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

+ **W.P.(CRL) 3697/2016**

TRIPTA THAPAR

..... Petitioner

Through: Mrs. Anjali J Manish and Mr.
Priyadarshi Manish, Advocates

versus

THE STATE

..... Respondent

Through: Mr. Satish Aggarwala and Mr. Amish
Aggarwala, Adv for R-2&3

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

24.12.2016

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Crl. M.A. No. 20195/2016

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(CRL) 3697/2016

1. Issue notice. Notice is accepted on behalf of the State. The petitioner has preferred the present writ petition to seek the following substantive reliefs:

- a) Issue a writ, order or directions in the nature of certiorari seeking quashing of the summons bearing DRI- HQ- 50D/ Enq-22/ INT-10/2016/ 9129 dated 13.12.2016; or
- b) Issue a writ, order or directions in the nature of mandamus to the respondent to allow the presence of counsel for the petitioner

during the recording of statement under Section 108 of the Customs Act, 1962 (the Act).

2. After some arguments, counsel for the petitioner has not pressed the first relief in the writ petition, and to that extent the writ petition stands dismissed as withdrawn.

3. The case of the petitioner is that the petitioner is a 63 year old lady, who is a sleeping partner in two firms, namely, M/s. Lifa Enterprises and M/s. Goodluck Trading Company. The petitioner claims that Mr. Sanjay Puri, who is the other partner, is active in both the firms. The petitioner has placed on record the partnership deeds in respect of the aforesaid firms, which show that the petitioner's share of profit and loss is 80% in Lifa Enterprises, and 65% in Goodluck Trading Company.

4. The Directorate of Revenue Intelligence (DRI) conducted search in the premises of the firms, and also searched the residential premises of Sanjay Puri. The petitioner states that Sanjay Puri has deposited the documents in support of the import made by these firms, in respect of which the investigation is in progress.

5. Respondent no.3, namely, Senior Intelligence Officer, DRI issued a summons requiring the petitioner to appear along with the partnership deed and other documents in respect of import of leggings made by Lifa Enterprises. Summons were issued to the petitioner returnable on 30.09.2016. However, the petitioner did not appear and Mr. Sanjay Puri, sent a response giving reasons for the petitioner's non-appearance. Yet again, summons were issued to the petitioner on 10.10.2016 requiring her to

appear on 21.10.2016. A response was sent by Mr. Sanjay Puri once again setting out the reason that the petitioner's mother was on her death bed, and the petitioner was out of station.

6. Notice dated 02.11.2016 was issued summoning Sanjay Puri requiring him to appear with the relevant documents in respect of both the aforesaid firms. On 05.11.2016, the petitioner sent a communication claiming that she is only a sleeping partner in the said firms and that Sanjay Puri was handling the affairs of the two firms. She claimed that her appearance would serve no purpose. Once again summons were issued to the petitioner on 16.11.2016, requiring the petitioner to appear with the documents regarding imports made by the firms. The petitioner again sent a response on 23.11.2016 stating that her appearance would serve no purpose except physical exertion to her when she is not feeling well.

7. In view of the repeated non-appearance of the petitioner in response to the notice issued to her, respondent no.3 preferred a complaint bearing CC No.51121/2016 u/s 174 and 175 IPC. The learned CMM took cognisance of the said complaint and the petitioner was summoned for 19.12.2016. Learned counsel for the petitioner states that on 19.12.2016, the petitioner appeared through her counsel before the learned CMM in response to the aforesaid summons.

8. Once again, the petitioner was summoned by respondent no.3 on 13.12.2016 directing her to appear personally on 23.12.2016 along with the desired documents. The petitioner has, consequently, preferred the present writ petition to seek the aforesaid reliefs.

9. At the outset, I may observe that the petitioner is not an unconnected person with the two firms. She is the majority shareholder in the two firms. As to what is her defence is a matter that she has to disclose to the concerned authorities in response to the summons issued to her. The summons issued to the petitioner u/s 108 of the Act is in respect of an inquiry which respondent no.3 is conducting in relation to import of leggings and pyjamas by the aforesaid firms, of which the petitioner, admittedly, is the majority stakeholder. It does not lie in the mouth of the petitioner to urge that no purpose would be served in requiring her to appear in response to the summons issued to her u/s 108 of the Act. It is not for her to reach any such conclusion, and the petitioner cannot be permitted to scuttle the inquiry underway in respect of import of the goods undertaken by the two firms, of which she is the majority stakeholder.

10. The submission of learned counsel for the petitioner is that since the petitioner is a senior citizen and a lady, firstly, her questioning may be undertaken in the presence of a lady officer and during normal office hours. Mr. Aggarwal submits that, though, the respondents conduct the inquiry even beyond the normal office hours – as that may be required on account of exigencies of a particular case, he submits that in the special facts of this case, the respondents shall hold the inquiry during normal office hours in the presence of a lady officer.

11. So far as the prayer sought by the petitioner to permit the presence of her counsel during recording of her statement u/s 108 of the Act is concerned, learned counsel for the petitioner has placed reliance on several earlier orders, whereby the Supreme Court and this Court has acceded to

such prayer. Reference may be made to the following orders in this respect:

- i) *Vijay Sajnani & Anr. V. UOI & Anr.* in CRL MP No.10117 of 2012 in W.P.(Crl.) No.29/2012 decided by the Supreme Court on 25.04.2012;
- ii) *Nitin Jain v. DRI & Anr.*, W.P.(Crl.) No. 2388/2015 decided by this Court on 20.10.2015;
- iii) *Nipul Jain @ Monty Jain v. Additional Director, DRI*, W.P.(Crl.) No.1897/2015 decided by this Court on 02.09.2015;
- iv) *Senior Intelligence Officer, DRI v. Jugal Kishore Samra*, (2011) 12 SCC 362;
- v) *Mahender Kumar Kundia v. Union of India*, 2015 (319) ELT 9 (SC);
- vi) *Rajender Arora & Ors. V. UOI & Ors.*, W.P. (C) No.389/2010 decided by the Supreme Court on 07.12.2010.

12. A perusal of these orders show that the Supreme Court and this Court have routinely permitted the counsel of the noticee to remain present at the time of interrogation/ questioning of the noticee u/s 108 of the Act, subject to the condition that the counsel shall be placed at a visible distance, but beyond audible distance from the place of inquiry, so that the counsel may be able to see that the noticee is not subjected to any physical harm, but he is not able to hear the process of interrogation/ inquiry undertaken by the authorities.

13. The aforesaid prayer made by the petitioner is strongly opposed by the respondents by placing reliance on ***Poolpandi v. Superintendent, Central Excise & Ors.***, AIR 1992 SC 1795 : 1992 (3) SCR 247. The relevant extracts from this decision relied upon by Mr. Aggarwal read as

follows:

“11. We do not find any force in the arguments of Mr Salve and Mr Lalit that if a person is called away from his own house and questioned in the atmosphere of the Customs office without the assistance of his lawyer or his friends his constitutional right under Article 21 is violated. The argument proceeds thus : if the person who is used to certain comforts and convenience is asked to come by himself to the Department for answering questions it amounts to mental torture. We are unable to agree. It is true that large majority of persons connected with illegal trade and evasion of taxes and duties are in a position to afford luxuries on lavish scale of which an honest ordinary citizen of this country cannot dream of and they are surrounded by persons similarly involved either directly or indirectly in such pursuits. But that cannot be a ground for holding that he has a constitutional right to claim similar luxuries and company of his choice. Mr Salve was fair enough not to pursue his argument with reference to the comfort part, but continued to maintain that the appellant is entitled to the company of his choice during the questioning. The purpose of the enquiry under the Customs Act and the other similar statutes will be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be “expanded” to favour exploiters engaged in tax evasion at the cost of public exchequer. Applying the ‘just, fair and reasonable test’ we hold that there is no merit in the stand of appellant before us.

13. The judgment under challenge in Criminal Appeal No.

476 of 1986 deals with several questions raised by the respondent, and the appeal has been pressed by Mr Tulsi as against that part which allows the presence of a lawyer when the respondent is interrogated. It has been rightly contended on behalf of the appellant that the relevant provisions, in this regard, of the FERA and the Customs Act are in pari materia and the object of the two Acts is also similar. As pointed out earlier, the case of Ramanlal Bhogilal [(1973) 1 SCC 696 : 1973 SCC (Cri) 583] was one arising under FERA. Consequently Criminal Appeal No. 476 of 1986 has to be allowed against that part of the judgment of the Delhi High Court which dealt with the right of the respondents to have their lawyer during their interrogation.

14. On the other hand, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in **Birendra Kumar Pandey & Anr. V. Union of India & Anr.**, in W.P.(Crl.) No.28/2012 decided on 16.04.2012. The submission of the petitioner is that though **Poolpandi** (supra) is a three Judge Bench decision, the same was taken note of in the subsequent decision in **Birendra Kumar Pandey** (supra), a two Judge Bench who explained the said decision in **Birendra Kumar Pandey** (supra) in the following manner:

“In our view, the decisions which was rendered in Poolpandi’s case (supra) by a Bench of Three Judges, was in the context of the direct involvement of the learned counsel during the actual interrogation where the lawyer assumed an active role during the interrogation. On the other hand, the order that has been sought, as passed in various matters does not contemplate such an eventuality. In fact in terms of the orders which were have earlier passed, a lawyer has no role to play whatsoever during the interrogation, except to be at a distance beyond hearing range to ensure that no coercive methods were used during the interrogation”.

15. Since **Birendra Kumar Pandey** (supra) is a subsequent decision,

which takes note of the earlier decision in *Poolbandi* (supra) and explains the same, I am bound to follow the decision in *Birendra Kumar Pandey* (supra). Even otherwise, this court cannot see as to how the process of inquiry would suffer, even if the aforesaid prayer of the petitioner is granted. Consequently, the said prayer is granted in the following terms.

16. Let the petitioner appear before respondent no.3 for inquiry on 02.01.2017 at 11:00 a.m. for her questioning along with all the documents required of her in the earlier notices issued to her. No further notice shall be required to be given to her u/s 108 of the Act, and the present direction shall constitute sufficient notice to her in compliance of Section 108 of the Act.

17. The inquiry shall be conducted uptill 5:00 p.m. and if the same is required to be continued, the same may be continued on a day to day basis during office hours only. The same shall be conducted in the presence of a lady officer of the DRI. Counsel for the petitioner shall be permitted to accompany her. He shall be permitted to remain at a distance from where he can see the process of inquiry being undertaken, but he shall not be within the audible range of the process of inquiry.

18. Order dasti under the signatures of the Court Master.

VIPIN SANGHI, J

DECEMBER 24, 2016

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