

(1996) 07 DEL CK 0091

In the Delhi High Court

Case No : Criminal Miscellaneous Appeal No. 1630 of 1996

Directorate of Enforcement

APPELLANT

Vs

National Fertilizers Ltd.

RESPONDENT

Date of Decision : 19-07-1996

Acts Referred:

Constitution of India, 1950 — Article 20(3)

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1996) 3 AD 678 : (1996) 63 DLT 710 : (1996) 39 DRJ 397

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : Madan Lokur, G. Joshi, J.C. Diggpal and Ajay Diggpal, for the Appellant;

Judgement

N.G. Nandi, J.

(1) By this petition u/s 482 Cr.P.C., the petitioner seeks to set aside the order dated 4.7.1996, to the extent that it permits the presence of the counsel during the interrogation of respondent No.2, passed by the learned Special Judge, Tis Hazari Courts, Delhi.

(2) It is suggested from the petition that the petitioner filed an application on 1.7.1996 before the Special Judge/seeking permission to interrogate Mr. Sambasiva Rao (Respondent No.2) in connection with certain remittances amounting to US\$ 38 million allegedly made by respondent No. 1 to respondent No.2 for import of 200 thousand Mt of Urea in alleged contravention of the provisions of the Foreign Exchange Regulation Act, 1973 (FERA); that respondent No.2 has been remanded to judicial custody in Central Jail Tihar by the learned Special Judge in connection with the aforesaid matter which is being interrogated by the CBI.

(3) The petition as well as the copy of the order dated 4.7.1996 aforesaid, suggest that on 4.7.1996, the learned Sub Judge permitted the Enforcement

Officer and his team to interrogate respondent No.2 at Central Jail, Tihar and further ordered that respondent No.2 shall be entitled to have his counsel present during the investigation. It is this part of the order, viz. permitting the presence of the counsel during the investigation which is challenged and sought to be set aside in this proceeding.

(4) Relying on the decision reported in Poolpandi Vs. Superintendent, Central Excise and others etc. etc., , it has been submitted by Mr. Lokur, learned counsel for the petitioner, that neither the lawyer nor a non-lawyer during the interrogation can be permitted to remain present and that the part of the order dated 4.7.1996 permitting the presence of the counsel during the interrogation is illegal and liable to be quashed. It is further contended that looking to the nature of offence also no body should be permitted to remain presence during interrogation of respondent No.2. As against this, it is submitted by Mr. Diggpal, learned counsel for respondent No.2 that considering the safety and security of respondent No.2, and also that there is no torture to the respondent during the interrogation, the jail authorities be permitted within the view; that intention of the petitioner is to knock out evidence from respondent No.2 during the interrogation.

(5) The limited question raised in this proceeding is whether respondent No.2 who has been permitted to be interrogated by the Enforcement Officer and his team, at Central Jail Tihar, is entitled to the presence of his counsel during interrogation or not. This question has been set at rest by the Supreme Court in the case of Poolpandi Vs. Superintendent, Central Excise and others etc. etc., wherein, while dealing with the case of investigation under the Customs Act, 1962 and Fera, 1973, it has been held that refusing to allow presence of a counsel during interrogation is not vocative of article 20(3) and 21 of the Constitution of India. In para II of the judgment it is observed "..... The purpose of 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 there under should not be "expanded" to favor 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." Thus, it will be seen that there can not be presence of a lawyer or a non lawyer during the investigation of the person who is to be interrogated for the investigation under the Customs Act, 1962 and Fera, 1973 and the refusal to allow presence of a counsel during interrogation would not be vocative of Articles 20(3) and 21 of the Constitution of India.

(6) As far as the argument with regard to the safety/security of respondent No.2 is concerned, the counsel for respondent No.2 has not suggested any basis for the which should be reasonable and not fanciful apprehension requiring security to respondent No.2 during interrogation. In my opinion, there does not appear any reason for respondent No.2 to be apprehensive about his safety/security during interrogation.

(7) In view of the above, the order dated 4.7.1996 passed by the Special Judge, Tis Hazari Courts, Delhi, to the extent of permitting the presence of a counsel during interrogation of respondent No.2, deserves to be set aside and quashed.

(8) In the result, the petition is allowed.