

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT

MR. JUSTICE NASIR-UL-MULK, HCJ
MR. JUSTICE GULZAR AHMED
MR. JUSTICE MUSHIR ALAM

CIVIL APPEAL NO. 09 OF 2006

(On appeal from the judgment of
the Peshawar High Court,
Peshawar, dated 25.03.2006
passed in W. P. No. 85 of 2000)

Deputy Director Collector Customs Intelligence
and Investigation, Peshawar

Appellant

Versus

Farman Ali and others

Respondents

For the Appellant: Mr. Abdul Rauf Rohaila, ASC

For Respondent Nos.1-2: Mr. Isaac Ali Qazi, ASC

For Respondent No.3: Mr. Waqar Ahmed Khan, Addl. A.G. KPK

On Court Notice: Mr. Sohail Mehmood, DAG

Date of Hearing: 27.01.2015

JUDGMENT

NASIR-UL-MULK, CJ.- Leave to appeal was granted
against the judgment of the Peshawar High Court on 02.01.2006.
The points of law for determination with the brief background as
stated in the leave granting order are reproduced:-

“By the impugned judgment of the
Peshawar High Court, dated 25.6.2003 in writ
petition No.85 of 2000, filed by the respondents,
Farman Ali and another, case F.I.R. No.5 dated
25.1.2000, registered against the respondents,
under a number of provisions of the Central
Excise Act, 1944 and the Rules framed
thereunder, was declared to be without lawful

authority and consequently, of no legal effect, on the grounds that cognizance of the said offences can be taken by the Special Judge, under Subsection 6 of Section 9-A of the Central Excise Act, 1944, only upon a complaint in writing by the Central Excise Officer and that Section 13 of the Act, though empowers the Central Excise Officer to arrest an accused, it does not provide for the registration of the first information report.

2. The submissions made by Mr. Abdul Rauf Rohila, ASC for the petitioner, Deputy Director Customs Intelligence and Investigation, Peshawar, and Barrister Masood Kauser, for the respondents, raise the following questions of public importance:-

- i) Whether the complaint mentioned in Subsection 6 of Section 9-A of the Central Excise Act, 1944, by which the Special Judge, can take cognizance, is to be equated with the "complaint" under Section 200 of Cr. P. C. and thus the procedure thereunder to be followed or charge sheet submitted by a police officer under Section 173 Cr. P. C. as provided under Subsection 11 of Section 13 of the Act?
- ii) Whether in the absence of express provisions in the Central Excise Act, 1944, the Central Excise Officer is precluded from registration of a case?
- iii) Whether the High Court was correct in holding that in view of the special procedure provided under Section 13 of the Act for the investigation of a crime, the first information report could not be registered?

iv) That when the Central Excise Officer has been empowered under Subsection 1 of Section 13 of the Act to arrest a person without warrant and for the investigation of a case to exercise the powers conferred under criminal procedure code upon officer incharge of a police station, whether the registration of the first information report could be declared illegal?

v) That even if the first information report has been rightly held to have been registered without lawful authority can the Special Judge not take cognizance of the offences under Subsection 6 of Section 9-A of the Act, upon complaint mentioned in Subsection 11 of Section 13 of the Act?

We, thus, grant leave to appeal to determine the above questions."

2. In order to appreciate the arguments advanced and to answer the questions formulated in the leave granting order it is necessary to reproduce the entire section 13 of the Central Excise Act, 1944 (hereinafter referred to as "the Act"):-

"13. Power to arrest.-(1) Any Central Excise Officer authorized by the Central Board of Revenue in this behalf who has reason to believe that any person has committed an offence under this Act may arrest such person.

Provided that the Central Excise Officer shall immediately intimate the fact of the arrest of a person to the Special Judge who may direct such Officer to produce that person at such time and place and on such date as the Special Judge Considers expedient and such Officer shall act accordingly.

(2) Notwithstanding anything contained in proviso to sub-section (1), any person arrested under this Act shall be produced before the Special Judge or, if there is no Special Judge within a reasonable distance, to the nearest Judicial Magistrate, within twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the Special Judge or, as the case may be, of such Magistrate.

(3) When any person is produced under sub-section (2) before the Special Judge, he may, on the request of such person, after perusing the record, if any, and after giving the prosecution an opportunity of being heard, admit him to bail on his executing a bond, with or without sureties, or refuse to admit him to bail and direct his detention at such place as he deems fit.

Provided that nothing herein contained shall preclude the Special Judge from cancelling the bail of any such person at a subsequent stage if, for any reason, he considers such cancellation necessary, but before passing such order he shall afford such person an opportunity of being heard, unless for reasons to be recorded he considers that the affording of such opportunity shall defeat the purposes of this Act.

(4) When such person is produced under sub-section (2) before a Judicial Magistrate, such Magistrate may, after authorizing his detention in such custody, at such place and for such period as he considers necessary or proper for facilitating his earliest production before the Special Judge, direct his production before the Special Judge on a date

and time to be fixed by him or direct such person to be forthwith taken to, and produced before, the Special Judge and he shall be so taken.

(5) Nothing in sub-section (3) or sub-section (4) shall preclude the Special Judge or the Magistrate from remanding any such person to the custody of the Central Excise Officer holding inquiry against that person if such Officer makes a request in writing, to that effect and the Special Judge or the Judicial Magistrate, after perusing the record, if any, and hearing such person, is of the opinion that for the completion of inquiry or investigation it is necessary to make such an order; provided that in no case the period of such custody shall exceed fourteen days.

(6) When any person is arrested under this Act, the Central Excise Officer shall record the fact of arrest and other relevant particulars in the register mentioned in sub-section (10) and shall immediately proceed to inquire into the charge against such person and if he completes the inquiry within twenty-four hours of his arrest, excluding the time necessary for journey as aforesaid, he may, after producing such person before the Special Judge or the nearest Judicial Magistrate make a request for his further detention in his custody.

(7) While holding an inquiry under sub-section (6), the Central Excise Officer shall exercise the same powers as are exercisable by an officer in charge of a police-station under the Code of Criminal Procedure, 1898 (Act V of 1898), but such Officer shall exercise such powers subject to the foregoing

provisions of this section while holding an inquiry under this Act.

(8) If the Central Excise Officer, after holding an inquiry as aforesaid, is of the opinion that there is no sufficient evidence or reasonable ground for suspicion against such person, he shall release him on his executing a bond, with or without sureties, and shall direct such person to appear, as and when required, before the Special Judge, and make a report to the Special Judge for the discharge of such person and shall make a full report of the case to his immediate superior.

(9) The Special Judge to whom a report has been made under sub-section (8) may, after the perusal of record of the inquiry and hearing the prosecution, agree with such report and discharge the accused or, if he is of the opinion that there is sufficient ground for proceeding against such person, proceed with his trial and direct the prosecution to produce evidence.

(10) The Central Excise officer empowered to hold inquiry under this section shall maintain a register to be called "Register of Arrests and Detention" in the prescribed form in which he shall enter the name and other particulars of every person arrested under this Act, together with the time and date of arrest, the details of the information received, the details of things, goods or documents, recovered from his custody, the name of the witnesses and the explanation, if any, given by him and the manner in which the inquiry has been conducted from day to day; and such register or authenticated copies of its aforesaid entries shall be produced before the

Special Judge whenever such Officer is so directed by him.

(11) After completing the inquiry, the Central Excise Officer shall as early as possible, submit to the Special Judge a complaint in the same form and manner in which the officer in charge of a police-station submits a report before a court.

(12) Any Magistrate of the first class may record any statement or confession during inquiry under this Act, in accordance with the provisions of section 164 of the Code of Criminal Procedure, 1898 (Act V of 1898)

(13) Without prejudice to the foregoing provisions of this section, the Federal Government may, by notification in the official Gazette, authorize any other officer working under the Central Board of Revenue to exercise the powers and perform the functions of a Central Excise Officer under this section, subject to such conditions, if any, that it may deem fit to impose."

3. Perusal of section 13 of the Act would show that it provides a comprehensive procedure for inquiry into an offence committed under the Act, right up to the filing of the complaint before the Special Judge. The Central Excise Officer has been conferred the power to arrest a person whom he believes to have committed a crime under the Act. Upon arrest he is required to produce the accused before the Special Judge within 24 hours. The Special Judge may admit the accused to bail or direct his detention "at such place as he deems fit." Three provisions of section 13 sub sections (6), (8) and (10) are relevant for the present purpose. First, under sub section (6) upon effecting arrest of a suspect the Central

Excise Officer is required to record the fact of arrest and other relevant particulars in the register as are mentioned in subsection (10) and then to proceed with inquire into the allegations. Subsection (10) requires the maintenance of register called the "Register of Arrests and Detention" in the prescribed form where complete particulars of the case are to be mentioned, including the person arrested, the time and date of arrest, things and documents recovered and taken into custody, details of the information received and the manner in which the inquiry had been conducted. If the Central Excise Officer does not proceed under sub section (8) to release the accused for lack of sufficient evidence he is required under sub section (11) to submit a complaint to the Special Judge "in the same form and manner in which the officer in charge of a police station submits a report before a court."

4. The High Court had set aside the F.I.R. in the case on the ground that the Act does not make any provision for it. The learned counsel for the appellant submitted that the provision of sub section (6) read with sub section (10) of the Act when examined in juxtaposition with section 154 of the Criminal Procedure Code bears material similarity between the two and thus the Central Excise Officer is also empowered to register a criminal case in the shape of F.I.R. We need to take a look at section 154 of the Criminal Procedure Code:-

"Information in cognizable cases.—Every information relating to the commission of a cognizable offence if given orally to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as

aforesaid shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf."

5. The above provision does not mention the phrase "First Information Report" (F.I.R.) but provides for entry of the information in a book in the prescribed form. It is the Police Rules, 1934 which makes reference to F.I.R. Rule 24.1 of the Rules read with Rule 24.5 of the Rules provides for the 'First Information Report Register' to be maintained in Form 24.5 prescribed in the Rules. This only provides a format for formal recording of the information whereas the power to record the same and to further investigate a cognizable offence is provided for in sections 154, 156 and 157 of the Code of Criminal Procedure. The Police Rules obviously cannot be applied to the proceedings under section 13, or for that matter, any other provision of the Act. The absence of F.I.R. however does not, in any way, take away or effect the powers of the Central Excise Officer to arrest an accused under the Act, to carryout inquiry into an offence and to file complaint before the Special Court. Sub section (10) of section 13 of the Act in fact provides for its own Register called "Register for Arrest and Detention" in which details referred to above are to be mentioned. Thus where the Form prescribed under the Police Rules for recording of the F.I.R. may not be used by the Central Excise Officer for recording information regarding the offence under the Act its exclusion will have no bearing on the criminal proceedings.

6. It appeared from the arguments of the learned counsel for the appellant that by setting aside the registration of the F.I.R.

the High Court had annulled the entire criminal proceedings. Such an impression perhaps is being gathered as ordinarily when any F.I.R. is quashed by the Court the entire criminal proceedings are set at naught. By the impugned judgment the High Court has set aside the F.I.R. but not the criminal proceedings. The proceedings are not liable to be annulled simply because the Central Excise Officer had used the format of F.I.R. prescribed in the Police Rules. The Excise Officer can still file complaint under sub section (11) of section 13 of the Act before the Special Judge, based on the information recorded under sub section (10).

7. As regards the nature of the complaint to be filed by the Central Excise Officer to the Special Judge for the trial of the accused the same has been expressly equated with the police report submitted by the officer in charge of a police station under section 173 of the Criminal Procedure Code. The complaint is not to be treated as one filed under section 200 of the Criminal Procedure Code. It is in the nature of police report (*challan*) submitted by the police under the Criminal Procedure Code and has all the trappings of such a police report and the Trial Court shall proceed upon it accordingly.

8. It follows that the High Court may have been technically correct in holding that the case could not have been registered in the form of First Information Report. However, setting aside of the registration of the case in that format did not amount to quashment of the criminal proceedings against the respondents. The initiation of criminal proceedings, its investigation and trial is to be conducted in accordance with the procedure laid down in Section 13 of the Act. The very recording of the information under

Section 13(10) of the Act in the register of arrest and detention, mentioning the names of the persons arrested, giving details of the information regarding the crime itself amounts to registration of a criminal case on the basis of which the complaint can be filed before the Special Court in the nature of police report under Section 173 of Criminal Procedure Code. The appeal is, therefore, partially allowed and the impugned judgment modified to the above extent.

Chief Justice

Judge

Judge

Announced in open Court at
Islamabad on March, 2015

Chief Justice

“APPROVED FOR REPORTING”