IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M No.15216 of 2018
Date of Decision: 26.02.2019

Directorate of Revenue Intelligence ....Petitioner

Versus

State of Haryana and another ....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sourabh Goel, Advocate
for the petitioner.

Mr. R.S. Doon, A.A.G., Haryana.

Mr. Gautam Dutt, Advocate
for respondent No.2.

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DAYA CHAUDHARY, J.

This petition has been filed under Articles 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 for quashing of directions as mentioned in paragraph No.12 and also for expunging the observations/remarks as mentioned in paragraph Nos.10 and 11 of order dated 02.12.2016 passed by the Additional Sessions Judge, Rohtak in Bail application No.102 of 2016 in case FIR No.637 dated 09.11.2015 registered under Sections 188/406/420 of the Indian Penal Code at Police Station Sampla, District Rohtak.

Briefly the facts of the case are that the officers of the Directorate of Revenue Intelligence recovered and seized certain goods under Section 110 of the Customs Act, 1962 (here-in-after referred to as `the Act, 1962). While acting on an intelligence, the seized goods were handed over to respondent No.2 i.e Sh. Gaurav Arora, the Director of the Company, who was present at the time of recovery and seizure. An undertaking was also given by him not to remove, sell, deal, trade or part with the seized goods as mentioned in two panchnamas. The DRI initiated action for the pre-trial disposal of the seized goods as the same were found in the factory premises. The Punjab and Sind Bank, New Delhi also informed the petitioner that they had taken over possession of the factory premises of M/s Gaurav Pharma Pvt. Ltd. on 22.09.2014 being not found in the factory premises. The Managing Director of the Company was summoned for enquiries as per provisions of Section 108 of the Act, 1962. In his voluntary statement dated 26.07.2013, he admitted the receipt of the goods and execution of superdginamas. The FIR was registered under Sections 188/406/420 IPC at the instance of Assistant Commissioner, Central Excise, Rohtak. Respondent no.2 moved an application for anticipatory bail before the Sessions Court, Rohtak by impleading State of Haryana as party respondent. The bail application was dismissed vide order dated 02.12.2016. However, the learned Additional Sessions Judge, Rohtak directed the Investigating Officer to take appropriate action against the DRI officers/Intelligence officers, namely, Shri Gautam Bahrai and Sh. Ashok Kumar under Section 120-B IPC. Respondent no.2 filed ***CRM-M No.29797 of 2017*** for anticipatory bail.

Learned counsel for the petitioner submits that a wrong observation was made that the release of goods was in violation of Sections 110 and 110-A of the Act, 1962 as the goods were never released to Gaurav Arora. The goods were entrusted to respondent No.2 being the son of the Managing Director as he was present at the spot. He was also looking after the work of the company. Learned counsel also submits that there was no material available before the Court to observe that the Intelligence Officers with dishonest intention had colluded with the accused in disposal of the seized property. It was observed without anything on record that they were in agreement with the accused for commission of unlawful act in disposal of the seized goods. Learned counsel further submits that the DRI Investigating Officer was empowered to seizure of goods and their safe custody under the close supervision of senior officers. The observations made in paragraph No.12 of the order dated 02.12.2016 was beyond the scope of the petition for anticipatory bail and without having any such jurisdiction. At the end, learned counsel for the petitioner submits that the observations as made in paragraph Nos.10 and 11 of the order of bail were without affording any opportunity to DRI or the officers concerned.

Learned State counsel has raised a preliminary objection that the observations made in the order were based on reasoning as the act and conduct of the Intelligence Officers was found to be suspicious and committed by them was in violation of provisions of "the Act, 1962". Accordingly, a direction was issued to take action against the erring officers under Sections 120-B IPC. Learned counsel also submits that during course of investigation, the statements of said two officers were recorded and they admitted in their respective statement that they had handed over the seized goods to respondent No.2 without satisfying themselves that Respondent no.2 was not the Managing Director of the company and he was solely responsible for any act and conduct of the company. Learned State counsel also submits that the seizure process was not in accordance with the provisions of Section 110 of the Act, 1962 and the conditions as required under Section 110-A of the Act, 1962 were not mentioned.

Heard the arguments of learned counsel for the parties and have also perused the observations/directions issued in the order of dismissal of bail.

In the present case, the seized goods were handed over to respondent No.2 i.e Sh. Gaurav Arora, who was present at the time of recovery and seizure. He executed two superdginamas and had undertaken not to remove, sell, deal, trade or part with the seized goods as mentioned in two panchnamas. Sh. Krishan Arora, the Managing Director of M/s Gaurav Pharma Pvt. Ltd. was summoned for enquiries under Section 108 of the Act, 1962. In his voluntary statement dated 26.07.2013, he had admitted the seizure of the goods. Similarly, Gaurav Arora was also summoned under Section 108 of the Act, 1962. In pursuance to the summons, he appeared on 31.07.2013 and admitted in his voluntary statement the receipt of the goods and the execution of superdginamas. The application for anticipatory bail filed by Sh. Gaurav Arora was dismissed vide order dated 02.12.2016. It was observed that the DRI officers/Intelligence officers, namely, Shri Gautam Bahrai and Shri Ashok Kumar were having dishonest intention and had colluded with the accused in disposal of the seized property in violation of provisions of the Act, 1962. It is also mentioned that they were in agreement with the accused for commission of unlawful act in disposal of the seized goods. Their role was required to be investigated by the Investigating Officer qua the offence punishable under Section 120-B IPC. It was also directed to the Investigating Officer to take appropriate action against the DRI officers/Intelligence officers, namely, Shri Gautam Bahrai and

Shri Ashok Kumar. The accused applicant was not found entitled for concession of anticipatory bail. Petitioner i.e Directorate of Revenue Intelligence through its Deputy Director has filed the present petition for quashing of directions as mentioned in paragraph No.12 and for expunging the observations/remarks mentioned in paragraphs No.10 and 11 of order dated 02.12.2016 passed by the Additional Sessions Judge, Rohtak. During pendency of the investigation, the statements of said officers/officials were recorded, wherein, it was admitted that they had handed over the seized property to Gaurav Arora but the allegations were denied.

Sections 110 and 110-A of the Act, 1962 are relevant for deciding the present controversy, which are reproduced as under :-

> " ***110. Seizure of goods, documents and things.-***(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:
>
> Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.
>
> [(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.]
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> [(1B) Where any goods, being goods specified under sub-

section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceeding under this Act and shall make an application to a Magistrate for the purpose of –

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.]

[(1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.]

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the [Commissioner of Customs] for a period not exceeding six months.

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extract therefrom in the presence of a officer of customs.

[110A. Provisional release of goods, documents and

> **things seized pending adjudication.-** Any goods, documents or things seized under section 110, may, pending the order of the [adjudicating authority], be released to the owner on taking a bond from him in the proper form with such security and conditions as the [adjudicating authority] may require.]"

As per provisions of Section 110 of the Act, 1962, in case, it is not practicable to seize any such goods, the proper officer may serve upon the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

As per provisions of Section 110-A of the Act, 1962, the goods, documents and the things seized pending adjudication may be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require. Under both the sections, the owner of the goods is empowered to have the goods, documents or things seized pending adjudication after release. Shri Gaurav Arora was the Director of the Company and he undertook the goods on *superdari* to keep the same in the factory premises and not to remove or part with except with the prior permission from the competent authority. The goods were never released but were given on *superdari*. The observation made by the trial Court is contrary to the provisions of said Sections/Act. Even no release memo was issued. Moreover, Shri Gaurav Arora is son of Shri Krishan Arora, who is the Managing Director of the firm. Shri Krishan Arora was hospitalized and at his back, Shri Gaurav Arora was looking after the affairs of the Company.

As per case of the petitioner, the concerned department was not having any godown where the seized goods could have been shifted. As per proviso to sub-section (1) of Section 110 of the Act, 1962, in case, it is not practicable to seize any goods which is liable to be confiscated under the Act, the proper officer may serve upon the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of the officer. There is a distinction between the `seized goods' and `goods liable to seizure'. It is not a case that the goods were seized by the department being liable for confiscation. Section 110 of the Act, 1962 is not applicable under the facts and circumstances of the case. The goods were kept in the premises of the owner itself and undertaking was taken by his son, who is also the Director of the Company not to remove, part with or sell without any prior permission.

It is apparent from the undertaking and the orders that goods were never released and provisions of Section 110-A of the Act, 1962 did not come into operation. The goods were duly kept in the presmises of the company.

In view of the facts and circumstances as mentioned above, the present petition is allowed and the observations made in order 02.12.2016 passed by the Additional Sessions Judge, Rohtak against the officers of the petitioner-Department are hereby set aside.

(DAYA CHAUDHARY)
JUDGE

26.02.2019
gurpreet

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No