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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 30.09.2019.

Judgment pronounced on: 06.11.2019.

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\+ **W.P.(CRL) 2686/2019**

SUDHIR KUMAR AGGARWAL ..... Petitioner

Through:- Ms. Geeta Luthra, Sr. Adv. with Mr. Prateek Yadav, Adv.

versus

DIRECTORATE GENERAL OF GST INTELLIGENCE ..... Respondent

Through:-Mr. Harpreet Singh, Sr. St. Counsel.

CORAM:
HON'BLE MR. JUSTICE BRIJESH SETHI

JUDGMENT

BRIJESH SETHI, J.

1. Vide this order, I shall dispose of an application for modification of order dated 20.09.2019 passed by this court, moved by petitioner under article 226 of the constitution of India read with section 482 of the code of criminal procedure, 1973 for writ of mandamus directing the respondents to not cause any physical, mental or verbal harassment to the petitioner during pendency of the investigation.

2. It was submitted by the learned counsel for the petitioner in his petition that the petitioner was a Director of M/s Dominion Expoventures Pvt. Ltd. since 14.05.2016, having its office at FF-35-36, Omex Pearl Tower, Netaji Subhash Place, Pitampura, New Delhi and engaged in the business of import of FMCG items and tobacco products.

3. It was further submitted that petitioner came to know that the Respondent agency, conducted a search on 11.09.2019 at the Petitioner's property bearing no. J5/101E, Rajokri Garden, New Delhi which was rented out to one Mr. Jaiswar@ Mr. Jaiswal, who was residing at the said premises with his wife. Mr Jaiswar@Mr. Jaiswal, was manhandled and was in state of trauma after having been illegally detained by the officers of the Respondent agency.

4. It was next submitted that an employee of the petitioner, namely one Mr. Garg was also, illegally detained by the officers of the Respondent and was

manhandled, harassed mentally, physically and verbally by the officers of the Respondent agency.

5. It was next submitted that the petitioner had also come to know that search team of the respondent agency was also enquiring about him with regard to his Company namely, M/s Dominion Expoventures Pvt. Ltd. during their search on 11.09.2019. It was submitted that the petitioner was innocent and had nothing to do with the aforementioned case/investigation. He was willing to join the investigation if summons were sent to him.

6. It was further submitted that the petitioner apprehended that the respondent would cause physical, mental and/or verbal harassment to the petitioner as heard by him from various people who were recently summoned and detained by the respondent agency.

7. Learned Counsel for the petitioner had relied upon **1987(2) SCC 424 (Nandini Satpathy vs. P.L.Dani and Anr.)**, wherein the Hon'ble Supreme Court has held as under:

> "63. Lawyer's presence is a constitutional claim in some circumstances in our country also, and , in the context of Article 20 (3), is an assurance of awareness and observation of the right to silence. The Miranda decision has insisted that is an accused person asks for lawyer's assistance, at the stage of interrogation, it shall be granted before commencing or continuing with the questioning. We think that Article 2093) and Article 22(1) may, in a way, be telescoped by making prudent for the police to permit the advocate of the accused, if there be one, to be present at the time he is examined. Overreaching Article 20(3) and section 161(2) will be obviated by this requirement. We do not lay down that the police must secure the services of a lawyer. That will lead to police-station-lawyer system, an abuse which breeds other vices. But all that we mean is that if an accused person expresses the wish to have his lawyer by his side when his examination goes on, this facility shall not be denied, without being exposed to the serious reproof that involuntary self-crimination secured in secrecy and by coercing the will the project."

8. It was next submitted by Ld. Counsel that the maximum punishment that could be imposed under Section 132 of the CGST Act, 2017 was only an imprisonment for 5 years, apart from fine and that therefore, under Section 41 and 41-A of the Code of Criminal Procedure, after its amendment, a person could not be arrested so long as such person complied with the

notice for his appearance. It was prayed that the Petitioner herein was ready and willing to join the investigation as and when called by the Respondent agency.

9. Ld. Counsel had also relied upon **'Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 273**, wherein it was held that in criminal cases that are punishable with imprisonment of not more than seven years, the accused persons should not be remanded to custody unless the conditions specified therein are met.

10. It was next submitted in the petition that though the petitioner had not received any summons to appear from any of the respondent agency, however, he agrees to appear before the respondent provided, respondents do not cause any physical, mental or verbal harassment to the petitioner during pendency of the investigation. It was further submitted that the respondent was already in possession of all the documents relating to the petitioner's company and therefore, the respondent need not take any coercive steps in the present investigation. All the

offences under the Act are compoundable under section 138 of the CGST Act and hence arrest was wholly unnecessary.

11. It was next submitted that petitioner was ready to submit himself to any condition/conditions, which the Court might impose to allay the fear of the respondent, of any kind of likely absence from the trial or investigation.

12. It was lastly submitted that the petitioner fears for his life, health and safety and apprehends, that the respondent may cause physical, mental and/or verbal harassment to the petitioner during pendency of the investigation and prayed that protection in the event of receiving summons from the respondent authority may be granted and respondent be directed to interrogate the Petitioner in presence of his lawyer/attorney as laid down by Hon'ble Supreme Court in **'Nandini Satpathy Vs. Dani and Anr.(1978) 2 SCC 424'**.

13. I have heard the rival submissions and given my thoughts to the matter.

14. The petition was first listed for hearing on 22.09.2019 when the Ld. Counsel for the respondent had accepted the notice and submitted that respondent is duty bound to follow the mandate of Hon'ble Supreme Court laid down in '**Nandini Satpathy vs Dani (P.L.) and Anr, (1978) 2 SCC 424'.** It was, however, submitted that the petitioner is required to join the investigation and cooperate in the investigation. It was agreed at that time that the petitioner would join the investigation as and when required. However, later on the instant application was moved by the Ld. Counsel for the respondent seeking modification of the said order on the ground that the investigation against the petitioner is in respect of fraudulent availment of Input Tax Credit of GST under the cover of fake invoices. It was submitted that this Court had disposed of the petition and allowed the prayer of the petitioner seeking presence of an advocate at the time of recording of statement by the respondent in view of the judgment in **Nandini Satpathy's case (Supra)**.

However, the facts of the said case are completely different from the present case in as much as GST officers are not police officers and the offence committed is also completely different and, therefore, **Nandini Satpathy's case (Supra)** case cannot be relied upon in this matter.

15. At this juncture, it may be clarified that order dated 22.09.2015 was passed by this court on the assurance given by the Ld. Counsel for the respondent that **Nandini Satpathy's case (supra)** case would be followed by the respondent and on this assurance, the petition was disposed of.

16. The Ld. Counsel for the respondent has now sought amendment in the order submitting that there is a subsequent judgment passed by Hon'ble Supreme Court in a case titled **'Pool Pandi vs. Superintendent, Central Excise and Ors. 1992 AIR 1795 (SC)',** in which the Hon'ble Court has noticed and distinguished the judgment of **Nandini Satpathy's case (Supra)** case and has refused to allow the presence of a lawyer during questioning

under Customs Act and the relevant para runs as under;

> 11. We do not find any force in the arguments of Mr. Salve and Mr. Lalit that if a person is called away from his own house and questioned in the atmosphere of the customs office without the assistance of his lawyer or his friends his constitutional right under Article 21 is violated. The argument proceeds thus : if the person who is used to certain comforts and convenience is asked to come by himself to the Department for answering question it amounts to mental torture. We are unable to agree. It is true that large majority of persons connected with illegal trade and evasion of taxes and duties are in a position to afford luxuries on lavish scale of which an honest ordinary citizen of this country cannot dream of and they are surrounded by persons similarly involved either directly or indirectly in such pursuits. But that cannot be a ground for holding that he has a constitutional right to claim similar luxuries and company of his choice. **Mr. Salve was fair enough not to pursue his arguement with reference to the comfort part, but continued to maintain that the appellant is entitled to the company of his choice during the questioning. The purpose of the enquiry under the Customs Act and the other similar statutes will be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail**. **For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of**

> **persons who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be "expanded" to favour exploiters engaged in tax evasion at the cost of public exchequer. Applying the `just, fair and reasonable test' we hold that there is no merit in the stand of appellant before us.** (Emphasis supplied).

17. Ld. Counsel for the respondent has submitted that in the above case, the Hon'ble Supreme Court has rejected the prayer of the petitioner seeking presence of a lawyer during investigation. It was next submitted that petitioner in the present case does not have clean antecedents also. Presently he is on conditional interim bail granted vide order dated 24.05.2019 by the concerned Ld. Trial Court in a case which is being investigated by DRI and this fact has been concealed from this court.

18. It was next submitted that under **Section 70** of the **CGST Act, 2017** 'any person' whose attendance was considered necessary either to give evidence or to provide

a document or anything in any inquiry can be summoned. It was submitted that petitioner was being called for the purpose of questioning. It was, therefore, prayed that order dated 20.09.2019 be modified wherein the prayer of petitioner seeking presence of lawyer during examination by the respondent was allowed as this will frustrate the very purpose of the inquiry.

19. Ld. Counsel for the petitioner has, however, opposed the above submission and submitted that the order dated 20.09.2019 passed by this court is in accordance with law. There are no grounds to modify the same. There are many judgments right from **'Nandini Satpathy's case (Supra)** which provide for the presence of lawyer during investigation. There is no difference between investigation /interrogation by the Customs officers or Police Officers so far as presence of Lawyer during the said period is concerned.

20. I have considered the rival submissions. The Hon'ble Supreme Court in **Pool Pandi's judgment**

(Supra), has categorically stated that presence of a lawyer cannot be allowed during examination/ interrogation by a Customs Officer. It was held that relevant provisions of the Constitution in this regard have to be construed in the spirit in which they were made and benefit thereunder should not be extended to exploiters engaged in Tax Evasion at the cost of public exchequer. The submission of the petitioner regarding presence of lawyer in the interrogation was, therefore, declined by the Hon'ble Supreme Court. High Court of Delhi in a case titled **"Sudhir Gulati vs. UOI, 1998 (100) E.LT. 344 (Del)"** has also categorically held that assistance of lawyer cannot be allowed while examination of a person in the Customs Office. It was held as under;

> 10. In view of the aforesaid discussion, we are of the view that the petitioner is accused of an offence in respect of the FIR noticed hereinbefore within the meaning of Article 20(3) and cannot be compelled to be a witness against himself. **But the scope of offence under the aforesaid FIR and scope of enquiry under Customs Act, 1962 is different. An enquiry under Customs Act primarily relates to the smuggling of goods**. **Section 108 confers**

> **upon a Gazetted officer of the Customs the powers to summon any person whose attendance he considers necessary to give evidence or to produce a document or any other thing in any enquiry which such officer is making in connection with the smuggling of goods.** The person so summoned is bound to attend and to state the truth upon any subject respecting which he is examined or makes statements and produce such documents and other things as may be required. Therefore, the impugned summons cannot be set aside. The petitioner is required to appear and answer such questions and give such information regarding himself which do not tend to incriminate him. **In our view the petitioner is also not entitled to assistance of a lawyer at the time of recording of his statement under Section 108 of the Customs Act**. (emphasis supplied)

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 vs. Superintendent, Central Excise and Ors. 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.

22. The application stands disposed of accordingly.

BRIJESH SETHI, J

NOVEMBER, 06, 2019