(1994) 07 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3198/94

Baxu Khan APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 20-07-1994

Acts Referred:

Constitution of India, 1950 — Article 20(3), 226
Criminal Procedure Code, 1973 (CrPC) — Section 161(2), 162, 164, 4(2)
Customs Act, 1962 — Section 107, 108
Foreign Exchange Regulation Act, 1973 — Section 40
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 25

Citation : (1994) 73 ELT 523

Hon'ble Judges : Milap Chandra Jain, J

Bench : Single Bench

Advocate : G.M. Khan, for the Appellant;

Final Decision : Dismissed

Judgement

Milap Chandra Jain, J.—These two writ petitions have been filed for restraining the respondents from harassing and coercing the petitioner to give a confessional statement against their wish and from curtailing their liberty and for directing them to take their affidavits as their statements u/s 108, Customs Act (hereinafter to be called ''the Act''). These writ petitions are being disposed of by this common order as the facts and law involved in them are same.

2. The facts giving rise to these writ petitions may be summerised thus. On August 24, 1993, the Customs Superintendent, Nachna, Range Jaisalmer arrested Ata Mohd. son of Dene Khan, resident of Panche ka Tala, P.S. Nachna (Jaisalmer), on his information 16 tins of Acetic Anhydride were recovered, a complaint u/s 25(a), Narcotic Drugs and Psychotropic Substances Act was filed in the court of the special Judge (NDPS), Jodhpur against Ata Mohd., the case was decided on March 31,1994 and accused Ata Mohd. was acquitted. The custom officers of Jaisalmer and Nachna are repeatedly calling the petitioners for recording their statements u/s 108 of the Act. Every time they stated that they

are not at all connected in any way with the said Acetic Anhydride but the custom officers are bent upon connecting the petitioners in the said Acetic Anhydride and to record their confessional statements to involve them in the recovery of the said Acetic Anhydride. On May 20,1994, they sent their affidavits Annexure 1, to the Custom Superintendent (respondent No. 1) through registered A.D. post. The custom officers of Jaisalmer and Nachna are still harassing the petitioners and putting them under duress, undue influence and coercion to give their confessional statements in the said matter.

3. It has been contended by the learned counsel for the petitioners that the Custom officers cannot force the petitioners to give their confessional statements particularly when they have repeatedly told them that they are in no way connected with the said Acetic Anhydride and have sent their affidavits Annexure 1. He further contended that Sections 107 and 108 of the Act do not permit the custom officers to record confessional statements under undue influence, coercion, duress or mis-representation. He lastly contended that even if the petitioners are involved in the said recovery of Acetic Anhydride they cannot be compelled to be witnesses against themselves as provided under Article 20(3) of the Constitution of India. He relied upon Sevantilal Karsondas Modi 1979 Cri. L.R. (SC) 558 , Mohan Lal Vs. State of Rajasthan and Others, Soni Vallabhdas Liladhar v. Assistant Collector of Customs, Jamnagar AIR 1965 SC 481 and Narcotic Control Bureau v. Gani Khan 1944 Cri. L.R. (Raj.) 355.

4. Section 107 of the Act empowers an authorised customs officer to examine any person acquainted with the facts and circumstances of the case and require any person to produce any document or thing relevant to the enquiry in connection with the smuggling of any goods. Section 108 enshrines that any gazetted officer of the Customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document in any inquiry which such officer is making in connection with the smuggling of any goods. It further requires that .persons so summoned shall be bound to attend either in person or by authorised Agent as such officer may direct and persons so summoned shall be bound to state the truth and to produce such documents. Of course these provisions do not permit the custom officers to coerce or compel or to put under coercion or undue influence or to use any third degree methods while examining a person summoned by him. If any custom officer violates these principles, it would always be open to the person concerned to complain of the same whenever these statements are sought to be used. If the allegations are established, certainly no body would rely or take note of them. The custom officers are not primarily concerned with the detention and punishment of a crime but are mainly interested in the detection and prevention of smuggling of contraband articles and safeguarding recovery of custom duties. They are more concerned with the smuggled goods rather than the offenders who smuggle goods.

5. In both the writ petitions particulars of the coercion, duress or undue pressure

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have not been given. It has also not been shown as to how the petitioners are being harassed by the custom officers. Custom Officers have statutory right under these sections to examine persons and to summon them to give evidence and produce documents in connection with an inquiry relating to smuggling of any goods. This statutory power of the Custom Officers cannot be lightly interfered with by the exercise of power under Article 226 of the Constitution of India. Simultaneously, these provisions do not empower the custom officers to harass the innocent persons.

6. There is no force in the contention of the learned counsel that Article 20(3) of the Constitution would be attracted if they are compelled to give their statements. It would suffice to say here that provisions of Article 20(3) are applicable in case of accused persons and admittedly petitioners are not accused persons as yet. It has been observed in K.T. Advani, New Delhi Vs. The State, New Delhi, as follows :-

"It is not in dispute that most of the safeguards, rights and privileges to which an accused is entitled in the course of investigation under the Code of Criminal Procedure, whether founded in the constitutional provisions or provided for in the Code of Criminal Procedure and the Evidence Act, have been denied, by judicial interpretation or legislative departure, to a person whose conduct or dealings are subject-matter of investigation under the provisions of the Foreign Exchange Regulation Act, 1973, as indeed, under the Customs Act, 1962, before a formal accusation has been made against him either by a first information report, or a complaint to a Court. Such a person has thus been held to be outside the protection of clause (3) of Article 20 of the Constitution on the ground that such a person would not qualify to be a "person accused of any offence" since these words carry the connotation of a formal accusation and that a formal accusation is made against such a person, having regard to the scheme of these Acts, only when a complaint has been filed in a Court against him, even though he may be proceeded against departmentally and may even be in detention or on bail by an order of a Court. Such a person has also been denied the several safeguards provided in Chapter XII of the Code of Criminal Procedure and referred to above, including the qualified right to silence, the rule against self-incrimination embodied in Sub-section (2) of Section 161 the bar against the use of any statement recorded in the course of investigation embodied in Section 162, and his salutary provisions contained in Section 164 with regard to confessions. This exclusion is based on the obvious reason that the investigation into the conduct of such a person does not attract at that stage the provisions of the Code of Criminal Procedure and that these provisions are, therefore, not applicable to him by virtue of the fact that the two special statutes provide a different procedure and would, therefore, except such investigation from the operation of the Code by virtue of Sub-section (2) of Section 4 thereof."

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"At the same time, such a person when summoned to give evidence and produce

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documents either u/s 40 of the Foreign Exchange Regulation Act or Section 108 of the Custom Act, which are identical in terms, is not only bound to "attend" but is also bound" to state the truth upon any subject respecting which they are examined or make statements and produce such documents as may be required."

7. The facts and circumstances of the aforesaid cases are quite different and distinguishable. They are not applicable in these cases.

8. Accordingly, the writ petitions are dismissed with aforesaid observations. A copy of this order be sent to the Asstt. Collector (Customs), Jaisalmer.

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