**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

****

CRM-M-24124-2015

Rakesh Kumar Goyal **.....Petitioner**

Vs.

Directorate of Revenue Intelligence .....Respondent

****

**Reserved On.: 20.04.2024
Pronounced On: 18.05.2024**

****

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: Mr. Manuj Nagrath, Advocate
for the petitioner.

Mr. Rajesh Sethi, Senior Standing Counsel with
Mr. Paramdeep Singh, Advocate
for respondent- DRI.

****

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C., is to quash complaint No.112 dated 06.06.2012 titled *"DRI v. Rakesh Kumar Goyal"* under Section 174 & 175 of the IPC *(Annexure P-1);* and order dated 22.04.2015 *(Annexure P-13)* passed by learned Additional Sessions Judge, Ludhiana, upholding the summoning order dated 06.06.2012 of learned Chief Judicial Magistrate, Ludhiana *(Annexure P-11),* whereby petitioner has been summoned to face prosecution under Sections 174 & 175 of the IPC.

2.1 Complaint (Annexure P-1) was filed by Shri Santokh Singh, Senior Intelligence Officer in Directorate of Revenue Intelligence, Ludhiana, stating therein that he was empowered to issue summons under Section 108 of the Customs Act, 1962 and to order appearance of any person, whose attendance he considered necessary in the official capacity of public servant and that he was in charge of the case in hand and the inquiry pending before him against M/s Kwality Overseas Pvt Ltd., of which accused Rakesh Kumar Goyal *(petitioner herein)* is the Director and the overall in charge, looking after day-to-day business of the company. It was stated further that complainant was conducting inquiry in connection with imports by said M/s Kwality Overseas Pvt Ltd. Reference was then made to number of summons, which were sent to the accused i.e. petitioner by Registered Post to appear in the office of complainant in connection with the investigation, as accused was required to be confronted with the incriminating/other documentary evidence available with the complainant, suggesting undervaluation and under-utilization of Advance Authorization for Annual Requirements. In response to the three summons dated 23.02.2012, 05.03.2012 & 12.03.2012, accused did not appear and every time, a letter was sent to the complainant to the effect that petitioner was out of station and pre-occupied elsewhere and it was not possible for him to come on the dates as mentioned on the summons. By way of 4th summon dated 28.03.2012, the accused was required to appear for 04.04.2012. However, he did not appear and rather, sent a letter dated 02.04.2012 to the effect that inquiry was being conducted without any reason, thus making his intentions clear for not appearing in response to the summons and not joining the investigation. Alleging that despite issuance of several summons and the reasonable opportunities given to the accused, he had intentionally and willfully remained absent from investigation, prayer was made to summon and prosecute the accused under Sections 174 & 175 of the IPC.

2.2 Vide order dated 06.06.2012 (Annexure P-11), learned Chief Judicial Magistrate, on finding a *prima facie* case, directed issuance of process against the accused to face prosecution under Sections 174 & 175 IPC. Petitioner challenged the complaint and the summoning order by filing CRM-M-34227-2014 before this court but the same was dismissed as withdrawn vide order dated 01.10.2014 (Annexure P-12) with liberty to avail the remedy of filing revision before the Court of Sessions. Petitioner then approached the Court of Sessions challenging the summoning order but his criminal revision was dismissed by learned Additional Sessions Judge vide order dated 22.04.2015 (Annexure P-13).

3.1 It is contended by learned counsel that in response to the summons dated 23.02.2012 (Annexure P-2), petitioner had sent his letter dated 28.02.2012, stating in detail the points as raised by the respondent in respect of the consignments. Petitioner also sent another letter dated 24.02.2012 (Annexure P-4) stating therein that being pre-occupied, petitioner could not appear but the queries raised in the summons had been clarified and that all the documents were produced. Similarly, the summons dated 05.03.2012 (Annexure P-5) was responded with letter dated 09.03.2012 (Annexure P-6) and summons dated 12.03.2012 (Annexure P-7) was responded with reply dated 21.03.2012 (Annexure P-8). Learned counsel contends that summons dated 28.03.2012 (Annexure P-9) was again issued illegally on the same grounds. Learned counsel contends that authorized representative of the petitioner appeared before the respondent- complainant and made reference of the previous responses to the summons but still the complaint has been filed with the allegation that the petitioner willfully and deliberately avoided to appear in response to the summons, by concealing the factum of replies sent by the petitioner from time to time and therefore, petitioner has been wrongly summoned by the Court.

3.2 Learned counsel contends further that Section 108(3) of Customs Act allows the summoned person to attend either in person or by an authorized agent and that in the present case, authorized agent of the petitioner duly appeared before the respondent but at that time, respondent was not available.

3.3 Learned counsel then referred to Section 174 & 175 of the Indian Penal Code to contend that these provisions provide punishment for non-attendance in obedience to an order of a public servant or for omission to produce any document before the public servant concerned and that for the contravention of the provisions of the Customs Act, 1962, special procedure is prescribed under Section 117 of the Act itself. Learned counsel has referred to Section 4 & 5 of the Code of Criminal Procedure so as to contend that Customs Act, 1962 being a special law, so the offences under Customs Act, 1962 are to be dealt with under the procedure laid down therein and not under the Indian Penal Code.

3.4 Learned counsel contends that Customs Act is a Code in itself, providing for the procedure, penalties and jurisdiction and therefore, complaint (Annexure P-1) is not maintainable, as Section 117 of the Customs Act provide for the penalty in case of contravention of the provisions provided under the Act. To support his contention, learned counsel has referred to ***"Saroj K. Datta v. R.L. Thapliyal"*** *Delhi 2010 (6) R.C.R.(Criminal) 2573*; ***"Meera Kapoor v. State, (Delhi)"*** *2008 (2) JCC 829*; ***"General Manager, Telecom v. M. Krishnan (SC)"****, 2009(5) BCR 501*; ***"Jasbir Singh v. Vipin Kumar Jaggi"*** *2001(4) Crimes 127.*

4. Refuting the above said contentions, learned senior standing counsel for the respondent- DRI has drawn attention towards the fact that Section 108 of the Customs Act, 1962 falls in Chapter XIII of the Act pertaining to searches, seizure and arrest containing Sections 100 to 110AA; whereas, Section 117 of the Act, as referred by counsel for the petitioner, is under Chapter XIV of the Act, containing the provisions pertaining to confiscation of goods and conveyances and imposition of penalties. Learned counsel contends that these provisions provide for the various circumstances, under which the goods and conveyances can be confiscated and the imposition of penalty. Section 117 of the Act is a residue provision, providing that any person contravening any provision of the Act, which was his duty to comply and where no express penalty has been provided for such contravention or failure, shall be liable for penalty not exceeding an amount of ₹4,00,000/-. Contending that complaint is maintainable and that summoning has been rightly passed by learned Chief Judicial Magistrate and rightly upheld by the court of Sessions, prayer is made for dismissal of the petition.

5. I have considered submissions of both the sides and have perused

the record carefully.

6. Section 108 & 117 of the Customs Act, 1962 read as under:

> **"108. Power to summon persons to give evidence and produce documents.—**
> (1) Any Gazetted Officer of customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.
> (2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned. (3) All persons so summoned **shall be bound to attend either in person or by an authorised agent, as such officer may direct;** and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required:
> Provided that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.
> (4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860)."
> **117. Penalties for contravention, etc., not expressly mentioned**.—Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees."
> *[Penalty amount raised to ₹ 4 Lacs by way of Amendment Act, 2019]*

7. On the other hand, Section 174 & 175 of the IPC read as under:

> **"174. Non-attendance in obedience to an order from public servant**.—Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both, or, if the summons, notice, order or

proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A, being legally bound to appear before the High Court at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b) A, being legally bound to appear before a District Judge, as a witness, in obedience to a summons issued by that District Judge intentionally omits to appear. A has committed the offence defined in this section.

175. Omission to produce document or electronic record to public servant by person legally bound to produce it.- Whoever, being legally bound to produce or deliver up any document or electronic record of any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both, or, if the document or electronic record is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

8. There is merit in the contention of learned counsel for the petitioner. As is evident from Section 108 of the Customs Act, any Gazetted Officer of customs has the power to summon any person, whose attendance he consider necessary for the purposes as mentioned in the provision and similarly, he has the power to ask the concerned summoned person for production of certain specified documents or things as mentioned in the summons. In case, the concerned person, to whom notice under Section 108 of the Customs Act is issued, fails to comply with the summons, Section 117 of the Customs Act takes care thereof, inasmuch as it provides penalty for contravention of the said provision. No doubt that no specific provision is

mentioned in the Customs Act to take action for violation of Section 108 of the Customs Act but Section 117 of the Customs Act clearly provides that any person contravening any provision of the Act or abetting any such contravention or failing to comply with any provision of the Act, with which it was his duty to comply and no express penalty is provided for such contravention or failure, shall be liable to be dealt with under the said provision i.e. by imposing a penalty upon him.

9. Section 174 and 175 of Indian Penal Code provides punishments for committing offences for non-attendance in obedience to an order from public servant or omission to produce document or electronic record to public servant by person legally bound to produce it. Had there been no provision like 117 in the Customs Act, obviously the concerned person to whom summons have been issued under Section 108 of the Customs Act, if fails to comply therewith, would have been guilty for committing an offence under Section 174 of 175 or both of the Indian Penal Code, as the case may be but as Section 117 of the Customs Act, finds place in a Special Act i.e., Customs Act, which is a complete code in itself providing for various violations, offences and penalties and the procedure etc., therefore, Section 174 & 175 of Indian Penal Code will have no application, in view of Section 4 & 5 of the Criminal Procedure Code which reads as under:

> **"4. Trial of offences under the Indian Penal Code and other laws**.—
> (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
> (2) ***All offences under any other law*** shall be ***investigated, inquired into, tried, and***

> ***otherwise dealt with*** according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.
>
> **5. Saving**.—***Nothing contained in this Code*** shall, in the absence of a specific provision to the contrary, ***affect any special or local law*** for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

10. In ***"General Manager, Telecom v. M. Krishnan (SC)"****, 2009(5) BCR 501,* telephone connection of respondent was disconnected for non-payment of the telephone bill. Said respondent filed complaint before the Consumer Forum. It was held that said forum did not have jurisdiction, as there was special remedy in Section 7B of Telegraph Act, regarding disputes in respect of telephone bills. Hon'ble Supreme Court held that special law overrides the general law and so, the order of Consumer Forum restoring the connection and imposing the penalty, was set aside.

11. In ***"Jasbir Singh v. Vipin Kumar Jaggi"*** *2001(4) Crimes 127,* it was held by Hon'ble Supreme Court that although there was no conflict between powers exercised by the Court under Section 307 of the Code of Criminal Procedure and by the Government under Section 64 of the Narcotic Drugs and Psychotropic Substances Act, 1985, but even if such a conflict is assumed, Section 64 would prevail both on the ground that Act being a Special Act overrides the Criminal Procedure Code, which is a general Act and also because the later enactment must prevail over the earlier one.

12. As far as, ***"Saroj K. Datta V. R.L. Thapliyal"*** (supra) & ***"Meera Kapoor V. State"*** (supra) relied by learned counsel for the petitioner are

concerned, in those cases, provisions of Section 108 and 117 of the Customs Act were not considered in the light of Section 4 & 5 of the Criminal Procedure Code and therefore, those authorities have no application to the case in hand.

13. Consequent to the entire discussion as above, it is held that impugned complaint as filed by the respondent against the petitioner seeking his prosecution Section 174 & 175 of the Indian Penal Code, cannot be sustained. The said complaint (Annexure P1) and order dated 22.04.2015 *(Annexure P-13)* passed by learned Additional Sessions Judge, Ludhiana, upholding the summoning order dated 06.06.2012 of learned Chief Judicial Magistrate, Ludhiana *(Annexure P-11),* whereby petitioner has been summoned to face prosecution under Sections 174 & 175 of the IPC, are hereby quashed. However, complainant – respondent will be at liberty to proceed against the petitioner as per Section 117 of the Customs Act, 1962.

Disposed of accordingly.

(DEEPAK GUPTA)
JUDGE

May 18, 2024
Neetika Tuteja

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No