IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION (WP) NO. 807 OF 2019.

(Anil Naidu s/o Chandrakant Naidu, Indore Vs. Union of India, thr. the Commissioner of Customs, Nagpur & Ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Shri S.Kumar along with Shri Akshaya Sudame, Advocates for the petitioner.
Shri S.N.Bhattad, Advocate for respondent No.3.
Ms. S.Jachak, APP for the State.

CORAM : P.N. DESHMUKH &
PUSHPA V. GANEDIWALA, JJ.
SEPTEMBER 11, 2019.

Not on board. On mentioning, taken on board.

Issue notice to the respondents.

Shri Bhattad, Advocate waives notice for respondent No.3 and submits that the petitioner be directed to join the authorities from the Wildlife Crime Control Bureau, Western Region, Mumbai (Maharashtra) as party respondents.

At this stage, we do not find it necessary to issue any such directions for adding above respondents, unless the petitioner satisfies this Court establishing tenability of this petition.

Rule made returnable forthwith. Heard the learned counsel for the petitioner.

The prayer in this petition is to issue directions to respondent No.3 to register case against one "M/s. SRK Exotic Birds, Nagpur" and to investigate it under Section 135 of the Customs Act, 1962 and on investigation, to initiate prosecution against the concerned by monitoring the investigation. By interim measure it is prayed that directions be issued to seize the exotic species of animals or birds from the premises of the said "M/s. SRK Exotic Birds, Nagpur".

To a specific query put to the learned counsel for the petitioner for not adding the owner/proprietor of "M/s. SRK Exotic Birds, Nagpur" it is submitted that it is not a necessary party respondent, as the person against whom accusations are made or prayed to be investigated, is not necessary to be heard. All the more, if such parties are added as respondents, there is every possibility of them becoming alert, which would hamper the investigation.

It is the case of the petitioner that "M/s. SRK Exotic Birds, Nagpur" does not possess any valid license for import of such exotic birds of which they have indulged into trading, nor can they produce any proof of valid importation of exotic birds and as such would not be in a position to establish that they are legally acquiring such species of birds which are in their stock for trade. As such, it is submitted that whatsoever business is carried out by the said SRK

Exotic Birds is illegal, as they would not be in a position to produce any document in compliance to requirement of “Convention on International Trade in Endangered Species of Wild Fauna and Flora” (hereinafter referred to as “CITES”).

In the background of above facts, the learned counsel for the petitioner submitted that under the provisions of Section 110 of the Customs Act, 1962, unless the petitioner is in a position to prove that he has legally imported such species to India, they are liable to confiscation under the said provisions and for substantiating such submissions, had further contended that if on investigation, statements are recorded, the authorities of the respondent No.3 would establish case of illegal smuggling of exotic birds and, therefore, had prayed for issuance of directions as aforesaid.

The learned counsel for respondent No.3 on accepting notice submits that the petition is misconceived and is liable to be dismissed with costs.

In the background of above submissions, we find that admittedly, import of exotic species of birds or animals is not permitted unless it is under valid license or payment of appropriate customs duty. So far as Wildlife Protection Act is concerned, admittedly, exotic species of birds or animals are not covered under the schedule thereunder and as such, we do not find that there can be any restriction to their domestic trade, possession or keep for breeding under the said Act. It is specifically noted that simply because exotic species are those birds or animals whose origin is not placed to Indian Wildlife by itself does not mean that unless the person who is in possession of same, said birds or animals are presumed to be smuggled into India, in view of the fact that provisions of the Foreign Trade Policy are applicable only in international foreign trade and not in relation to domestic possession or trading or breeding.

In view of the case of the petitioner as unfolded above, perusal of the provisions of Section 123 of the Customs Act, 1962 would reveal that it has no application to the exotic species of birds and animals and thus, owners or persons claiming ownership or are in possession of such exotic species are not required to establish that they are smuggled in India. Reference can also be usefully made to the provisions of Section 110 of the Customs Act, 1962, which enables the officers of respondent No.3 – Directorate of Revenue Intelligence to exercise its powers to seize any goods or documents only if, they have “reason to believe” that the said goods are liable for confiscation.

Admittedly, it is not the case of the

petitioner that “M/s. SRK Exotic Birds, Nagpur” had imported any consignment of such species. Documents filed in support of the petition, infact, would establish that “M/s. SRK Exotic Birds, Nagpur” is not only engaged in keeping and trading of such birds, but are also into breeding of them irrespective of the fact that origin of such birds is not actually traced in India. As such, we do not find any manner whatsoever in which exotic species in possession of any such person can be ascertained as “smuggled into India” or “locally bred in-captivity” in the absence of any statutory ban imposed upon such in-captive breeding.

In that view of the matter, we do not find any reason to issue any directions to initiate action as prayed for under the provisions of the Customs Act, 1962 on any domestic keeper of the exotic species, as issuance of any such directions would be contrary to law, as it stands on today. However, we note that, if violation of any of the provisions of the Prevention of Cruelty to Animals Act, 1960 is found, in that event, appropriate authority under the said Act would definitely have jurisdiction to act upon, which would be limited under the provisions of the said Act.

Considering the fact that there is no statutory presumption that all the exotic species are imported to India, nor there is a legal requirement which compels domestic keeper of such species to produce any proof of importation or documents establishing his acquisition, no relief as sought for can be granted, as there is no prohibition, restriction or regulation to sale, purchase, possession or breeding of the exotic species within India under the provisions of the Customs Act, 1962. As such, issuing of directions as prayed, would be without jurisdiction. The provisions of Sections 123 and 110 of the Customs Act, 1962 are clear and unambiguous and, therefore, any seizure of such exotic species from one who is in possession and acquisition of same would be contrary to the provisions of the said Act.

In view of the facts as aforesaid and for the reasons mentioned above, we are of the view that the petition is based on mere surmises and conjectures as the petitioner failed to prove any legal support in the background of his case.

In the circumstances, we do not find merits in the petition, same is, therefore, dismissed at the stage of admission with no order as to costs.

JUDGE **JUDGE**

Sumit