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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: August 10, 2015

+ **CRL.M.C. 3102/2012**

TARUN DATTA Petitioner

Through: Mr. Deepak Tyagi, Advocate

versus

C B SINGH Respondent

Through: Mr. Satish Aggarwal, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

% **(ORAL)**

In this petition, quashing of proceedings under Section 174 of IPC is sought.

At the hearing, learned counsel for petitioner submitted that petitioner had not deliberately avoided in joining the inquiry proceedings and has infact appeared before the Authorities concerned on 26th October, 2009 in pursuance to the summons issued under Section 108 of *The Customs Act, 1962*.

It was pointed out that impelled by petitioner's complaint of 2nd June, 2008 (*Annexure P-2 colly.*), respondent has been able to recover the custom duty of ₹6.71 crores from various importers and the inability of petitioner to join the proceedings on four occasions was on account of his medical problems. In this regard, attention of this Court is drawn to the copy of the medical certificates of 19th May, 2009, 1st June, 2009, 27th July, 2009 and 6th August, 2009.

Learned counsel for respondent has opposed this petition by

drawing the attention of this Court to the counter-affidavit filed to this petition and by relying upon Apex Court's decision in *Vijay Mallya v. Enforcement Directorate, Min. of Finance* in Criminal Appeal No.1406 of 2009 rendered on 13th July, 2015.

Upon hearing both the sides and on perusal of the complaint (*Annexure P-1*), petitioner's complaint (*Annexure P-2 colly.*) and the copy of the medical papers, the counter-affidavit and the decision cited, I find that in *Vijay Mallya (supra)*, there was deliberate avoidance to appear before the Authorities concerned due to which proceedings for the offence under section 174 of IPC were allowed to continue whereas in this instant case, I find that there was no deliberate avoidance on the part of petitioner herein. Rather, inability of petitioner to appear in response to the summons issued is neither willful nor deliberate. Copies of medical certificates on record show that due to medical problem, petitioner could not appear before the Authorities concerned and it is evident from the counter filed that petitioner had eventually appeared before the Authorities concerned on 26th October, 2009 and his statement was recorded.

In view of aforesaid, this Court is of the considered opinion that continuance of proceedings arising out of the complaint for the offence under Section 174 of IPC would be an exercise in futility. Accordingly, this petition is allowed and the complaint (*Annexure P-1*) is hereby quashed.

(SUNIL GAUR)
JUDGE

AUGUST 10, 2015

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