

Assistant Collector of Customs and Central Excise, Farrukhabad

Vs

Dinesh Chandra and Prahlad Chandra

Criminal Appeal No. 679 of 1979

(R. S. Sarkaria, R. S. Pathak JJ)

12.09.1980

JUDGMENT

R. S. SARKARIA, J. –

1. This appeal by special leave is directed against an order, dated July 3, 1979, of the High Court of Allahabad, by which it quashed the prosecution of the respondents in exercise of its powers under Section 482 of the Code of Criminal Procedure, 1973.

2. The respondents were being tried in the Court of Chief Judicial Magistrate, Farrukhabad, for offences under Rule 126-P(2) (ii), (iv), (v) and (vi) of the Defence of India Rules (for short called 'the DIR'), alleged to have been committed by them on April 20, 1967. Under Rule 126-Q of the DIR, no prosecution for an offence could be instituted against the respondents without the consent of the Administrator or any person authorised in this behalf. Such sanction for prosecution is said to have been granted by the Collector of Customs, under whose orders the Assistant Collector on December 27, 1972, filed a complaint against the respondents in court in respect of the aforesaid offences. The High Court quashed the proceedings with these observations :

..... 'Administrator' means the Administrator appointed under Rule 126-J of the Rules. As the Defence of India Act, 1962 and the Rules expired in 1970, the Administrator appointed under Rule 126-J also ceased to exist on their expiry. I am clearly of the opinion that the Administrator did not continue to exist by virtue of Section 1(3) of the Defence of India Act, 1962, after the expiry of the Act and the Rules in 1970 as this provision does not provide for his continuance after the expiry of the Act and the Rules. Further Section 116 of the Gold Control Act, 1968 also does not provide for the continuance of the Administrator appointed under the Rule 126-J of the Rules for performing the functions under the Rules after its expiry. Section 6 of the General Clauses Act also does not provide for the continuance of the Administrator, after the expiry of the Defence of India Act, 1962 and the Rules. In these circumstances, the Collector of Customs could not be authorised by the Administrator, who had ceased to exist in 1970, to grant sanction for the prosecution of the applicants under Rule 126-P(2) (ii), (iv), (v) and (vi) of the Rules could not be instituted without the consent of the Administrator appointed under Rule 126-J of the Rules or any person authorised by him in this behalf it follows that the prosecution of the applicants is illegal and deserves to be quashed.

3. Mr. Khader, appearing for the appellant, submits that the Department or the State is not anxious to proceed further with the trial of these accused respondents because of the considerable lapse of

time. But, he strongly urges the court to lay down the law in regard to the question as to whether Section 116 of the Gold Control Act, 1968 or Section 6 read with Section 24 of the General Clauses Act, 1897 and Section 1(3) of the Defence of India Act, 1962, saves and continues the office, functions and powers of the Administrator appointed under Rule 126-J of the DIR (Part XII-A) for the purpose of authorising or initiating prosecution in 1972 for offences committed in April 1967 punishable under Rule 126-P(2) (ii), (iv), (v) and (vi) of the DIR.

4. In order to ascertain the primary facts on the basis of which the appellant wants us to answer this question of law, we repeatedly adjourned the pronouncement of orders to enable the appellant to produce the original notification or order under Rule 126-J of the DIR, whereby an Administrator was appointed. We also requested him to produce a copy of any general or special order whereby the Administrator authorised the Collector of Customs to exercise any of the powers exercisable by the Administrator under the aforesaid part of the DIR. In spite of the ample opportunities repeatedly given, Mr. Khader has expressed his inability to supply this basic information. In the absence of such information, which is not available from the record before us, or from the judgment of the High Court, any attempt to answer the question posed will be an exercise in sheer speculation. We, therefore, decline to express any opinion on that question and dismiss this appeal.

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