular No. 14/82 set out hereinbefore the effect of the circular is that the ban on the licensee for issuance of letter of authority after 20th September, 1982 for the import of any OGL items permitted by the said endorsement dated 20th September, 1982 would not affect any letters of authority issued before 5th April, 1984 in respect of licences issued prior to 1st April, 1982. But factually it had yet to be established whether the letter of authority in fact was issued before 5th April, 1984. It was also alleged in the complaint, the learned judge noted, that the licence of M/s Arun Kumar & Co. was made valid for OGL items in terms of import policy for the year 1982-83. As the learned judge read the complaint, he was of the view that the case of the prosecution was that licence could be issued for import of OGL items restricted to the year 1982-83. The learned judge further noted the allegations and of conspiracy and of the overt acts alleged in pursuance of the conspiracy. He also noted the order of the High Court set out hereinbefore dated 16th March 1983.

After analysing the complaint, according to the learned judge, the following were the charges, namely;

1. Could the beef tallow in respect of which a firm contract under the previous policy was in existence be imported? E
2. Could the licence of B. Arun Kumar and Company which was issued on 20th February, 1982 for OGL item and made non-transferable be utilised for purposes of import of beef tallow?

According to the learned judge, in the ultimate analysis, two acts were alleged against the accused in the complaint, namely; beef tallow being an item canalised, it could not have been imported and M/s Arun Kumar's licence could not have been used for the import of this item.

The learned judge then referred to a note bearing No. 1266/84 which was the report of an investigation made on the aspect of the opening of letter of credit for the import of beef tallow by M/s. J.S.V.L. through National Bank of India. This note was prepared by the CBI in collaboration with Interpole which had come to existence during the pendency of the complaint. It has to be borne in mind that this note was essentially confined to the conduct of bank officials but the learned judge was of the view that it had falsified some of the results of earlier investigation by CBI. According to the learned judge, the subsequent investigation of CBI had revealed that the application of JSVL was in fact available with National Bank of India, Delhi with the request to open the letter of credit for US Dollars 12,246,250 for the import of 25,000 M.Ts of beef tallow. It also revealed that Mr. Soni the concerned bank manager of National Bank of India, Janpath had asked for the original contract and on receipt of contract he had also directed it to be put up before the Head Office for sanction. Certain opinion was sought for the advice of Mr.A.K. Sen as counsel and as Senior Advocate which had been exhaustively noted in the said report.

The learned judge construed the use of the expression 'may' in the order of the High Court dated 16th March, 1983 in C.W.No. 313 of 1983 noted before as direction upon the Bank. The learned judge felt that the High Court's order dated 16th March, 1983 clearly indicated a direction because the contract in question was before the canalisation.

It is possible to take a different view namely a permission only. According to the learned judge, the subsequent investigation by the CBI with the assistance of Interpole had clearly frustrated most of the allegations on which the complaint was based. The learned judge has observed as follows :

"It would be seen that the latest investigation has nullified the very basis of the complaint. In fact the whole complaint is based on the findings of the Collector of Customs and on the assumption that it was fraudulent transaction and neither the contract dated 2.6.1981 was in existence nor was the contracting party based in Singapore in existence. Under such circumstance if there is no prima facie case I find no reason to allow such expensive and tardy proceedings to drag on for years together. On facts therefore it is clear that the contract came into existence when the import of items was admittedly on OGL items and was not canalised. The case of the prosecution is not that the import of beef tallow prior to it was canalised. Admitted case of the parties is that the item was canalised actually after the contract came into existence. In fact the whole case is based upon law. The facts by and large are

admitted by the parties. The fact is that import of beef tallow was permissible under OGL before it came to be canalised on 5.6.1981."

Then the learned judge went on to analyse the constitution of JSVL and its conduct, the enquiry by Interpole, the order of the High Court, the banning of Interpole, the consequences of difference between public notices and statutory Orders. According to him, banning of beef tallow by Public Notice would not amount to any contravention of the order passed under the Act.

The learned judge was of the view that there was no conspiracy and such a complaint should not have been lodged and no legalistic view should be taken and there was no case to proceed on the complaint. He accordingly quashed the complaint.

The principles on which the complaint can be quashed under section 482 of the Code of Criminal Procedure are well settled.

The learned judge seemed to have proceeded that no conspiracy could ever be imputed by holding of the Director's meeting. Whether a conspiracy in the facts and circumstances of a particular case can emanate from the Directors' meeting would depend upon the examination of the entire facts and circumstances and the conduct of the parties. Whether it was necessary for the JSVL to have a licence as it had Open General Licence and were being imported for its own use but as an abundant caution it took the licence of Arun Kumar and the letter of authority would have to be investigated. It is further alleged that the Collector confiscated the goods with option to redeem the same on payment of Rs. 1,09,60,000 under section 125 of the Customs Act, 1962. The fine was paid, goods were allowed to come in and these were sold to actual users as JSVL were advised that in the disturbed climate it should not use the raw material in its own factory.

The learned judge felt that in the Directors' meeting, the periodical review was made on the progress of the business of the company. He could not find any conspiracy. The learned judge referred to the necessity of mens rea. Several authorities were noted by the learned judge in aid of the proposition that there was no conspiracy as there was no mens rea and as such the complaint was quashed.

The question at this stage, is, not whether there was any truth in the allegations made but the question is whether on the basis of the allegations, a cognizable offence or offences had been alleged to have been committed. The facts subsequently found out to prove the truth or otherwise on the allegation is not a ground on the basis of which the complaint can be quashed.

In this case it has to be borne in mind that learned Metropolitan Magistrate took cognizance of the complaint under section 5 of the Act as well as section 120B of Indian Penal Code. Section 120B deals with punishment of criminal conspiracies against all the parties concerned. Section 5 of the Act has already been noted. Court had issued summons in this case under section 205 of Criminal Procedure Code to stand trial.

It may be mentioned that the Import Control Order, 1955 passed by the Central Government under sections 3 and 4A of the Act laid down restrictions on the import of newsprint (imprint of

newspaper-dictated) which had been considered in the case of *Bennett Coleman & Co. & Ors. v. Union of India & Ors.*, [1973] 2 S.C.R. 757. It was held in that case that the power of the Control Order could only be exercised by Government notification and not by notice.

The power under section 482, Criminal Procedure Code, has been examined by this Court in *Municipal Corporation of Delhi v. Ram Krishan Rohtagi & Oks.*, [1983] 1 S.C.R. 884. It was laid down clearly that the test was that taking the allegations and the complaint as these were, without adding or subtracting anything, if no offence was made out then only the High Court would be justified in quashing the proceedings in exercise of its powers under section 482 of Code of Criminal Procedure. There this Court observed that the power under section 482 should be used very sparingly. In that case the fact that proceedings had been quashed against some of the directors would not prevent the court from exercising its discretion under section 319 of the Code if it was fully satisfied that a case for taking cognizance against them had been made out on the additional evidence led before it. Section 319 of Code of Criminal Procedure gives ample powers to any court to take cognizance to add any person not being an accused before it and try him along with the other accused. The learned judge, in the instant case had observed that in this case the Bank had not been made a party to the conspiracy.

Firstly it has to be borne in mind the essential ingredients. Glanville Williams in his treatise on Criminal Law, Second Edition in Chapter 15 at page 663 has observed as follows :

"Conspiracy, like other inchoate crimes, was principally the invention of the Star Chamber. The term "Conspiracy" merely means an agreement of a certain kind. "Conspire", said Lord Campbell, "is nothing; agreement is the thing." The agreement may be inferred from conduct. It was once ruled that conspiracy cannot be deduced from acts not in themselves illegal, but this is probably wrong; the legality or illegality of the acts is merely of evidentiary importance. There need be no overt act beyond the making of the agreement."

Secondly, if it was felt necessary at a later stage the Bank could be added as a party.

The limits of the power under section 482 have been clearly stated by this Court in *Raj Kapoor & Ors. V. State Ors.*, [1980] 1 S.C.C. 43.

This principle was again reiterated by this Court in *Pratibha Rani v. Suraj Kumar & Anr.*, A.I.R. 1985 S.C. 628 where the majority judgment of this Court held that where the allegation of entrustment and misappropriation was made under sections 405 and 406 of the Indian Penal Code a prima facie case was made out for trial of offence.

The grounds upon which the learned judge seems to have quashed the complaint in the instant case was the subsequent report by the CBI which had not yet been proved and considered in the background of the allegations made and secondly that some of the parties alleged to be in the conspiracy were not made parties. These, in our opinion, are no grounds for quashing the criminal proceedings where on prima facie being satisfied the learned Metropolitan Magistrate had taken

cognizance. Taking all the allegations in the complaint to be true, without adding or subtracting anything, at this stage it cannot be said that no prima facie case for trial had been made out. That is the limit of the power to be exercised by the High Court under section 482 of the Code of Criminal Procedure. The High Court in the instant case has exceeded that jurisdiction.

We are not concerned with the truth or otherwise of the allegations made in the complaint, that would be investigated at the time of the trial. In that view of the matter we are unable to sustain the order under appeal. We make it quite clear that we are not expressing any opinion on the merit of the charge and the complaint would be investigated in accordance with law and the accused persons would be entitled to prove before the court that no charge has been made out against them and they should be acquitted of the charges. But at this stage under inherent power of section 482 of Code of Criminal Procedure, in our opinion, in the background and circumstances of this case the court should not have used the extraordinary power. In the premises, the appeal is allowed. The order and judgment quashing the proceedings are set aside.

A.P.J.

Appeal allowed.