Radhika Agarwal vs Union of India

Power of arrest

Date of Order: February 27, 2025
Case Law No: GIB-SC-2025-01
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CASE DESCRIPTION / SUMMARY

Facts of the Case

The present batch of writ petitions and criminal appeals raised a common question regarding the legality and scope of arrest powers exercised by officers under the Customs Act, 1962 and the GST Act, 2017. The controversy stemmed from the three-Judge Bench decision in *Om Prakash v. Union of India* (2011), which had held that offences under the Customs Act and Central Excise Act were non-cognizable and bailable, and that arrest could not be made without a warrant from the Magistrate.

After that decision, Parliament amended the Customs Act in 2012, 2013 and 2019. Certain specified offences were declared cognizable, and some were further declared non-bailable. Similar legislative structure was adopted in the GST Act. Despite these amendments, challenges continued to be raised questioning the power of customs officers to arrest without warrant, the applicability of provisions of the Code of Criminal Procedure, and whether customs officers were to be treated as "police officers."

The matters reached the Supreme Court to determine:

1. Whether the ratio in *Om Prakash* continued to apply after statutory amendments.
2. Whether customs officers are police officers.
3. To what extent provisions of the Code of Criminal Procedure apply to arrests under the Customs Act.
4. What safeguards must be observed while exercising the power of arrest.

Court's Observations and Decision

The Court declined to reopen the correctness of *Om Prakash*, noting that the legislature had consciously amended the Customs Act after that judgment. The amendments carved out specific offences as cognizable and certain serious offences as non-bailable. Therefore, the statutory scheme now governs the classification of offences.

The Court held:

- Customs officers are not police officers, as consistently held in earlier Constitution Bench decisions.
- However, even though they are not police officers, procedural safeguards under the Code of Criminal Procedure apply unless expressly excluded by the special statute.
- Sections 4 and 5 of the Code make it clear that provisions of the Code apply to offences under special laws unless a contrary procedure is prescribed.

The Court clarified the legal position post-amendment:

- Offences specified under Section 104(4) of the Customs Act are cognizable.
- Certain offences under Section 104(6) are non-bailable.
- All other offences are non-cognizable and bailable.

The Court emphasized that the power of arrest is a drastic power affecting personal liberty and must be exercised strictly in accordance with statutory safeguards. It applied principles earlier laid down in cases dealing with arrest under special statutes, including those under the PMLA.

The Court held that the following safeguards are mandatory:

- The officer must have "material" and must form "reasons to believe" before arrest.
- Grounds of arrest must be informed to the arrestee.
- Proper records and diary must be maintained.
- Safeguards under Sections 41B, 41D, 50A and 55A of the Code apply.
- The arrestee has a right to meet an advocate during interrogation, though not throughout.
- Magistrates must ensure compliance with procedural safeguards at the time of production.

The Court further held that judicial review of arrest is permissible. Courts can examine whether the statutory preconditions for arrest were satisfied.

Case Referred

1. Om Prakash and Another v. Union of India and Another, (2011) 14 SCC 1, Supreme Court of India.
2. Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440, Supreme Court of India.
3. A.R. Antulay v. Ramdas Sriniwas Nayak, (1984) 2 SCC 500, Supreme Court of India.
4. State of Punjab v. Barkat Ram, (1962) 3 SCR 338, Supreme Court of India.
5. Ramesh Chandra Mehta v. State of West Bengal, (1969) 2 SCR 461, Supreme Court of India (Constitution Bench).
6. Illias v. Collector of Customs, (1969) 2 SCR 613, Supreme Court of India (Constitution Bench).
7. Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1, Supreme Court of India.

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8. Union of India v. Ashok Kumar Sharma, (2021) 12 SCC 674, Supreme Court of India.
9. D.K. Basu v. State of West Bengal, (1997) 1 SCC 416, Supreme Court of India.
10. Senior Intelligence Officer, DRI v. Jugal Kishore Samra, (2011) 12 SCC 362, Supreme Court of India.
11. Arvind Kejriwal v. Directorate of Enforcement, (2025) 2 SCC 248, Supreme Court of India.
12. Pankaj Bansal v. Union of India, 2023 SCC OnLine SC 1244, Supreme Court of India.
13. Prabir Purkayastha v. State (NCT of Delhi), (2024) 7 SCC 576, Supreme Court of India.
14. Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929, Supreme Court of India.

ADDITIONAL FOOTNOTES

Final Order:
The Court upheld the validity of arrest powers under the amended Customs Act and GST Act, subject to strict compliance with statutory safeguards and procedural protections. The challenges based solely on *Om Prakash* were rejected in view of subsequent legislative amendments. Directions were issued to ensure compliance with constitutional and procedural safeguards during arrest.

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