
(2000) 01 CAL CK 0034
In the Calcutta High Court
Case No : Writ Petition No. 19721 (W) /99

Narendra Lohia

APPELLANT

Vs

R.K. Sarkar and Others

RESPONDENT

Date of Decision : 13-01-2000

Acts Referred:

Customs Act, 1962 — Section 108

Citation : (2000) 68 ECC 460

Hon'ble Judges : Ajoy Nath Ray, J

Bench : Single Bench

Judgement

Ajoy Nath Ray, J.—35 sacks of betel-nuts were seized at the godown of Transport Contractor, namely, Uma Carrying Corporation located at Siliguri. The seizure took place at 5-45 in the afternoon. The goods on the basis of documents and Challans, belonged to one Sudhir Saha. Although this Writ is by Narendra Lohia, Sudhir Saha has also appeared. In an earlier Writ of goods were released on Sudhir Saha's depositing with his Advocate-on-record in that case, namely, Mr Kudalia, a sum of Rs. 75,000. Narendra Lohia has been served with a summons u/s 108 of the Customs Act. Some reasons to believe that the goods are smuggled must be there on record already so as to evoke Jurisdiction. From the documents in the file available to the learned Advocate for the respondents in Court upto date, the information leading to the visit to the Transport Contractors godown has not surfaced in any details. Who told what to whom is not known. According to the statement obtained by them, Sudhir Saha has stated that betel-nuts are Nepal betel-nuts. That those belong not to him but to Narendra Lohia of whom he is a salaried employee drawing Rs. 2,000 per month. The address of S.M. Traders Sudhir Saha given in the house of one Mrs. Goel has been stated to be erroneous by Mrs. Goel herself. The goods were destined 25 to Amratolla Street, Calcutta-1, to the address of Supari Trading Corporation, allegedly. One Desai of that concern has said that he placed the order on Sudhir Saha. Once earlier Narendra Lohia was interrogated on the same charge of getting Nepal betel-nuts but he was released. We now have the same process all over again.

No sample was retained from the released goods. I passed the order in that matter also but the point of drawing sample, to the best of my recollection, did not crop up at that time. In any event it is not easy to prove or disprove the smuggling of Supari, which, at least to the lay understanding will not on examination reveal where those have been grown. Mr. Sen has emphasised that North Bengal is not itself without Supari production and that at least from Nepal the entry of Supari would not attract any duty. There might be matters of suspicion or belief about Narendra Lohia trying to hide behind Sudhir Saha but any indication of smuggling, there is none. Although Section 108 summons is a legal procedure, it is well-known that interrogation often leads to long and harassing procedure and confessions obtained there are admissible in evidence. There appears to be no urgency for interrogating Narendra Lohia. An interim order is therefore called for. Order and observations are without prejudice.

ORDER

1. Upon reading a petition of Narendra Lohia and the affidavit of verification thereof dated 29th November, 1999 and the exhibits or annexures to the said petition and upon hearing Mr. Bhasker Sen, Advocate for the petitioner.
2. It is ordered that a Rule do issue calling upon the opposite parties to show cause why a Writ in the nature of Mandamus should not be issued directing the opposite parties to rescind, recall, withdraw and/or to forbear from giving effect to the impugned Summons as referred to in prayer (a) of the petition or why a Writ in the nature of Prohibition should not be issued commanding the opposite parties to refrain from issuing Summons u/s 108 of the Customs Act, 1962 as complained of in prayer (c) of the petition or why a Writ in the nature of Certiorari should not be issued in terms of prayer (b) of the petition cancelling, setting aside or quashing the impugned orders and they are further commanded at the bearing of this application to produce in Court or cause to be forwarded to the Registrar of this Court for being so produced all relevant records in connection with this case so that conscionable justice may be administered by cancelling, setting aside or quashing, the same or making such further directions as to the Court may seem fit and proper or why such further or other order or orders should not be made as to this Court may seem fit and proper.
3. There will be an interim order of injunction in terms of prayer (e) of the petition till the disposal of the Rule.
4. The Rule is made returnable. 12 weeks hence.
5. Let a plain copy of this order duly counter-signed by the Assistant Registrar (Court) be given to the parties.