(1978) 07 CAL CK 0032

In the Calcutta High Court

Case No : Criminal Revision No. 2262 of 1977

K.K. Goenka APPELLANT

Vs

Superintendent of Customs Preventive RESPONDENT

Date of Decision : 25-07-1978

Acts Referred:

Constitution of India, 1950 — Article 20(3)
Customs Act, 1962 — Section 107, 108, 135
Penal Code, 1860 (IPC) — Section 193, 228

Citation : (1978) 2 ELT 637

Hon'ble Judges : A.N. Banerjee, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.N. Banerjee, J.—Facts leading to the issue of the present Rule may be briefly stated as follows : On 15-7-77 Customs Officers came to the petitioner''s residence and made a search therein and seized certain documents and keys of some lockers under a seizure list. On 24-9-77 the petitioner was arrested and produced before the learned Magistrate for having committed the alleged offence u/s 135 of the Customs Act. The learned Chief Metropolitan Magistrate before whom the petitioner was produced, released him on bail and directed him to report to the Investigating Officer every alternate day for first week and then twice a week for another week. On 7-10-77 the Customs authority prayed for further time before the learned Magistrate who allowed them time till 20-12-77 for filing complaint. Thereafter on 9-11-77 two notices to show cause for contravention of the provisions of Gold Control Act, 1968 and Foreign Exchange Regulation Act, 1972 and Customs Act, 1962 were served upon the petitioner with a direction to submit written explanation within 15 days from the dale of the receipt of the notices, On 18-10-77 the Customs Authority filed an application before the learned Chief Metropolitan Magistrate and prayed for cancellation of the petitioner''s bail on the allegation that the petitioner had not complied with the terms of the hail. On the same day the learned Magistrate directed the petitioner to report to the Investigating Officer once a week for three weeks commencing from 19th December, 1977. It is as against this order the present Rule has been obtained.

2. Mr. Balai Chandra Rou learned Advocate appearing for the petitioner contended that the aforesaid order of the learned Magistrate was in violation of Article 20(3) of the Constitution of India and that having directed the Customs authorities, to file the complaint and the Customs authorities also having served show cause notices upon the petitioner it would be to the prejudice of the petitioner to be interrogated by the Customs authorities who might ask questions incriminating the accused petitioner. Mr. J.N. Ghosh learned Advocate appearing for the opposite party No. 1 supported the order of the learned Magistrate and contended that there was nothing illegal or wrong in the impugned order. The learned Advocate for the State also supported the order of the learned Magistrate.

3. Evidently, the Customs authorities were making enquires into the matter u/s 107 of the Customs Act, 1962. u/s 108 of the said Act any gazetted officer of Customs shall have the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in and inquiry which the officer is making in connection with the smuggling of any goods, Every such enquiry shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code. It is thus clear that the Customs authorities making an enquiry u/s 107 of the aforesaid Act have independent power to summon any any person whose attendance they consider necessary either to give evidence or to produce a document or any other thing in any enquiry which such officer it making in connection with smuggling of any goods. such power is independent of any direction which may be given by the learned Magistrate. Merely because the Customs authorities have served notices to show cause or have been directed to file complaint by the learned Magistrate, it cannot be said, as was said by the learned Advocate for the petitioner, that the Customs authorites have no longer any power to summon a person either for the purpose of giving evidence or for production of a document or any other thing.

4. It is true that under Article 20(3) of the Constitution of India no person can be compelled to give evidence against himself. The powers u/s 108 of the Customs Act, 1962 are subject to the aforesaid constitutional bar and it cannot be said that the Customs authorities have any right to compel any person to give evidence against himself. Mr. Roy submitted that there is a different between making a statement before the Police during investigation and making a statement before the Customs Officer during enquiry inasmuch as in the latter case the statement made by a person may be translated into evidence while in the former case such statement was not admissible in evidence. It may be so, but that does not mean that the Customs authorities will have no power to examine the petitioner any further because they have served show cause on him or have asked for time for filing complaint before the learned Chief Metropolitan

Magistrate. I may, however, make it clear that it would be always open to the petitioner to decline to answer to any question which may incriminate him and which violates the provisions of Article 20(3) of the Constitution of India. He has always got that right and he can exercise such right at all time during the enquiry by the Customs authorities. I, therefore, find that there is nothing wrong in the order of he learned Magistrate which directs the petitioner to see the Investigating Officer as per the impugned order.

5. In the result, the Rule stands discharged.