



Crl.O.P.No.14526 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 20.07.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.14526 of 2020
and Crl.M.P.No.5548 of 2020

1. J.Ananad
2. K.Sivamani

...Petitioners

-Vs-

The Assistant Commissioner of Customs
Customs Division,
Nagapattinam.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to C.C.No.73 of 2017 on the file of the learned Judicial Magistrate No.I, Nagapattinam and quash the same.

For Petitioners : Mr.S.Ramachandran

For Respondent : Mr.N.P.Kumar

Special Public Prosecutor for Customs

ORDER

This petition has been filed to quash the proceeding in C.C.No.73 of 2017 on the file of the learned Judicial Magistrate No.I, Nagapattinam, thereby taken cognizance for the offences under Section 135(1)(b) of the Customs Act as against the petitioners.



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2. The respondent filed complaint alleging that they received information about the transportation of gold biscuits of foreign origin weighing about 15 Kg for sales at Chennai. On the basis of the said information, the respondent conducted road check and intercepted the vehicle. They noticed that two occupants were in the vehicle and on enquiry they found seven parcels containing gold biscuits of foreign origin, weighing about 15.06 Kgs and it valued at about Rs.4,52,40,000/- The respondent filed complaint and the same has been taken cognizance in C.C.No.73 of 2017 as against the petitioners.

3. The learned counsel appearing for the petitioners submitted that without examining any of the witnesses, the learned Magistrate without following the mandatory provisions under the Cr.P.C., straight away issued summons to the petitioners. In respect of framing charges and questioning of the accused, the same shall only be after the examination of the witness. Through the respondent failed to produce any sufficient materials for proceeding against the petitioners, the learned Magistrate without even verifying the materials produced by the respondent, straight away issued summons and framed charges.



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4. It is seen that the offence under Section 135(1)(b) of the Customs Act, 1963, is punishable with a maximum punishment of seven years and therefore, it is a warrant case otherwise than the police report. Therefore, the provisions under Section 245 of Cr.P.C., is the relevant provision applicable to the present impugned complaint. It is relevant to extract the provisions under Section 245(2) of Cr.P.C., as follows:-

“(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.”

Thus it is clear that if the charge is groundless then the learned Magistrate is empowered to discharge the accused under Section 245(2) of Cr.P.C.

5. In the case on hand, the learned Magistrate without examining any witnesses straight away had taken cognizance on the complaint lodged by the respondent and issued summons to the petitioners. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India reported in **(2009) 14 SCC 115** in the **Ajoy Kumar Ghose Vs. State of Jharkhand**, as follows :-



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“26. It will be better to see what is that "previous stage". The previous stage would obviously be before the evidence of the prosecution under Section 244(1) Cr.P.C. is completed or any stage prior to that. Such stages would be under Section 200 Cr.P.C. to Section 204 Cr.P.C. Under Section 200, after taking cognizance, the Magistrate examines the complainant or such other witnesses, who are present. Such examination of the complainant and his witnesses is not necessary, where the complaint has been made by a public servant in discharge of his official duties or where a Court has made the complaint or further, if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192 Cr.P.C. Under Section 201 Cr.P.C., if the Magistrate is not competent to take the cognizance of the case, he would return the complaint for presentation to the proper Court or direct the complainant to a proper Court.

27. Section 202 Cr.P.C. deals with the postponement of issue of process. Under sub-Section (1), he may direct the investigation to be made by the Police officer or by such other person, as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. Under Section



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202(1)(a) Cr.P.C., the Magistrate cannot give such a direction for such an investigation, where he finds that offence complained of is triable exclusively by the Court of sessions. Under Section 202(1)(b) Cr.P.C., no such direction can be given, where the complaint has been made by the Court.

28. Under Section 203 Cr.P.C., the Magistrate, after recording the statements on oath of the complainant and of the witnesses or the result of the inquiry or investigation ordered under Section 202 Cr.P.C., can dismiss the complaint if he finds that there is no sufficient ground for proceeding.

29. On the other hand, if he comes to the conclusion that there is sufficient ground for proceeding, he can issue the process under Section 204 Cr.P.C. He can issue summons for the attendance of the accused and in a warrant-case, he may issue a warrant, or if he thinks fit, a summons, for securing the attendance of the accused. Sub-Sections (2), (3), (4) and (5) of Section 204 Cr.P.C. are not relevant for our purpose. It is in fact here, that the previous stage referred to under Section 245 Cr.P.C. normally comes to an end, because the next stage is only the appearance of the accused before the Magistrate in a warrant- case under Section 244 Cr.P.C.



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30. *Under Section 244, on the appearance of the accused, the Magistrate proceeds to hear the prosecution and take all such evidence, as may be produced in support of the prosecution. He may, at that stage, even issue summons to any of the witnesses on the application made by the prosecution. Thereafter comes the stage of Section 245(1) Cr.P.C., where the Magistrate takes up the task of considering on all the evidence taken under Section 244(1) Cr.P.C., and if he comes to the conclusion that no case against the accused has been made out, which, if unrebutted, would warrant the conviction of the accused, the Magistrate proceeds to discharge him.*

31. *The situation under Section 245(2) Cr.P.C., however, is different, as has already been pointed out earlier. The Magistrate thereunder, has the power to discharge the accused at any previous stage of the case. We have already shown earlier that that previous stage could be from Sections 200 to 204 Cr.P.C. and till the completion of the evidence of prosecution under Section 244 Cr.P.C. Thus, the Magistrate can discharge the accused even when the accused appears, in pursuance of the summons or a warrant and even before the evidence*



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is led under Section 244 Cr.P.C., makes an application for discharge.”

Thus, it is clear that previous stage could be from the stage of Section 200 of Cr.P.C., whereby the learned Magistrate upon taking cognizance, is entitled, either to straight away issue process or conduct an enquiry by postponing the issue of process under Section 202 of Cr.P.C. Therefore, either he can issue process or dismiss the complaint under Section 203 of Cr.P.C.

6. In this regard, it is relevant to rely upon the judgment reported in **(2012) 10 SCC 517** in the case of **Manharibhai Muljibhai Kakadia Vs. Shaileshbhai Mohanbhai Patel**, in which the Hon'ble Supreme Court of India held as follows :-

“34. The word, “cognizance” occurring in various Sections in the Code is a word of wide import. It embraces within itself all powers and authority in exercise of jurisdiction and taking of authoritative notice of the allegations made in the complaint or a police report or any information received that offence has been committed. In the context of Sections 200, 202 and 203, the expression ‘taking cognizance’ has been used in the sense of



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taking notice of the complaint or the first information report or the information that offence has been committed on application of judicial mind. It does not necessarily mean issuance of process.”

7. Therefore, depending on the circumstances of the case, it can be held that even before the issue of process or examining the sworn statement of the complainant, there could be cognizance in a particular case. The only requirement is that the learned Magistrate should have taken authoritative notice of the allegations made in the complaint. In the case on hand, upon presentation of the complaint, with out examining witnesses the learned Magistrate had taken cognizance and straight away issued summons to the petitioners. Therefore, even though the words “at any previous stage of the case” is meant to from the stage of inception i.e., under Section 200 of Cr.P.C., the same would not be extended to the 'check and call on' stage as it will be in the domain of the complainant, if the complaint is returned to modify, add, delete the contents of the complaint.

8. It is in this context , the phrase “at any previous stage of the



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case” means a case on file with cognizance being taken , as otherwise, there cannot be a 'discharge' from the case. Therefore, I am of the view that in this case, the stage of Section 200 of Cr.P.C., itself has not commenced and even before that such application (discharge) cannot be filed. Even by giving the meaning of widest import, ignoring the procedure of sworn statement, even ignoring the numbering of the complaint, if one has to see only whether there was any application of mind or authoritative notice of allegations by the Magistrate, the answer in this case, is in the negative. Thus, except for receiving a complaint under Section 190 (a) of Cr.P.C., the case the proceedings as per Section 200 have not even commenced.

9. In view of the above discussions, the learned Magistrate ought not to have taken cognizance as against the petitioner even before recording their statements. Therefore, the impugned proceedings cannot be sustained as against the petitioner and it is liable to be set aside. Accordingly the proceedings in C.C.No.73 of 2017 on the file of the learned Judicial Magistrate No.I, Nagapattinam is hereby quashed. The learned Magistrate is at liberty to proceed with the complaint filed by the respondent as against the petitioners in accordance with law. At the same



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time, the petitioners are at liberty to file a petition under Section 245(2) of

Cr.P.C., in the manner known to law.

10. In the result, the Criminal Original Petition stands allowed.

Consequently, connected miscellaneous petition is closed.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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1. The Judicial Magistrate No.I,
Nagapattinam
2. The Assistant Commissioner of Customs
Customs Division,
Nagapattinam.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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