



Judgment

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

CRIMINAL WRIT PETITION No. 484/2023.

Ghulam Farooq Noorani,
Aged 41 years, Occupation – Business,
resident of 602, Arihant Sparsh,
Plot No.13 and 14, Sector 26,
Vashi, Navi Mumbai.

... **PETITIONER.**

VERSUS

The Central Bureau of Investigation,
through Superintendent of Police,
Anti Corruption Bureau, Nagpur.

... **RESPONDENT.**

Mr. S. Kantawala, Advocate with Mr.A.M. Sudame, Advocate
for the Petitioner.
Ms M. Chandurkar, Advocate for the Respondent.

CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.

DATE : JANUARY 18, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

Rule. Rule is made returnable forthwith and by consent of

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the learned Counsel for the parties, the matter is taken up for final disposal.

2. By this petition under Articles 226 and 227 of the Constitution of India, petitioner's prayed to quash the first information report bearing Crime No. RC0282021A0001/2021 registered with the CBI/ACB, Nagpur for the offence punishable under Sections 120-B, 420, 467, 468, 471 of the Indian Penal Code and Sections 13[2] read with Section 13[1][d] of the Prevention of Corruption Act. It is the contention of the petitioner that he has no concern with the allegations leveled in the first information report, which has been lodged at the instance of the directions issued by this Court in Criminal Public Interest Litigation No.5/2016. The first information report is admittedly against the officers of the Central Excise and Customs, as well as against unknown persons.

3. Precisely it is alleged that this Court in Criminal Public Interest Litigation took cognizance regarding smuggling of substandard, unsafe and unfit betel nuts/areca nuts by fake persons with fake and forged documents in connivance with public servants

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causing huge revenue loss. Certain betel nuts weighing 1065 MTs have been seized connecting the petitioner. In said connection, the Director of Revenue Intelligence has issued a show cause notice dated 28.07.2018 to the petitioner and some others in terms of Section 124 of the Customs Act, 1962 alleging evasion of custom duty. The petitioner has challenged the said notice, which culminated into adjudication by the Joint Commissioner of Customs, who ordered confiscation of goods as well as, a penalty of Rs.1 Crore has been imposed upon the petitioner under Section 112[a] of the Customs Act.

4. The petitioner has carried said adverse order before the Tribunal i.e. Customs Excise and Service Tax Appellate Tribunal [Mumbai]. Ultimately by an order dated 27.06.2023, the Appellate Tribunal on merits has set aside the order of adjudication which was in term of confiscation and imposition of penalty.

5. It is the contention of the petitioner that the said order of the Appellate Tribunal has attained finality, and thus, criminal prosecution cannot run hand in hand on the same facts and

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circumstances. This is the main ground canvassed by the petitioner. Precisely, it is the submission of the learned Counsel appearing on behalf of the petitioner that the first information report does not reflect loss of revenue, but, there are allegations of forgery and fraud. It is canvassed by C.B.I., that certificate of origin, which has been produced by the petitioner is fake and investigation to that effect is still in progress. However, it is not disputed that the petitioner has not been yet named as an accused in the said crime.

6. The learned Counsel appearing for the non-applicant has invited our attention to the orders passed by the Supreme Court in case of **Hukum Chand Garg and another .vrs. The State of Uttar Pradesh and others – Special Leave to Appeal [Cri] 762/2020 decided on 07.02.2022**, wherein in similar circumstances, the investigation was allowed to continue while granting certain protection to the petitioner therein. The learned Counsel for the non-applicant further states that the investigation revolves around several stake holders involving Sri Lankan Government, and it would take some time.

7. The petitioner has been served with a notice under Section 160 of the Code of Criminal Procedure, which the petitioner has positively responded. It is the contention of the CBI that in pursuance of the directions in Criminal Public Interest Litigation, the first information report has been registered and investigation is in progress. The issue involved is having vast magnitude having effect on public health, and therefore, at this initial stage the first information cannot be quashed.

8. It is not in dispute that the first information report is against unknown persons, and since last three years the investigation is going on. The petitioner has appeared in pursuance of the notice from the office of CBI. Since yet the petitioner has not been arrayed as an accused, there is no question of quashing of the first information report. However, at present there is no material, rather the investigation is still going on therefore, we refrain ourselves in examining the case of the petitioner on merits.

9. In view of above, we proceed to pass the following order.

ORDER

- (i) Criminal Writ Petition is allowed and disposed of.
- (ii) The Investigating Officer shall continue with the investigation in relation to Crime No. RC0282021A0001/2021 registered with the CBI/ACB, Nagpur for the offence punishable under Sections 120-B, 420, 467, 468, 471 of the Indian Penal Code and Sections 13[2] read with Section 13[1][d] of the Prevention of Corruption Act. He shall give 72 hours prior notice to the petitioner before proceeding against him, so as to enable the petitioner to take appropriate steps. It is made clear that during said period of 72 hours, no coercive steps shall be taken against the petitioner.
- (iii) Rule is made absolute in the aforesaid terms.

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