* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: August, 08, 2023
% **Pronounced on: August, 18, 2023**

\+ **CRL.M.C. 2141/2021 & CRL.M.A. 14443/2021**

DISHA LANGAN ..... **Petitioner**

Through: Mr. Priyadarshi Manish, Mrs. Anjali Jha Manish, Ms. Divya Rastogi and Mr. Saksham Garg, Advocates.

Versus

DIRECTORATE OF REVENUE INTELLIGENCE ...**Respondent**

Through: Mr. Satish Aggarwala, Senior Standing Counsel and Mr. Gagan Vaswani, Advocate.

CORAM:
HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

1. This petition has been filed seeking quashing of the Criminal Complaint filed by the respondent/Directorate of Revenue Intelligence[1] for offences punishable under *Sections 132* and *135(1)(a)* and*(b)* of The Customs Act, 1962[2], against persons including the petitioner herein, and for quashing of the order dated 22.10.2018 passed by the learned Chief Metropolitan Magistrate, Patiala House Court, New Delhi under *Section 204* of the Code of Criminal

[1]Hereinafter referred as "**DRI**"
[2] Hereinafter referred as **"Act"**

Procedure, 1973[3] taking cognizance and issuing summons to the petitioner.

2. As per the complaint filed by the DRI, after obtaining sanction for prosecution from the Sanctioning Authority, three persons, including one Mr. Anil Kumar Langan, father of the petitioner herein, were intercepted at the IGI Airport on 29.04.2017 on the basis of a specific intelligence to the effect that a syndicate was involved in smuggling of arms and ammunitions from Slovenia to India and that members of the said syndicate would be arriving at Terminal-3, IGI Airport, New Delhi, carrying prohibited items by way of concealment either in their hand/checked-in baggage or on person to try to smuggle the same without declaring before the Customs and without payment of customs duty leviable thereon. Further, the father of the petitioner utilized the petitioner's Arms and Ammunition License[4] issued by the Delhi Police and the Renowned Shooter Certificate issued by the National Rifle Association of India[5] for importing weapons using bogus Invoices and by suppressing the true value and description of the weapons, and without the recommendation of

[3]***Section 204:Issue of process.—****(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—*

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.

[4] Hereinafter referred as "**License**"

[5]Hereinafter referred as "**NRAI"**

NRAI.

3. In the proceedings before the Senior Intelligence Officer, DRI, the petitioner in her statement under *Section 108* of the Act, recorded on 20.06.2017 submitted that on the date of incident i.e., 29.04.2017, she was not in Delhi and was at Gujarat National Law University, Gandhinagar, Gujarat [where she was studying at that point of time]. She further stated that she never ordered any import of arms as it was her father who procures them on her behalf. She further submitted that as she was only concerned with the shooting competitions, and all arrangements qua the arms and their procurement were made by her father, she was also not aware of the quantum of arms in her name as all the paperwork was handled by her father.

4. Learned counsel for the petitioner submits that the petitioner cannot be punished for the alleged offences committed by her father and also that based on the documentary evidence, including the statement of the petitioner recorded under *Section 108* of the Act on 20.06.2017, there is no case made out against her. He further submits that as none of the ingredients of *Section(s) 132*, *135(1(a)* and *135(1)(b)* of the Act were satisfied, no case is made out against her. Relying on the above, he then submits that the issuance of summons under *Section 204* Cr.P.C. is bad in law as the same has been mechanically passed without indicating if a prima facie case has been made out against the petitioner.

5. In rebuttal, learned Senior Standing Counsel for DRI submits that the

present petition is not maintainable as the order of cognizance is a revisable order and the petitioner, instead of filing a revision petition, has now belatedly approached this Court directly which is not permissible in law. He further submits that specific allegations have been made against the petitioner, resulting in commission of offence under *Section 135* of the Act as she allowed her license to be used by her father in the alleged import of arms. Relying on *Section 138A* of the Act[6], learned Senior Standing Counsel submits that since the petitioner allowed her father to use her license, she had knowledge of the fact that her father was wrongly importing arms and there is reason to believe so.

6. Thence, relying upon paragraph 21 of the dicta of the Hon'ble Supreme Court in ***State of Gujarat v. Afroz Mohammed Hasanfatta***[7], learned Senior Standing Counsel submits that at the time of issuance of summons, the facts stated in the complaint have to be accepted as they appear on the face of it and the Court is not required to conduct a detailed enquiry in the merits and demerits of the case. He further submits that the petitioner is being prosecuted for offences committed by her and not vicariously for the offences committed

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[6]***Section 138A. Presumption of culpable mental state.—****(1) In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*
Explanation.—In this section, —culpable mental state‖ includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.
(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.
[7] (2019) 20 SCC 539

by her father. Thereafter, relying upon ***K.I. Pavunny v. Asstt. Collector (HQ), Central Excise Collectorate***[8]***,*** he submits that the statement made under *Section 108* of the Act is cogent and legal and can solely lead to conviction.

7. This Court has heard and deliberated upon the submissions advanced by both the learned counsel for the petitioner and the learned Senior Standing Counsel for DRI and has perused the documents on record.

8. Considering the factual matrix involved and the arguments addressed, this Court is primarily concerned qua the legal issue of maintainability of the petition in the present form and also if the petitioner, under the given circumstances, can be made liable for the alleged offences as per the complaint.

9. Qua the sole legal issue of maintainability of the present petition, it is pertinent to note that the powers under Section 482 Cr.P.C. are not powers conferred by the statute but are powers saved thereunder, and thus the remedy of revision being available cannot itself be construed to bar the jurisdiction of this Court in terms of Section 482 Cr.P.C. [***Re.: Dhariwal Tobacco Products Ltd. vs. State of Maharashtra***[9]***, Som Mittal vs. Govt. of Karnataka***[10], ***Adalat Prasad vs. Rooplal Jindal***[11] and ***N.K. Sharma v. Abhimanyu***[12]]. In view of the settled position of law, as per this Court, the petition in the present form is

[8] (1997) 3 SCC 721
[9] (2009) 2 SCC 370
[10] (2008) 3 SCC 574
[11] (2004) 7 SCC 338
[12] (2005) 13 SCC 213

maintainable, as there is no absolute bar thereof in the eyes of law.

10. The facts leading to the present petition are that upon conducting an investigation, a complaint was filed alleging that there was a syndicate involving Mr. Prashant Vishnoi, Mr. Amit Goyal, Mr. Anil Kumar Langan and Mr. Boris Sobotic Mikolic among others, to smuggle firearms, ammunitions and accessories of foreign origin (including those used in hunting) from Slovenia into India under the garb of holder of 'Renowned Shooter' Certificates granted by the NRAI and that they were selling the said smuggled weapons of foreign origin in India on huge profits and using them for hunting wildlife animals. The petitioner herein has been named in the said complaint on the basis that at the time of seizure from the father of the petitioner, the 'Renowned Shooter' Certificate of the petitioner was found in his possession, which was allegedly utilized to procure and purchase arms from Slovenia.

11. It is not in dispute that on the date of incident i.e., 29.04.2017, the petitioner, besides being enrolled in LLB course at Gujarat National Law University, Gandhinagar, Gujarat was also a National level shooter. It is also not in dispute that on the date of incident, the petitioner was not present in Delhi as she was in Gandhinagar, Gujarat. Both the above are fortified by the statement of the petitioner under *Section 108* of the Act recorded on 20.06.2017, wherein she had stated that "*... ...I was in my college in Gandhinagar, Gujarat on 29.04.2017."* and furthermore by the fact that the said facts have nowhere been contested by the DRI.

12. It is the primary case of the petitioner that no case has been made out against her as she has no connection whatsoever with the commission of the alleged offences. She *bonafidely* gave her license to her father as he had always been responsible for procuring the necessary arms and ammunitions for her. The relevant extracts of the statement of the petitioner recorded under *Section 108* of the Act are reproduced as under:-

> *"Q. Did you order anybody to import arms and ammunition from Slovenia in the month of April, 2017?*
>
> *Ans: No I did not order, all the purchase of arms and ammunition is done by my father on my behalf. My father decides which arms are to be purchased or imported.*
>
> *……*
>
> *Q: How many arms and ammunition do you possess?*
>
> *Ans: I am not exactly aware how many arms I have as my father keeps track of all the paper work and arms and ammunitions. I am only concerned with the shooting competitions, he can better explain about arms and ammunition in my license and those found in my house during the search on 29.4.2017*
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> *Q; Please tell me the cost of the pistols being owned and used by you?*
>
> *Ans: My father buys the weapons for me so I have no knowledge regarding the same.*
>
> *Q: For how many arms and ammunitions have you applied for import permit from NRAI?*
>
> *Ans: My father deals with application for arms and ammunition needed for my sport from NRAI and Licensing Authority. I have no knowledge regarding the same…"*

13. It is the general practice in most, if not all, Indian families that a student studying in School/ College/ University and that too when it happens to be in another State/Country, it is the family, primarily the parents, who play the augment role to support and fill in for them. It is a matter of common

knowledge that most of such students are dependent upon their parents. This is more so when the parents are also involved in the same activity, like in the present circumstances, where the father of the petitioner is himself a shooter. Considering the state of affairs involved, this Court is of the view that like any other student, the petitioner would have been busy in her studies and like any other sportsperson, she would also have been busy with her shooting practices and therefore her father filled in for making all arrangements qua procuring arms and ammunitions for her shooting practices/ competitions.

14. Therefore, the statement of the petitioner in the present scenario is very much plausible and reposes confidence for this Court to opine that she never ordered any import of arms herself and that her father, being a renowned shooter himself, was responsible for procuring them for her, and that she was unaware of the alleged offences committed by her father. The situation being such, on the basis of the statement of the petitioner recorded under *Section 108* of the Act, none of the ingredients of *Section 135* of the Act are prima facie fulfilled and no case has been made out against the petitioner.

15. This Court is of the view that the case against the petitioner is based on assumption and presumption, which is neither sufficient for registration of a complaint against her nor for issuance of the impugned summoning order. The overall facts hereinabove lead to the conclusion that the petitioner is being wrongly prosecuted for the alleged offences committed by her father, only on the pretext that her father was in possession of her License at the time of seizure and had allegedly utilized the same for procuring arms, without any

specific allegation(s) against her.

16. It is to be noted that qua the role of the petitioner in the alleged offences, the complaint filed by the DRI itself records as under:-

> ***"35.8 Role of Disha Langan***
> *From the foregoing it is clear that she was a genuine shooter but had allowed her license to be used by her father Anil Kumar Langan for import of firearms through baggage in her name using bogus invoices to suppress the true value of the arms so imported as listed in Table- XX in para 27.2 above without the recommendations of NRAI."*

17. Even the report of the DRI seeking sanction for prosecution, holds that the petitioner had no direct connection in the commission of the alleged offences. The relevant extract of the report of DRI is as under:-

> *"19.8: Role of Disha Langan:*
> *On enquiry she was found to be a genuine shooter and was <u>not found directly involved with the syndicate</u> but she had allowed her license to be used by her father Anil Kumar Langan for import of firearms through baggage in her name using bogus invoices to suppress the true value of the arms so imported as listed in Table-XX in para 27.2 of the said show cause notice."*

18. This shows that while DRI in its complaint stated that the petitioner allowed her License to be used by her father for importing arms in her name, however, in the report seeking sanction for prosecuting the petitioner, it is stated that "*... ...was not found directly involved with the syndicate*".

19. Resultantly and based on the aforesaid existing position as on date, in the opinion of this Court, there were no sufficient grounds for the learned Chief Metropolitan Magistrate to issue summons under *Section 204*, Cr.P.C. against the petitioner, more so, whence there has/ have to be sufficient

grounds for proceeding because doing so tantamounts to setting into motion the whole criminal process which requires not only prima facie satisfaction of the learned Magistrate but also "... ...*sufficient ground for proceeding*". The importance with regard to a summoning order as per the Hon'ble Supreme Court in ***Dayle De'souza v. Govt. of India***[13] is reproduced hereinunder:-

> "***36.*** *..... Sometimes legal provisions are worded in great detail to give an expansive reach given the variables and complexities involved, and also to avoid omission and check subterfuges. However, legal meaning of the provision is not determined in abstract, but only when applied to the relevant facts of the case[20]. Therefore, it is necessary that the discretion conferred on the authorities is applied fairly and judiciously avoiding specious, unanticipated or unreasonable results. The intent, objective and purpose of the enactment should guide the exercise of discretion, as the presumption is that the makers did not anticipate anomalous or unworkable consequences. The intention should not be to target and penalise an unintentional defaulter who is in essence law-abiding.*
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> ***37.*** *There are a number of decisions of this Court in which, with reference to the importance of the summoning order, it has been emphasised that the initiation of prosecution and summoning of an accused to stand trial has serious consequences[21]. They extend from monetary loss to humiliation and disrepute in society, sacrifice of time and effort to prepare defence and anxiety of uncertain times. Criminal law should not be set into motion as a matter of course or without adequate and necessary investigation of facts on mere suspicion, or when the violation of law is doubtful. It is the duty and responsibility of the public officer to proceed responsibly and ascertain the true and correct facts. Execution of law without appropriate acquaintance with legal provisions and comprehensive sense of their application may result in an innocent being prosecuted.*

[13] 2021 SCC OnLine SC 1012

> ***38.*** *Equally, it is the court's duty not to issue summons in a mechanical and routine manner. If done so, the entire purpose of laying down a detailed procedure under Chapter XV of the 1973 Code gets frustrated. Under the proviso (a) to Section 200 of the 1973 Code, there may lie an exemption from recording pre-summoning evidence when a private complaint is filed by a public servant in discharge of his official duties; however, it is the duty of the Magistrate to apply his mind to see whether on the basis of the allegations made and the evidence, a prima facie case for taking cognizance and summoning the accused is made out or not. This Court explained the reasoning behind this exemption in National Small Industries Corporation Limited v. State (NCT of Delhi):* [22]
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> *"12. The object of Section 200 of the Code requiring the complainant and the witnesses to be examined, is to find out whether there are sufficient grounds for proceeding against the accused and to prevent issue of process on complaints which are false or vexatious or intended to harass the persons arrayed as accused. (See Nirmaljit Singh Hoon v. State of W.B.) Where the complainant is a public servant or court, clause (a) of the proviso to Section 200 of the Code raises an implied statutory presumption that the complaint has been made responsibly and bona fide and not falsely or vexatiously. On account of such implied presumption, where the complainant is a public servant, the statute exempts examination of the complainant and the witnesses, before issuing process."*
>
> ***39.*** *The issue of process resulting in summons is a judicial process that carries with it a sanctity and a promise of legal propriety."*

20. Considering the aforesaid facts and circumstances involved and based on the complaint and the report of the DRI seeking sanction for prosecution coupled with the petitioner's statement recorded under *Section 108* of the Act, it is difficult for this Court to conclude that the petitioner had any knowledge of the alleged offences committed by her father which can be attributable to

her. Taking a holistic note of all the aforesaid facts as they stand, as per this Court, the Complaint did/ does not disclose the commission of any offence by the petitioner. Thus, there was no sufficient reason for the learned Chief Metropolitan Magistrate to issue summons to her.

21. Furthermore, based on the existing documents and circumstances, the petitioner cannot be punished for the alleged offences committed by her father as there is no concept of vicarious liability under Criminal Law. The same being impermissible in law, the issuance of summons to the petitioner by the learned Chief Metropolitan Magistrate is bad in law.

22. In view thereof, no prima-facie case is made out against the petitioner under *Section(s) 132*, *135(1)(a)* and *135(1)(b)* of the Act as the allegations against the petitioner do not disclose the essential ingredients of the offence she is charged with/ accused of and no presumption that the petitioner had knowledge of the alleged offences committed by her father can be drawn. Further, in the opinion of this Court, the learned Chief Metropolitan Magistrate was wrong in proceeding to issue summons vide the impugned order merely on the existence of preponderance of probability. Hence, *Section 138A* of the Act is not applicable to the facts of the present case.

23. In terms of the above, reliance upon the two judgments placed by the learned Senior Standing Counsel for the DRI is misplaced as they are not applicable to the facts involved in the present case.

24. Lastly, considering all the aforesaid and the fact that the petitioner is a young girl of 26 years with a very bright future ahead and who while studying

law is also keeping her aspirations flying high through shooting and bringing laurels for the Country, this Court is of the considered opinion that she ought not to be punished for the alleged acts of her father solely on the pretext of her License being used by him.

25. Accordingly, the present petition is allowed and the Criminal Complaint No.14924/2018 filed by the DRI for offences punishable under *Sections 132* and *135(1)(a)* and *(b)* of The Customs Act, 1962 pending in the Court of the learned Chief Metropolitan Magistrate, Patiala House Court, New Delhi is quashed against the petitioner herein. Consequently, order dated 22.10.2018 and all the other proceedings emanating from the said complaint also stand quashed qua the petitioner.

26. Needless to state, observations, if any, made by this Court on the merits of the matter, have only been made for the purposes of deciding the present petition filed by the petitioner, and hence, such observations shall not be construed as expressions on merits of the matter.

27. It is further clarified that the proceedings in Criminal Complaint No.14924/2018 against the remaining accused persons shall continue in accordance with law.

28. The petition alongwith the pending application stands disposed of.

SAURABH BANERJEE, J.

AUGUST 18, 2023/rr