

Amit Goel Pradeep Pal Singh Anshul Goyal vs Additional Director General, Dri on 30 March, 2022

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(CRL) 1539/2020

AMIT GOEL

W.P.(CRL) 1565/2020 & CRL.M.A.14461/2020

PRADEEP PAL SINGH

W.P.(CRL) 1566/2020 & CRL.M.A.14462/2020

ANSHUL GOYAL

Through: Mr. A.K. Singla,
Mr. M.K. Madan an
Sachdeva, Advocat

versus

ADDITIONAL DIRECTOR GENERAL, DRI Resp

Through: Mr. Varun Mishra, Standing Coun

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

% 30.03.2022

1. By way of instant writ petitions under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, the petitioners are praying as under:-

"a. Issue a writ of Mandamus directing the officers working under the charge and subordinate to the ld. Respondent to permit the presence of the advocate with the petitioner while interrogating/ enquiry in case/file DRI/DZU/23/INT/101/2020 in conformity with the law propounded by the Hon'ble Supreme Court of India and this Hon'ble Court, as cited supra; and/or b. Direct the Ld. Respondent to conduct the interrogation promptly without undue delay and during the office hours i.e. from 10 AM to 5.00 PM, with usual breaks in the case/file DRI/DZU/23/INT/101/2020.

c. And direct the respondent not to take any coercive steps against the petitioners, in the above matter;"

2. Learned senior counsel appearing on behalf of the petitioners submitted that the petitioners are entrepreneurs and engaged in the business of import and trading of liquor. Petitioners Amit Goel

and Pradeep Pal Singh are Directors of the companies namely M/s Rad Elan Distributors Pvt. Ltd. and Blue Fluidics Pvt; Ltd and petitioner Anshul Goyal is the proprietor of the companies namely M/s National Food and Beverages, having its office at D-156, Okhla Industrial Estate Phase-1, New Delhi. The said companies are also duly registered with the Customs Authorities under the provisions of the Customs Act, 1962 (hereinafter "the Act") and are licensed as a public bonded warehouse under the provisions of Section 57 of the Act. It is further submitted that the said companies are also duly registered with the office of the Zonal Director General of Foreign Trade, New Delhi under the IEC No. 0508078512 for M/s Rad Elan Distributors Pvt. Ltd. and under IEC No. AKBPG9700A for M/s National Food and Beverages. Learned senior counsel further submitted that on 9th July 2020, premises of the companies situated at D-85/3, Okhla Industrial Estate Phase-1, New Delhi, had been search by the Special Investigation and Intelligence Branch (SIIB) of the customs department but nothing incriminating had been found in that search and the custom duty which was pending due at the time of said search had also been deposited by the companies voluntarily.

3. In September 2020, the Directorate of Revenue Intelligence had initiated investigation in the cases of the said imports made by Diplomats/Embassies, in furtherance thereof, the premises of the companies had again been searched by the respondent and the panchnama had been drawn on 10th September 2020, in this regard. It is further submitted that in connection with the investigations, as stated above, the business associate of the petitioners, Mr. Rajesh Jain, had been called at their office and he was thrashed and beaten by the officers of the respondent and was coerced to make statement on dictated lines. The petitioners had been sent a summons under Section 108 of the Act on his office email, requiring him to appear on 23rd September 2020. A reply to the said notice had been sent by the wife of Mr. Pradeep Pal Singh, through Speed Post to the respondent and some further time had been requested for appearing before the Investigating officer of the respondent.

4. It is further submitted that the petitioners apprehend that the officers of the Directorate of Revenue Intelligence would call the petitioners in their office and would meet out the similar treatment as has been given to Mr. Rajesh Jain and other business associates. It is further submitted that the statements recorded under the provisions of Section 108 of the Act are treated as judicial confessions and can jeopardize the defence of the petitioners in the proceedings, which may ultimately be lodged/initiated by the respondent against the petitioners. Learned senior counsel submitted that the petitioners are petrified with the highhanded treatment by the officers of the respondent and therefore prayed that this Court may allow the petitioners to appear before the Senior Investigating Officers of the respondent, in the presence of their counsel, who would be present at a visible distance and not within the audible/hearing range.

5. In support of his arguments, learned senior counsel has referred to the judgment of the Hon'ble Supreme Court in the matter of Vijay Sajani and Another vs. Union of India and Another (2019) 18 SCC 819 wherein it is observed as under:-

"4. Accordingly, we allow the criminal miscellaneous petition, as well as the writ petition and direct that the petitioners advocate should be allowed to be present during the interrogation of the petitioners. He/they should be made to sit at a

distance beyond hearing range, but within visible distance and the lawyer must be prepared to be present whenever the petitioners are called upon to attend such interrogation."

6. Per Contra, learned Standing Counsel for the respondent vehemently opposed the instant writ petition and submitted that there is no sufficient ground available in the instant writ petition for allowing the prayer as made by the petitioners. It is submitted on behalf of the respondent that a specific intelligence was received by the respondent that a syndicate of Delhi and Mumbai based persons is engaged into smuggling of imported cosmetics goods and food supplements without payment of Customs duty. Acting on the said intelligence, searches were conducted at various premises in Mumbai and Delhi on 9th September 2020 and 10th September 2020. During search proceedings, smuggled cosmetics goods of foreign origin were found stored and various incriminating documents were also found. It is further submitted that during recording of statement of the concerned persons under Section 108 of the Act, the names of the petitioners and their accomplices had cropped up and summonses were issued to the petitioners to join the investigation. It is informed that the petitioners have not joined the investigation so far even after receipt of various summonses issued to them by the officers of the respondent.

7. It is further submitted that the statements tendered by Shri Rajesh Jain and Shri Sanjay, under Section 108 of the Act are voluntary and recorded in a cordial manner, without any force, threat or coercion. The apprehension of the petitioners is baseless and therefore, the prayer of the petitioners to appear before the officers of the respondent in presence of their counsel is without any merit or cogent reason. In support of his arguments, learned Standing Counsel for the respondent has relied upon the judgment of Hon'ble Supreme Court in Sudhir Kumar Aggarwal v. Directorate General of GST Intelligence 2019 SCC OnLine Del 11101 wherein it is held as under:-

"21. Perusal of the above case law reveals that presence of a lawyer cannot be allowed at the time of examination of a person under the Customs Office. The petitioner in the present case has been summoned by the Officers under GST Act who are not Police Officers and who have been conferred with the power to summon any person whose attendance they consider necessary to give evidence or to produce a document. The presence of the lawyer, therefore, is not required during the examination of the petitioner as per the law laid down by Hon'ble Supreme Court in Pool Pandi's case (Supra). So far as apprehension of petitioner that he may be physically assaulted or manhandled is concerned, this Court is of the opinion that it is a well settled law now that no inquiry/investigating officer has a right to use any method which is not approved by law to extract information from a witness/suspect during examination and in case it is so done, no one can be allowed to break the law with impunity and has to face the consequences of his action. The order dated 20.09.2019 which is against the judgment passed by Hon'ble Supreme Court in „Pool Pandi v. Superintendent, Central Excise (1992) 3 SCC 259 : 1992 AIR 1795 (SC) , therefore, stands modified and it is clarified that presence of a lawyer cannot be allowed to the petitioner at the time of questioning or examination by the officers of the respondent."

8. It is submitted that the apprehension of the petitioners is baseless and imaginary and the proceedings conducted under Section 108 of the Act are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860. The statements recorded under Section 108 of the Act are voluntary, without any force, threat or coercion.

9. Relying upon Sudhir Kumar Aggarwal's case (Supra), learned counsel for the respondent submitted that the Hon'ble Supreme Court has clarified that presence of a lawyer cannot be allowed to the petitioners at the time of questioning or examination by the officers of the respondent.

10. Keeping in view the aforesaid facts and circumstances and law discussed hereinabove, learned counsel for the respondent prayed that there is no merit in the instant writ petitions and are liable to be dismissed.

11. Heard learned counsel for the parties and perused the record.

12. The Hon'ble Supreme Court in the Vijay Sajnani's case (Supra) has held as under:-

"3. Similar matters have been filed before us earlier and in those matters, we had directed that during interrogation of the petitioner(s), his/their counsel would be allowed to be present within visible distance, but beyond hearing range. Inasmuch as, the same orders are being passed in these matters, we dispose of the writ petition by directing that in similar cases, in the event the person(s) summoned under Section 108 of the Customs Act, 1962, wish(es) for similar orders, he(they) may apply to the Customs Authorities concerned and a similar provision may be made for his/their interrogation in the presence of the learned counsel, as indicated hereinabove."

13. There are specific allegations made by the petitioners that their business associate, Mr. Rajesh Jain had been beaten and threatened by the respondent in the course of investigation for the purpose of recording the statement as per their wishes. In light of these serious allegations made by their business associate, the petitioners apprehend that they may, too, be physically assaulted or manhandled. Since, the allegations levelled by the business associate of the petitioners raise a reasonable apprehension on the part of the petitioners and the Hon'ble Supreme Court in the aforementioned judgements has also expressed similar view while granting such relief, this Court finds it appropriate to grant the relief as prayed for by the petitioners.

14. Accordingly, the present writ petitions are allowed with direction to the appropriate authority that the petitioners would be interrogated in presence of an Advocate at a visible, but not audible distance in relation to the interrogation by the Officers of DRI in accordance with the direction given by the Hon'ble Supreme Court in Vijay Sajnani (Supra). It is also directed that the proceedings be video-graphed in terms of orders passed by the Hon'ble Supreme Court in case of Rajinder Arora & Ors. vs. Union of India & Ors passed in Writ Petition (Civil) 389 of 2010.

15. With the aforesaid directions, the writ petitions stand disposed of.

16. Pending application, if any, also stands disposed of.

CHANDRA DHARI SINGH, J MARCH 30, 2022 Aj/ms