

THE HON'BLE DR. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.5863 OF 2022

ORDER:

Heard the submission of Sri Kalyan, who argued on behalf of Sri Namavarapu Rajeswara Rao, learned Assistant Solicitor General of India, and also heard Sri T.S.Anirudh Reddy, learned counsel for the respondent.

2. With a request to quash the order dated 09.03.2022 that is passed by the Court of Metropolitan Sessions Judge, Hyderabad, in CrI.M.P.No.399 of 2022 in F.No.DRI/HZU/26B/ENQ-32(INT-NIL)/2018 and F.No. DRI/HZU/26C/ENQ-31(INT-NIL)/2018 and thereby direct the concerned authorities to produce the respondent for custodial interrogation, the present petition is filed.

3. By the material available on record, what could be perceived is that as per the version of the petitioner - Directorate of Revenue Intelligence, on the instructions of the respondent herein, one Avinash Soni entered into agreements/registrations from April 2017 onwards with M/s Diamond India Limited, M/s The State Trading

Corporation of India Limited, M/s Bank of India and M/s MMTC Limited to purchase duty-free gold bullion under Advance Procurement Scheme of the FTP from Nominated Agencies and SGJ procured huge quantities of duty-free gold bullion from them.

4. As per Foreign Trade Policy (Advance Procurement Scheme), SGJ was supposed to manufacture jewellery out of the duty-free gold bullion and export the same within 90 days from the date of procurement. SGJ was supposed to submit the export documents to the Nominated Agencies as proof of export to complete the entire transaction. However, SGJ diverted and sold the duty-free gold bullion in the domestic market with the active involvement of the respondent herein and his son Preet Agarwal and made huge profits. To cover up the said diversion, SGJ resorted to fabrication of export documents.

5. Making his submission, learned counsel who argued on behalf of the learned Assistant Solicitor General of India submitted that the respondent is the master mind behind the entire fraudulent activities and the modus operandi of

the respondent has to be retrieved from him and, therefore, questioning him is essential. Learned counsel also states that recording of the statement of the respondent is also necessary to proceed with the investigation and such power is vested upon the Directorate of Revenue Intelligence as per Section 108 of the Customs Act, 1962 and hence, the Court below ought to have entertained the request and ought to have permitted for custodial interrogation, but it did not do so. Learned counsel also states that two cases were registered against the respondent, one at Hyderabad and the other at Kolkata. The case at Hyderabad was registered by Enforcement Directorate for availing bank loan without any secured assets and the other at Kolkata regarding the same set of facts.

6. Learned counsel for the respondent, on the other hand, submits that the Directorate of Revenue Intelligence is under obligation to investigate the case and cull out the truth and it cannot question the respondent and further custodial interrogation is impermissible under law.

7. A perusal of the impugned order discloses that the learned Metropolitan Sessions Judge dismissed the application and disallowed the request of the petitioner for custodial interrogation on two grounds. Firstly, that it does not entertain the jurisdiction to deal with the offences under the Customs Act, and secondly, the petitioner could not make out valid and sufficient grounds to permit the Directorate of Revenue Intelligence officials to record the statement of the respondent.

8. The petitioner mainly relied upon the contents of Section 108 of the Customs Act, 1962. Section 108 of the Customs Act reads as follows:

“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).”

Therefore, by the aforesaid provision, it is clear that the 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. That does not mean that power is vested upon the Officer of customs to collect information which would otherwise be termed as

incriminating material from the person against whom accusation is made.

9. A person cannot be deprived of his life or personal liberty, except according to procedure established by law as per Article 21 of the Constitution of India. Further, we have got Article 20 (3), which says that no person accused of any offence shall be compelled to be a witness against himself. Though not it can be termed that examining the person against whom accusation is made as a witness, the police or the other officials who are investigating a case cannot be permitted to compel a person against whom accusation is made to make a statement either inculpatory or exculpatory. It is the duty of the Investigating Agency under whatever cadre it may be to investigate the case and to cull out the truth. The person against whom accusation is made cannot be compelled to make a statement against himself. Furthermore, no other ground is urged as to the dire requirement of said interrogation or for recording the statement of the respondent against whom accusation is made. Permission cannot be accorded for interrogating him

only for the purpose of recording his statement for proceeding with the investigation. This Court does not find any other grounds, more so justifiable grounds, to accord such permission.

10. Resultantly, the criminal petition is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

29.07.2022

v v

DR. CHILLAKUR SUMALATHA, J