

A ASSISTANT COLLECTOR OF CENTRAL EXCISE, MADRAS

v.

V. KRISHNAMOORTHY AND ORS.

FEBRUARY 20, 1997

B [M.M. PUNCHHI AND K.T. THOMAS, JJ.]

Code of Criminal Procedure, 1973 :

C S. 377(2)—*Appeal against order of sentence on ground of its inadequacy—Offence under Customs Act—Conviction by trial court—Appeals preferred by Assistant Collector of Central Excise engaging Central Government Public Prosecutor as Advocate—Held, it is the Public Prosecutor who under directions of Central Government is obliged to present an appeal to High Court against the sentence on the ground of its inadequacy—Such power does not vest with complainant—Appeals have been preferred by complainant though counsel engaged by him is Central Government Public Prosecutor—A fiduciary relation of client and counsel appears to have been established—No such situation is permissible u/s. 377(2)—Appeals are not maintainable.*

D
E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 551 and 553 of 1990.

From the Judgment and Order dated 30.4.83 of the Madras High Court in CrI.A. Nos. 688/76 and 41 of 1977.

W.S.A. Quadri for P. Parmeswaran for the Appellant.

F V. Krishnamurthy and T. Harish Kumar for the Respondents.

The following Order of the Court was delivered :

G Sub-Section (2) of Section 377 of the Code of Criminal Procedure provides the manner in which an appeal against and order of sentence on the ground of its inadequacy can be preferred by the State Government. It reads as follows :

H 377. (2) "If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946

(25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, (the Central Government may also direct) the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy".

The cases in hand are such in which investigations were made by the Customs Officer. The trials before the Chief Metropolitan Magistrate led to the convictions of the accused respondents and orders of sentence were passed. On the ground of inadequacy of sentence, the appeals were preferred in the High Court by the Assistant Collector of Central Excise. Madras engaging the Central Government Public Prosecutor as the Advocate to pursue those appeals. Sub-section (2) afore re-produced provides that if an offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act 1946 (Act 25 of 1946) or by any agency empowered to make investigation into an offence under any Central Act other than this Code, the right of appeal on the ground of inadequacy of sentence vests with the Central Government and it is only at its direction that the Public Prosecutor can present an appeal to the High Court against the sentence on the ground of inadequacy. Now here before the Division Bench of the High Court was placed a reference made by a learned Single Judge raising the question whether the officer of the Customs Department would be an agency, empowered to make investigation into an offence under the provisions of the Indian Customs Act, within the meaning of Section 377(2) of the Code of Criminal Procedure and whether the appeal preferred by such an officer on the ground of inadequacy of sentence awarded was maintainable. The High Court by a long discussion set out in the judgment under appeal has held that the proceedings undertaken by the Customs Officer cannot come within the scope of "Investigation" as the said term is understood in Section 377(2) of the Code of Criminal Procedure. Sequally it was held that the Assistant Collector of Central Excise was not an 'agency' empowered to make investigation within the meaning of Section 377(2) of the Code of Criminal Procedure. The foundation having toppled the conclusion recorded by the High Court was that the appeals preferred by the learned Advocate on behalf of the appellant-officer under Section 377(2) of the Code of Criminal Procedure were not competent. Therefore those appeals were ordered to be dismissed which has given rise to these appeals.

- A The debate as to whether the Assistant Collector of Central Excise is empowered to make investigation within the scope and meaning of Section 377(2) of the Code of Criminal Procedure is academic and futile for the present purposes unless and until the appeals by themselves were competently filed by the proper designated person as given in the provision.
- B As is evident and crystal clear it is the Public Prosecutor who under the directions of the Central Government is obliged to present an appeal to the High Court against the sentence on the ground of its inadequacy. Such power does not vest with the complainant. Here the appeals have been preferred by the complainant though the counsel engaged by the complainant happens to be the Central Government Public Prosecutor. Plainly
- C a fiduciary relationship of client and counsel appears to have been established. No such situation is permissible under Section 377(2) of the Code of Criminal Procedure. The reason is obvious because the law presumes that it is the Central Government, who through its Public Prosecutor can voice grievance before the High Court in relation to the inadequacy of
- D sentence. The complainant has full say only in an appeal against acquittal under Section 378(4) of the Code of Criminal Procedure but has not *locus standi* to move under Section 377(2) of the Code of Criminal Procedure. The competency of the appeals having not been established we are not obliged to examine the correctness of the answer to the question whether an officer of the Customs Department would be such an agency as is
- E empowered to make investigation into an offence under the provisions of the Indian Customs Act within the meaning of Section 377(2) of the Code of Criminal Procedure. That question remains as it is.

The appeals are accordingly dismissed.

F R.P.

Appeals dismissed.