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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 10th December, 2019

REVIEW PET. 387/2019 in

+ W.P.(C) 9561/2019

SANDEEP JAIN

..... Petitioner

Through: Mrs. Anjali Jha Manish, Mr.
Priyadarshi Manish and Ms.Jasmeet
Kaur, Advs.

versus

ADDITIONAL DIRECTOR DRI (DIRECTORATE OF REVENUE
INTELLIGENCE) AND ANR

..... Respondents

Through: Mr. Yatharth Singh and Mr. P.C.
Aggarwal, Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

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10.12.2019

D.N. PATEL, CHIEF JUSTICE (ORAL)

1. This petition seeks review of order, dated 2nd September, 2019, whereby we had dismissed WP (C) 9561/2019.
2. A brief recital of facts is necessary.
3. On the suspicion that the petitioner was importing RO membranes, from China, by mis-declaring the value thereof, a raid was conducted, at the

premises of the petitioner, on 12th June, 2018, and goods were seized. Since then, investigations, in the matter, are proceeding.

4. Several summons were issued, many of which were avoided by the petitioner. We have noted, in our order dated 2nd September, 2019, that the petitioner avoided the summons issued to him, on 26th February, 2019, 4th March, 2019, 1st April, 2019, 15th April, 2019 and 13th June, 2019. Proceedings under Section 174 of Code of Criminal Procedure, 1973, have also been initiated against the petitioner, for willful disobedience of the summons issued to him.

5. The prayer clause, in the writ petition filed by the petitioner, reads thus:

“(i) To Quash and set aside the search & seizure conducted on dated 12.6.2018; AND

ii) To Quash and set aside the summons dated 12.06.2018, 30.07.2018, 26.02.2019, 04.03.2019, 01.04.2019, 15.04.2019, 13.06.2019 being bad in law; AND

iii) To stay all further proceedings arising out of the summons issued to the petitioner; AND

iv) To complete the remaining investigations if any in one day within the jurisdiction at New Delhi in the presence of an advocate or representative; AND

v) To restrain the respondents for taking any coercive action /steps, undue influence & pressure against the petitioner in recording further statement if any; AND

vi) To issue any other order (s) and Direction(s) which this Hon’ble court may deem fit and proper as per circumstances of the case; AND

vii). Costs be awarded in favour of the petitioner.”

6. Noting the above facts and keeping in mind the position, in law, that parties were required to attend, in response to summons issued by DRI, and that avoiding compliance with such summons is impermissible in law, we, *vide* our order dated 2nd September, 2019, dismissed the writ petition.

7. Paras 13 to 18 of the said order read thus:

“13. We see no reason to quash and set aside the summons issued by Respondent No.2. It ought to be kept in mind that the petitioner has to attend the summons and cooperate with the investigation, which is being carried out by respondent No.2.

14. The duration of the investigation depends upon the cooperation between of the parties and the complexity of the situation.

15. As the investigation is ongoing, we are not going much into and upon the facts of the case. Suffice it to state, that the petitioner has to attend hearing before the DRI Ahmedabad, as per summons issued to this petitioner.

16. At this stage, we see no reason to quash the search and seizure dated 12th June, 2018 carried out by Respondent No.2 at the premises of this petitioner. Nor we see any justifiable reason for quashing and setting aside the summons, as stated in the prayer clause.

17. If the petitioner is non-cooperative, actions are bound to be action to be initiated by respondents in accordance with law.

18. Hence, there is no substance in this writ petition and the same is hereby dismissed.”

8. The present review petition seeks review, of the aforesaid order, dated 2nd September, 2019, passed by us, to the extent of an “innocuous” request made by the petitioner, to allow the presence of an advocate at visible, but

not audible, distance, during the course of recording of the statement of the petitioner.

9. In the first place, this request cannot be made in a review petition, as it does not satisfy any of the grounds, on which review can be sought, as contemplated by Order XLVII Rule 1 of the Code of Civil Procedure, 1908, viz. (i) mistake or error apparent on the fact of the record, or (ii) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him, or (iii) any other sufficient reason.

10. It is a settled position, in law, that the third ground for review, i.e. “any other sufficient reason” has to be read *ejusdem generis* to the first two grounds¹

11. Though the review petition is liable to be dismissed even on this sole ground, we have, nevertheless heard Mrs. Anjali Jha Manish, learned counsel for the petitioner, on merits. Having done so, we do not see any justification to grant the prayer for review, even on merits.

12. Ms. Manish candidly concedes that there is no absolute entitlement, in law, for an advocate’s presence, at visible, but not audible distance, during the course of recording of a statement, pursuant to summons under Section 108 of the Customs Act, 1962 (hereinafter referred to as “the Act”). She has,

¹Ajit Kumar Rath v. State of Orissa and Ors (1999) 9 SCC 596; The State of West Bengal and Ors. vs. Kamal Sengupta and Ors. (1999) 9 SCC 596 ; Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius AIR 1954 SC 526

however, drawn our attention to various orders, passed by the Supreme Court and High Courts, wherein this concession has been granted.

13. She drew our especial attention to order, dated 16th April, 2012, passed by the Supreme Court in ***Birendra Kumar Pandey v. U.O.I***², in which the Supreme Court had permitted the presence of an advocate at visible, though not audible, distance, during the course of recording of the statement of the petitioner, therein.

14. A reading of the said decision is itself sufficient to discountenance the request of Ms. Manish. The Supreme Court has, in that case, relied on the following directions, issued in ***Senior Intelligence Officer, Directorate of Revenue Intelligence v. Jugal Kishore Samra***³:

“Taking a cue, therefore, from the direction made in D.K. Basu and *having regard to the special facts and circumstances of the case*, we deem it appropriate to direct that the interrogation of the respondent may be held within the sight of his advocate or any other person duly authorized by him. The advocate or the person authorized by the respondent may watch the proceedings from a distance or from beyond a glass partition but he will not be within the hearing distance and it will not be open to the respondent to have consultations with him in course of the interrogation.”

(Emphasis supplied)

15. It is clear that the directions, in ***Jugal Kishore Samra***², were issued in the special facts and circumstances of that case. A reading of the order, dated 16th April, 2012 *supra*, in ***Birendra Kumar Pandey***¹, too, reveals that permission, to have an advocate’s presence at visible, but not audible, distance, during the recording of the statement under Section 108 of the Act,

² WP (Crl). 28/2012 (order dated 16.04.2012)

³ (2011) 12 SCC 362

was permitted because the petitioners, in that case, were apprehensive that coercive attempts could be made to extort confessions from them.

16. No doubt, if a litigant, in a particular case, is able to produce credible material to indicate a real and live apprehension, of the possibility of coercive methods being employed, while recording of his statement under Section 108 of the Act, the court can always permit the presence of an advocate, at visible, but not audible, distance, during the course of recording of the statement.

17. The apprehension of coercive measure being employed is, however, required to be real and live, so that the grant of permission to have the presence of an advocate, at visible, but not audible, distance, which is an exception, does not become the rule.

18. A person, to whom summons have been issued under Section 108 of the Act, cannot, as a matter of right, seek presence of an advocate, at any distance, during the course of recording of his statement, by merely reciting, as a *mantra* as it were, that he apprehends that of coercive measures may be employed during the course of recording of his statement. The court has to be convinced that the facts of the case justify such an apprehension. Else, the Supreme Court has held, as far back as in ***Pooolpandi v. Superintendent, Central Excise***⁴, as under:

“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

⁴ (1992) 3 SCC 259

Article 21 is violated..... 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."

(Emphasis supplied)

19. In order to satisfy ourselves, regarding the reasonableness of the petitioner's request, we queried, of Ms. Manish, in that regard, whereupon she submits that, during the course of proceedings before the learned Metropolitan Magistrate, her client was surrounded by several officers of the DRI, who served, on him, summons to appear, so that his statement could be recorded. This, she submits, has created apprehensions, in her client's mind, of possible coercion, if and when he appears in response to the summons.

20. To our mind, this can hardly constitute a reasonable basis for the petitioner to apprehend coercion, during the recording of his statement, so as to justify a prayer for being permitted for the presence of an advocate at visible, though not audible, distance, during the course of recording of his statement.

21. In view of the aforesaid facts and keeping in mind the judicial pronouncements referred to hereinabove, we are of the opinion that there is no merit in the present review petition, which is, accordingly dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J.

DECEMBER 10, 2019

dsm

