

(2025) 07 DEL CK 0894

In the Delhi High Court

Case No : Criminal Miscellaneous Petition No. 984 Of 2018

Manish Kumar Jain

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 14-07-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 4, 5, 307, 482
Indian Penal Code, 1860 — Section 174, 175
Customs Act, 1962 — Section 108, 117, 124, 153
Indian Telegraph Act, 1885 — Section 7B

Citation : (2025) 07 DEL CK 0894

Hon'ble Judges : Neena Bansal Krishna, J.

Bench : Single Bench

Advocate : Priyadarshi Manish, Anjali Jha Manish, Paras Aneja, Aman Ahluwalia, Shoaib Haider, Satish Aggarwala

Final Decision : Disposed Of

Judgement

Neena Bansal Krishna, J.

1. Petition under Section 482 Code of Civil Procedure, 1973 (hereinafter referred to as Cr.P.C) has been filed seeking quashing of Criminal Complaint No.26460/2017 (now re-numbered as 6903/2018) under Section 174 Indian Penal Code, 1860 (hereinafter referred to as "IPC") and the Non-Bailable Warrants dated 22.01.2018 issued against the Petitioner, Manish Kumar Jain.

2. Briefly stated, the Petitioner, Manish Kumar Jain, Partner of M/s Mala Petrochemicals & Polymers was engaged in import and trading of different chemicals including PVC. He filed a Bill of Entry bearing No.8911267 dated 16.03.2017, for clearance of Ammonium Sulphate at the assessable value of Rs.67,50,658.20 and paid the requisite customs duty. However, the consignment was wrongly sent by the Supplier and the Directorate of Revenue Intelligence (DRI) issued an alert against him. The search was conducted at his godown on 22.03.2017 and the goods were seized for not providing the import documents in

respect of them.

3. During the investigations, the Petitioner appeared before DRI on 30.03.2017, 31.03.2017 and 10.04.2017 and his statements were recorded under Section 108 Customs Act, 1962 (hereinafter referred to as "Customs Act").

4. During the investigations, on the directions of DRI, Petitioner, Manish Kumar Jain deposited Rs.3 Crores against the past import. The Petitioner also deposited Rs.1,19,78,677/- in respect of the imported consignment against the Bill of Entry No.8911267 dated 16.03.2017. Because of the mistake of Supplier, some wrong description got mentioned on them, leading to the goods being seized by DRI on 21.04.2017, even though the entire amount had been deposited.

5. Despite having deposited the duty and 'No Objection' of DRI, the goods had been provisionally released by Commissioner of Customs but on onerous conditions. Writ Petition W.P(C) No.3965/2017 was filed before this Court. On the first date of hearing, an Order dated 05.05.2017 for provisional release of goods with onerous conditions, was passed.

6. In the meanwhile, on 08.05.2017 the DRI recorded the statement of the Petitioner and he was assured that no further statements would be required.

7. The Petitioner filed second Petition W.P(C) No.4123/2017 in which Division Bench of this Court modified the conditions for provisional release, vide Order dated 19.05.2017.

8. After the Order of Division Bench, DRI issued summons under Section 108 Customs Act not only to the Petitioner but also to his son and brother-in-law, on different dates.

9. In the meanwhile, summons was issued on 22.07.2017 to the Petitioner. The summons were not served in accordance with Section 153 Customs Act, but was affixed at the door of his house, since he was out of town. He came to know about the same when he later returned back.

10. On account of non-compliance of this single summon dated 22.07.2017, first Criminal Complaint C.C.No.12477/2017 was filed by the DRI before the Ld. CMM under Section 174 IPC in which Summons were issued on 05.08.2017 . On coming to know about the pending proceedings, counsel for the petitioner moved an Exemption Application which was allowed subject to cost of Rs.10,000/-. However, on the next date of hearing i.e. 04.09.2017 Bailable Warrants were issued against him.

11. Having unsuccessfully challenged this first CC No. 12477/2017 in Crl.M.C.3608/2017, the Petitioner has appeared before the learned CMM on 15.09.2017 in this first Complaint and obtained the Bail, which is now pending Trial.

12. The second Complaint CC No.26460/2017 under Section 174 IPC, has been filed on 17.11.2017 by DRI, for non-compliance of summons dated 15.09.2017.

The Petitioner was summoned vide Order dated 20.11.2017. The Counsel for the Petitioner submitted the Exemption Application which was taken on record by the Court, though the same was not considered.

13. On 22.01.2018, Ld. CMM in the absence of the Petitioner and his Counsel, issued NBWs against him. This second Complaint and NBW issued therein, are the subject matter of the present Petition.

14. In the meanwhile, the Petitioner filed for Anticipatory Bail, for the proceedings initiated by DRI under Customs Act, before the Ld. Sessions Judge which was rejected by the Sessions Judge on 19.12.2017.

15. Aggrieved, the Petitioner filed CrI. M.C. No.353/2018 and CrI. M.A. No.1376-77/2018 to challenge the Complaint Case No.26460/2016 and also the Summoning Order dated 20.11.2017, but since the two Orders/documents were not filed, he withdrew the same with liberty to file the same afresh.

16. Thereafter, the present Writ petition has been filed to challenge the Summoning Order dated 20.11.2017 and the Order dated 22.01.2018 vide which the NBWs have been issued against him.

17. The grounds of challenge are that the Summons were issued to the Petitioner as well as the Surety, even though no surety has been furnished by the Petitioner till then. This shows that there was non-application of mind while passing the Order dated 20.11.2017. The DRI has misused the provision of Section 108 Customs Act to issue summons to the Petitioner, whenever any Order was made by Ld. Apex Court or Ld. Division Bench of this Court. For the non-compliance of summons on different occasions, two Complaints have been filed against the Petitioner which shows that DRI wants to harass the Petitioner rather than to secure his presence. The Petitioner had appeared before the DRI from March to May, 2017 on different dates and has been coerced to make payments.

18. The present Complaint have been filed by suppressing and not disclosing that he had been appearing in response to the summons of DRI. Furthermore, Customs Act, 1962 deals only with the alleged non-compliance of summons issued by DRI and the issuance of NBW were uncalled for which have been issued in an arbitrary and a mechanical fashion. It has not been disclosed that Petitioner had all along cooperated in the investigations and had presented himself before the Respondent as and when directed.

19. Reference is made to the case of Rakesh Kumar Goyal vs. NCT of Delhi (2012) 193 DLT 270, wherein it has been observed that the plain reading of Section 108 Customs Act, shows that the offence is attracted only if the summons is intentionally disobeyed.

20. In the present case, there is no such intention manifested in any of the impugned Orders. The Section 174 IPC deals with initiation of Criminal Complaint which is a serious matter. The summons have been issued mechanically.

21. Reliance has been placed on King Emperor vs. Bohra Bir Bal AIR 1922 All 82, wherein it was observed that a person incapacitated by illness would be sufficient excuse for his not attending the Court. Similar observations have been made by the Supreme Court in the case of Mehmood Ul Rehman vs. Khazir Mohammad Tunda (2015) 12 SCC 420.

22. Reference is also made to Suresh V. Chaturvedi vs. AES Control Pvt. Ltd. 2003 (70) DRJ 210, wherein this Court had noted that the Ld. Trial Courts issuing NBWs straightaway after rejecting the Exemption Application on the very first date of hearing. It was observed that Section

87 Cr.P.C does not give unbridled power or discretion to the Court to issue the Warrants and it must be used sparingly and cautiously.

23. It is further submitted that any violation of Section 108 must be tried under Section 117 of the Customs Act which provides for penalty for contravention of any provision of the Customs Act. Therefore, even if it is assumed though not admitted, that there was non-compliance, no action under Section 174 IPC was mandated.

24. Support for this proposition is drawn from the case of Central Bureau of Investigation vs. State of Rajasthan (1996) 9 SCC 735, wherein it was observed that Section 4 and 5 Cr.P.C. cannot come to the aid of investigations for the offence under FERA.

25. In the end, reliance has been placed on State of Haryana vs. Bhajan Lal (1992) Supp. (1) SCC 335, wherein it is submitted that where the proceeding is an abuse of process of law, the same must be quashed.

26. Hence, a prayer is made that the Criminal Complaint No.26460/2017 under Section 174 IPC be quashed along with Order dated 20.11.2017 and Order dated 22.01.2018 vide which NBWs have been directed to be issued.

27. The Respondents have filed a Reply, wherein it is submitted that the Summons dated 16.11.2017 were issued on behalf of Respondent No.4 (in Crl. M.C. No. 3608/2017) which was sent to the residential address of the Petitioner. Thereafter, again the summons dated 23.11.2017 were issued for the Petitioner to appear on 30.11.2017, which was sent to his Counsel and was delivered on 25.11.2017. In terms of Section 153 Customs Act, a copy of the summons was also displayed on the Notice Board of ICD, Tughlaqabad, New Delhi, which was displayed on 24.11.2017.

28. The Anticipatory Bail applied by the Petitioner, Manish Kumar Jain was denied and thereafter, he absconded and was not available at his last known address. The Petitioner again absented before Ld. CMM and the Court had to issue coercive process which was not executed.

29. It is submitted that several incriminating documents/material and other technical evidence has come against the petitioner, on record. Several Show

Cause Notices were being issued in respect of the seizure of goods. Investigations on other aspects of the case including duty evasion, were underway. The investigations were at the crucial stage and the Petitioner had to be confronted with the documents and statements of other persons. His joining of investigation was, therefore, essential in view of the gravity of the case and extent of evasion involved. It is not a simple case of duty evasion or mis-Declaration.

30. The Petitioner on four occasions between 30.03.2017 to 08.05.2017, had tendered four statements. His statement had been recorded on 31.05.2018 when he appeared in the Office of DRI. Two Show Cause Notices dated 20.09.2017 and 06.04.2017 had been issued to the Petitioner in respect of the seizure of goods under Section 124 Customs Act.

31. It is claimed that after 08.05.2017 despite repeated summons, failed to appear in response to summons, thereby leading to the filing of the present Complaint under Section 174 IPC against him.

32. It is submitted that there is no ground for quashing of the Complaint or the Summoning Order or the Order issuing Warrants against him. There is no merit in the Petition, which is liable to be dismissed.

33. In the Written Submissions, the Petitioner has submitted that the Complaint under Section 174/175 IPC has been filed on the ground of non-appearance of the Petitioner in response to Notice under Section 108 Customs Act, before the Customs Authority. However, the provisions of IPC are not applicable to the Special Act i.e., the Customs Act which is to be considered as per Section 117 Customs Act. Even Section 4 & 5 of Cr.P.C support the stand of the petitioner as the Customs Act is a Special provision and its provisions shall prevail over the common law. The Complaint is, therefore, not maintainable.

34. Reliance has been placed on Rakesh Kumar Goyal vs. Directorate of Revenue Intelligence 2024 SCC OnLine P&H 4291; Central Bureau of Investigation vs. State of Rajasthan (1996) 9 SCC 735; Enforcement Directorate & Anr. vs. M. Samba Siva Rao & Ors. (2000) 5 SCC 431; and Sharat Babu Digumarti vs. Govt. (NCT of Delhi) (2017) 2 SCC 18.

35. It is further contended that the impugned Complaint has been filed without following due process of law and has not been filed in good faith. It is not the case of the Respondents that the Petitioner is not participating in the Enquiry at all. The only allegation is that he had not appeared on single occasion even though he had appeared thrice prior to this summon and had been pressurized to deposit Rs.3 Crores.

36. The summons issued on 22.07.2017 were pasted at the door of his house since he was out of station which reflects the undue haste without following the prescribed procedure, with the sole purpose of erroneously framing the Petitioner and without considering the reasons for non-appearance.

37. The last contention is that whole proceeding is a nullity as the summons had not been issued in accordance with the procedure. Reliance has been placed on State of Punjab vs. Davinder Pal Singh Bhullar & Ors. (2011) 14 SCC 770.

38. Submissions heard and record perused.

39. The present Complaint under S.174 IPC is based on the allegation that on 19.09.2017, the Petitioner had failed to appear before the DRI in response to summons dated 15.09.2017 under Section 108 Customs Act.

Whether the Section 174 IPC can be invoked for non-compliance of Notice under Section 108 Customs Act:

40. This question entails the interplay between Section 4 Cr.P.C. with the provisions of Customs Act.

41. S.4 of the Cr.P.C. read as under: -

"4. Trial of offences under the Indian Penal Code and other laws;

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

S.5. Saving

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

42. From the bare perusal of these two Sections, it is evident that where there is a Special Code, which contains all the provisions for investigations as well as penalties then, it shall prevail over the general law of the country.

43. This aspect of the Customs Act prevailing over the general law as provided in Cr.P.C. was considered in detail by the High Court of Punjab and Haryana in the case of Rakesh Kumar Goyal (supra). It was observed that under Section 108 Customs Act, enables any Gazetted Officer of Customs has the power to summon any person whose attendance he considers necessary and also ask for the production of certain specified documents or things as mentioned therein. No doubt, there is no specific provision to take action for violation of Section 108 Customs Act, but Section 117 Customs Act provides that any person contravening any provision of the Act or abetting any such contravention or fails to comply with provisions of the Act with which it was his duty to comply and no express penalty is provided for such contravention or failure, it shall be liable to

be dealt under S. 117 Customs Act to impose a penalty upon him.

44. Therefore, in case the concerned person fails to comply with summons under Section 108 Customs Act, Section 117 Customs Act takes care thereof in as much as it provides for penalty for contravention of the said provision.

45. Sections 174/175 IPC provides punishment for committing offences for non-attendance or omission to produce document or electronic record by a person legally bound to produce, in obedience to an Order from the public servant.

46. In the case of Delta Impex vs. Commissioner of Customs, 2004 (73) DRJ 417 (DB) and Enforcement Directorate vs. M. Samba Siva Rao (2000) 5 SCC 431, it was observed that Customs Act itself is a complete Code and provides for various stages of investigations, imposition of penalties, settlement of cases and Appeals.

47. Had there been no provision like Section 117 Customs Act providing for penalty for disobedience of any Order made under the Customs Act, then Section 174/175 could have been invoked.

48. In similar situation, the apex Court in the case of General Manager Telecom vs. M. Krishnan 2009 (5) DCR 501 wherein for an offence in regard to a complaint before Consumer Forum in regard to the disconnection of a telephone connection on account of non-payment, the Apex Court held that there was a special remedy under Section 7B of Telegraph Act and consequently, the Consumer Forum shall not have any jurisdiction.

49. Likewise, in the case of Jasbir Singh vs. Vipin Kumar Jaggi (2001) 4 Crimes 127, it was observed that Section 64 of NDPS Act would prevail over Section 307 Cr.P.C. as Special Act overrides the Criminal Procedure Code, which is the general Act.

50. In Saroj K. Dutta vs. R.L. Thapliyal, Del (2010) 6 RCR(Criminal) 2573 and Meera Kapoor vs. State, Del 2008 (2) JCC 829, similar observations were made that provisions of Section 108/117 Customs Act would prevail in the light of Section 4/5 Cr.P.C. and thus, general law would not have any application.

51. In the present case, the Complaint has been filed on account of disobedience of one summon dated 15.09.2017 issued under Section 108 Customs Act, which is disobedience of any officer under the Act and is therefore, penal under Section 117 Customs Act itself. The resort could not have been made to Section 174/175 IPC. The Complaint is therefore, liable to be quashed.

52. Before concluding, it may also be noted that the Petitioner had been joining the investigations pursuant to the Notices of the Customs Officer and had done so on 30.03.2017, 31.03.2017 and 10.04.2017. Thereafter, he had applied for Anticipatory Bail, which was rejected by the Additional Sessions Judge on 19.12.2017. The non-appearance on 15.09.2017 may have been in an endeavour by the Petitioner to await the outcome of his Anticipatory Bail, but such conduct cannot lead to an inference of deliberate and intentional avoidance of the

summons, especially when petitioner had been appearing on prior dates and even thereafter, he had joined investigations in 2018 and even deposited the penalty amounts.

53. Merely because he did not join investigations on one date i.e. 15.09.2017, NBW got issued vide Order dated 22.01.2018 which is clearly reflective of the abuse of the powers by the Customs Officer.

54. Pertinently, this was the second Complaint under S.174 IPC; one similar Complaint had also been filed prior to the present one, reflecting a definite pattern against the Petitioner. It cannot be overlooked that NBW once issued, has the serious implication of an individual being arrested and consequent deprivation of his personal liberty. The Apex Court has time and again emphasized and reiterated that coercive procedures must not be resorted to unless inevitable. In the present case, in the circumstances detailed above, such course of issuance of NBW and consequent filing of the Complaint was not justified.

55. In State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335 it has been held that Court has extraordinary power under Section 482 Cr.P.C. to quash the proceedings which are found to be an abuse of the process of law.

56. This is a blatant example where the Customs Officer has abused their powers to somehow corner the Petitioner who otherwise, has throughout been cooperating and joining the investigations. On this ground as well, the Petition is liable to be quashed.

Conclusion:

57. In view of the aforesaid discussion, the Criminal Complaint No.26460/2017 (now re-numbered as 6903/2018) under Section 174 IPC is hereby quashed and all the proceedings undertaken therein also stand quashed. However, this would not limit the right of the Respondent to take appropriate action under the Customs Act.

58. Pending Applications, if any, are disposed of accordingly.