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

\+ W.P.(CRL) 69/2017

VIMAL KUMAR

..... Petitioner

Through: M/s MGR Khatar, Binisa Mohanty & Navneet Panwar, Advocates

versus

UNION OF INDIA & ANR

..... Respondent

Through: Mr. Brajesh Kumar, Advocate for R1 M/s Amish Aggarwala & Satish Aggarwala, Advocates for R2.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **09.01.2017**

Crl.M.A. No. 297/2017

Exemption allowed subject to just exceptions.

WP(Crl.) No. 69/2017 and Crl.M.A. No. 296/2017

Issue notice. Mr. Brajesh Kumar and Mr. Aggarwala, Advocates accepts notice on behalf of respondent No. 1 and 2 respectively.

The petitioner has preferred the present writ petition to seek quashing of complaint case bearing CC No. 114/1/11 titled, ' S.K.Pandey Vs. Vimal Kumar' pending in the court of Shri Lovleen, learned MM-02, New Delhi, Patiala House Courts, and the proceedings emanating there from.

The petitioner is an accused in the aforesaid complaint. He is a Director of M/s VVK Traders (P) Ltd. as also of M/s Pavas Chemicals. He is also a proprietor of M/s Best Food Traders. M/s VVK Traders (P) Ltd. is engaged in the import and trading of various types of pesticides. It appears that the investigation was launched in relation to mis-declaration and undervaluation of import of various types of high value pesticides which were imported by the petitioner allegedly in the garb of chemicals like Sodium Bicarbonate, Thyonil Chloride and Sodium Bromide.

The Appraiser, Directorate of Revenue Intelligence summoned the petitioner accused for inquiry under Section 108 of the Customs Act in connection with the investigation relating to the aforesaid import. The petitioner/accused appeared and gave his voluntary statement on 02.09.2011 under Section 108 of the Customs Act. Since the petitioner/accused allegedly deliberately did not provide certain basic and key information, the aforesaid complaint under Section 177 of the Indian Penal Code i.e. CC NO. 114/1/11 was preferred by Mr. S.K.Pandey, Appraiser, Directorate of Revenue Intelligence, against the petitioner/accused.

The petitioner was summoned by the learned Metropolitan Magistrate in CC No. 114/1/11 on 18.10.2016. The summoning order has not been placed on record, though the petitioner has placed on record the order dated 02.01.2013 whereby the petitioner/accused was admitted to bail.

The petitioner then preferred an application under Section 245(2) Cr.P.C. for discharge. The said application was dismissed by the learned MM vide order dated 06.06.2016. I may observe that the order dated 06.06.2016 has not been assailed in the present writ petition, and rightly so. In case the petitioner was aggrieved by the order dated 06.06.2016 passed by learned MM, the petitioner had adequate remedy by preferring the revision petition against the said order and the same could not possibly have been assailed in writ proceedings.

The submission of learned counsel for the petitioner, firstly, is that under Section 108 of the Customs Act, the gazetted officer of Customs has the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer may make under the Customs Act. Section 108(3) obliges all persons so summoned to attend either in person or by an authorised agent and are, '*bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required*'. Learned counsel for the petitioner submits that under Section 132 of the Customs Act, the offences in relation to making of false declaration or false document has been set out. The said Section reads as follows:

> ***"132. False declaration, false documents, etc.*** *– Whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extent to two years, or with fine, or with both."*

Learned counsel submits that in relation to the same statement, the customs could not have initiated proceedings under Section 132 of the Customs Act and Section 177 of the Indian Penal Code. Section 177 IPC reads as follows:

*"**177. Furnishing false information** – Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;*

Or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Learned counsel for the petitioner submits that the expression, 'information' is used in Sections 154 and 155 Cr.P.C. There was no obligation of furnishing 'information' under Section 108 of the Customs Act in response to the summons issued to the petitioner. He further submits that since the offence under Section 177 IPC pertains to furnishing of information, whereas Section 108 of the Customs Act talks about the giving of evidence or production of documents, the alleged failure of the petitioner to truthfully make a statement or produce documents or other things under Section 108(3) of the Customs Act cannot lead to the commission of the offence under Section 177 IPC.

Learned counsel for the petitioner has sought to place reliance on the Illustrations and Explanation to Section 177 IPC. The said illustrations and explanation reads as follows:

*"**Illustrations***

(a) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the

> *Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.*
>
> *(b) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound under clause 5, section VII, Regulation III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police station, wilfully misinforms the police officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the later part of this section.*
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> ***Explanation*** *– In section 176 and in this section the word "offence" includes any act committed any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396,397,398,399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; and the word "offender" includes any person who is alleged to have been guilty of any such act."*

Learned counsel submits that the petitioner is protected under Article 20(3) of the Constitution of India since the petitioner is not obliged to be a witness against himself.

On the other hand, Mr. Aggarwala has submitted that the present writ petition is not maintainable. The petitioner was summoned by the learned MM way back in 2011-12. The petitioner has not assailed the summoning order, and even the order dated 06.06.2016 dismissing the petitioner's application seeking discharge under Section 245(2) Cr.P.C. has not been challenged till date in appropriate proceedings.

I do not find merit in the present petition of the petitioner, firstly, since it is open to the petitioner to assail the order dated 06.06.2016 passed by the learned Metropolitan Magistrate in other appropriate proceedings. The petitioner has an alternate efficacious remedy available to him which has not been availed of.

Secondly, even otherwise on merits I do not find merit in the petitioner's submission. Section 132 of the Customs Act creates an offence- the act of making, signing, using or causing to be made use of, any declaration, statement or document, '*in the transaction of any business relating to customs*' knowing or having reason to believe that such declaration, statement or document is false in any material particular. Thus, the offence under Section 132 of the Customs Act is complete when the person makes the said false declaration or statement or uses the false document ***in the course of the transaction of any business relating to the customs.*** However, the stage of commission of the offence under Section 177 IPC arises only after the person is summoned under Section 108 of the Customs Act by any gazetted office of Customs having power to issue summons requiring attendance of the person to give evidence or to produce a document, or any other, thing in any inquiry which such officer is making under the Customs Act. Therefore, the two offences under Section 132 of the Customs Act and under Section 177 of the Indian Penal Code relate to different proceedings, which arise at different stages, in two different situations. Whereas the offence under Section 132 of the Customs Act relates to the transaction with respect to any business relating to customs, the offences under Section 177 IPC relates to the furnishing of false information by person, legally bound to furnish information, to a public servant. Merely because a person may be accused of, or found guilty of commission of one of the two offences, it does not follow that the said person would necessarily be accused of, or found guilty of the other offence.

The submission of learned counsel for the petitioner that under Section 108 of the Customs Act, the person to whom summons is issued is required to '*give evidence or to produce document or other thing in any inquiry*', whereas under Section 177 IPC, the failure is in respect of furnishing of "information", has no merit at all. Section 108(1) and (3) make it clear that the summoned person is obliged to make his statement and produce documents as may be required of him. Statements and documents which are produced in proceedings under Section 108 of the Customs Act are also information since the expression, 'information' is of general and wide connotation. The information could be by way of a verbal statement or by way of a document. "Information" is defined in the Shorter Oxford English Dictionary as, "*communication of the knowledge of some fact or occurrence".* Every statement or document produced in response to the summons issued under Section 108 of the Customs Act is also "information". The submission that statements made or documents produced in proceedings under Section 108 of the Customs Act would not tantamount to 'information' under Section 177 IPC needs only to be stated to be rejected. Section 108 of the Customs Act obliges the summoned person to attend in response to the summons and he is bound to state the truth upon any subject respecting which he may be examined, or make statements and produce such documents and other things as may be required.

A reading of the "illustrations" shows that in both the illustrations, A was not legally bound to state the truth. In spite of that, as per these illustrations, A is said to be guilty of the offence under Section 177 IPC. On the other hand, in the present case, the petitioner was legally bound under Section 108(3) of the Customs Act to state the truth upon any subject respecting which he was examined, and make his statements and produce documents or other things as were required of him. Consequently, the illustrations do not advance the submission of the petitioner at all. So far as the reliance placed on the explanation is concerned, it is only clarificatory to say that the word, 'offence' includes any act committed at any place out of India, which, if committed in India, would be punishable under Sections mentioned in the said explanation. The use of the word, 'includes' shows that the application of Section 177 IPC is not restricted in respect of the named offences in the explanation. The purpose of the said explanation is entirely differently, namely, to rope in, within its scope, the act of furnishing of false information outside India which would be punishable under the named Sections if the offence had been committed in India. The said explanation nowhere excludes from its application offences under Section 177 IPC committed in relation to any other enactment.

Thus, the submission of learned counsel for the petitioner that in no case of alleged non-compliance of the summons under Section 108 of the Customs Act, the proceedings under Section 177 IPC can be initiated, has no merit and is rejected.

Consequently, I find absolutely no merit in the present petition and the same is dismissed. It is, however, made clear that this Court has not gone into the merits of the complaint in which the petitioner is accused under Section 177 IPC, and the trial court shall deal with the said complaint on its own merits.

The petition stands disposed of.

Dasti.

VIPIN SANGHI, J

JANUARY 09, 2017
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