(1987) 11 MAD CK 0014

In the Madras High Court

Case No : Writ Appeal No''s. 1015, 1017 and 1021 of 1987

Vittalnathan APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 30-11-1987

Acts Referred:
Customs Act, 1962 — Section 107, 108, 124, 141

Citation : (1989) 43 ELT 19

Hon'ble Judges : M.N. Chandurkar, C.J;Srinivasan, J

Bench : Division Bench

Advocate : M. Abdul Kareem, for Andul Nazeer, for the Appellant; P. Narasimhan, Senior Central Government Standing Counsel, for the Respondent

Judgement

M.N. Chandurker, C.J.—Even after hearing the learned Counsel for the appellants at considerable length we are not satisfied that there is

any infirmity in the order of the learned Single Judge. In his order the learned Judge has held that the petitioners are bound to appear in pursuance

of the summons u/s 108 of the Customs Act, 1962 (hereinafter referred to as the Act) and that they are not entitled to have the presence of a

lawyer at the time when their statement is recorded. As we fully endorse the reasons given and the view taken by the learned Judge while

dismissing the writ petitions, we do not think it necessary deal in extenso with the arguments advanced before us. However, since the matter has

been argued at considerable length we might briefly indicate the two contentions and the reasons for rejecting them.

2. The first contention was that a summons u/s 108 of the Act cannot be issued unless an enquiry as contemplated by Section 124 of the Act is

commenced by a notice to show cause as to why either the goods should not be confiscated or that penalty should not be imposed on the persons

concerned. Reliance has been placed for this view on the decision of the Gujarat High Court in Union of India v. Abdul Kadar Abdulgani 1985

Cri. L.J. 324, Central Govt. Vs. Fr. Alfred James Fernandez, and Pukhraj Pannalal Shah and Others Vs. K.K. Ganguly and Another, . In the

decision of the Gujarat High Court, that Court has held that the stage of recording of statements u/s 108 arises only when an enquiry is started

either for confiscation of the goods or for imposing penalty and this is very clear from the wordings of Section 108. That Court also held that so far

as Section 107 is concerned, it takes care of investigatory emergencies. Reliance for this view has been placed on the decision of the Supreme

Court in Balkrishna Chhaganlal Soni Vs. State of West Bengal, . The Kerala decision was a decision which dealt with Section 40 of the Foreign

Exchange Regulation Act, 1973 and the Court held that Section 39 and 40 of Foreign Exchange Regulation Act, 1973, were analogous to

Sections 107 and 108 of the Customs Act, 1962. While dealing with Section 39 and 40 of the Foreign Exchange Regulation Act, the Division

Bench of the Kerala High Court observed that while Section 39 gives the concerned officer power to investigate into matters which may ultimately

result in any enquiry u/s 51, Section 40 deals with the power to summon persons in connection with the enquiry for giving evidence or making

statements and producing documents. In the decision of the Bombay High Court it was observed that Section 108 of the Customs Act, 1962,

relates to a formal inquiry where a person can be required to give evidence and produce documents by issuing summons.

3. Now insofar as this Court is concerned, the scope of Sections 107 and 108 of the Act was considered by a Full Bench of this Court in

Collector of Customs v. Bhirumal Pahlajani 1967 1 M.L.J. 408. Dealing with Sections 107 and 108, the Full Bench observed that what Section

107 contemplates is a less formal and rigorous type of enquiry by the Customs Officers, whereas Section 108 contemplates an enquiry which is

almost parallel to the enquiry u/s 171-A of the Old Sea Customs Act, Section 171-A was considered by this Court in Rainbow Trading Co. Vs.

Assistant Collector of Customs, Appraising Dept., . In that decision a Division Bench of this Court has pointed out that from the setting of Section

171-A it appears that the section is enacted to facilitated on enquiry to find out whether an offence had been or is being committed, and it may lead

to a prosecution before the Criminal Court, if an offence is disclosed or the Customs authorities might consider it sufficient to impose an

administrative penalty without prosecuting the offender. In Romesh Chandra Mehta Vs. State of West Bengal, while dealing with the provisions of

the Sea Customs Act, 1878 it was observed as follows -

Under the Sea Customs Act, a Customs Officer is authorised to collect customs duty to prevent smuggling and for that purpose he is invested with

the power to search any person on reasonable suspicion (S. 169), to screen or X-ray the body of a person for detecting secreted goods (S. 170-

A), to arrest a person against whom a reasonable suspicion exists that he has been guilty of an offence under the Act. (S. 173) to obtain a search

warrant from a Magistrate to search any place within the local limits of the jurisdiction of such Magistrate (S. 172); to collect information by

summoning persons to give evidence and produce documents (S. 171-A) and to adjudge confiscation under S. 182. He may exercise these

powers for preventing smuggling of goods dutiable or prohibited and for adjudging confiscation of those goods. For collecting evidence the

Customs Officer is entitled to serve a summons to produce a document or the thing or to give evidence and the person so summoned is bound to

attend either in person or by an authorised agent, as such office may direct, and the person so summoned is bound to state the truth upon any

subject respecting which he is examined or makes statement and to produce such documents and other things as may be required. The power to

arrest, the power to detain, the power to search or obtain a search warrant and the power to collect evidence are vested in the Customs Officer

for enforcing compliance with the provisions of the Sea Customs Act.

The above observations will indicate that the power to collect information by summoning persons to give evidence and produce document

contained in Section 171-A of the Sea Customs Act, was an independent power. In Romesh Chandra Mehta Vs. State of West Bengal, the

Supreme Court dealing with Section 171-A of the Sea Customs Act, observed as follows -

Under Section 171-A of the Sea Customs Act, a Customs Officer has power in an enquiry in connection with the smuggling of goods to summon

any person whose attendance he considers necessary to give evidence or to produce a document or any other thing, and by sub-clause (3) the

person so summoned is bound to state the truth upon any subject respecting which he is examined or makes statements and to produce such

documents and other things as may be required. The expression ''any person'' includes a person who is suspected or believed to be concerned in

the smuggling of goods.

The power u/s 108 of the Act like the one u/s 171-A of the Sea Customs Act could be exercised for the purpose of obtaining any information with

regard to the alleged smuggling. Section 108 itself contemplates an enquiry as will be clear from the decision in Percy Rustomji Basta Vs. State of

Maharashtra, in which it was pointed out that a Customs Officers making an enquiry u/s 107 or 108 of the Customs Act is not a police officer and

the person against whom enquiry is made is not an accused person. Thus the enquiry made u/s 108 is an enquiry in connection with the smuggling

of any goods and in any such enquiry a Customs Officer of gazetted rank has been given the power to summon any person in give evidence. The

object of such an enquiry is to ascertain facts with regard to smuggling of goods. A person who is summoned u/s 108 may have nothing to do with

the actual smuggling of goods although he may known other relevant facts regarding such goods. That is why even a person who has nothing to do

with actual smuggling of goods can also be summoned in an enquiry u/s 108.

4. In Balakrishna''s case, it is undoubtedly observed by the Supreme Court that while the normal process of enquiry is facilitated by Section 108

investigatory emergencies are taken care of by Section 107. In the same decision, it was pointed out that the provision of place or time. This was in

the context of the contention that interrogation u/s 107 could be only of the potential delinquent or whether it must be confined only to witnesses

who threw light on the delinquent''s contravention of the law. The words ''any person'' in Section 107 were construed as covering every person

including a suspect and potential accused. It is not possible for us to construe these observations as laying down that Section 108 can be invoked

by the Customs authorities only in a case in which a notice u/s 124 of the Act is issued. In the instant case, as will appear from the facts the

Customs authorities were enquiring into the truth of the statements made by Hari Prasad who was found in a hotel room along with three other

persons from each one of whom gold biscuits had been seized. Hari Prasad is the son of one Villanathan, who is the appellant in App. 1015 of

1987. He had been absconding. Hari Prasad is alleged to have stated that he had gone to the hotel at the instance of his father who was a working

partner in the shop of one Rajagopal and he had come to the room to receive all the 90 gold biscuits, with the intention of transporting them to his

residence at Section 141 Raja St, Coimbatore. These biscuits, according to Hari Prasad, to be handed over to Rajagopal who is the appellant in

W.A. 1017 of 1987. A statement with regard to earlier transaction in gold was also made by him. An enquiry is now being made for the purpose

of verifying the truth or otherwise of these statements, and the appellants have been served with summons u/s 108 of the Act.

5. The provision of Section 40 of the Foreign Exchange Regulation Act, which are stated by the Division Bench of the Kerala High Court to be

identical to the provisions of Section 108 of the Act do not seem to be as general in character as the provisions of Section 108 of the Act. While

Section 108 of the Act refers to an enquiry in connection with the smuggling of any goods Section 40(1) of the Foreign Exchange Regulation Act

refers to ''any investigation or proceeding under this Act.'' The word ''proceeding'' not to be found in Section 108 of the Act. The observations of

the Bombay High Court do not, in our view, run counter to the view that Section 108 could be availed of by the Customs Officer while making an

enquiry of the kind that is being made in the instant case. The enquiry is expressly in connection with the smuggling of goods. Such an enquiry is

expressly permissible by Section 108 of the Act and for such enquiry the Customs Officer is, on the terms of Section 108 of the Act, entitled to

require any person to give evidence. The question as to whether this will be followed up by any proceeding relating to confiscation of goods or

imposition of penalty does not arise at the present stage.

6. There is also no substance in the other contention raised that the persons summoned u/s 108 should be permitted to be accompanied by a

lawyer. So far as this Court is concerned, the matter has been extensively dealt with by the decision of this Court in Anil G. Merchant v. Director of Revenue Intelligence 1985 E.L.T. 292 . This Court has pointed out that there is no right in the person examined u/s 108 of the Act to have a

lawyer present at the time of interrogation because the investigation has necessarily to be secret an even the identity of the person interrogated or

examined may have to be kept secret until a late stage of the investigation. It was pointed out that the person interrogated u/s 108 may be a person

involved in the commission of any offence or may be a person who only knows some facts or about somebody also committing it was is in the

nature of a witness unconnected with the offence.

7. It was then argued that the appellants could not be arrested on somebody else''s statement. Whether the appellants will be arrested or not a

matter which can be gone into at the moment and there is no reason to assume that the Customs authorities will abuse their powers.

A grievance is made that when witnesses are examined u/s 108 of the Act, they are examined at any time of the day and that they are kept in one

room. These are all matters of hypothetical consideration, though we might make it clear that it was stated on behalf of the respondents that the

witnesses are examined only during office hours.

8. In the result, all the appeals are dismissed. There will be no order as to costs.

9. After the judgment was delivered, the learned Counsel for the petitioners has mentioned to us that he had argued that a witness summoned u/s

108 of the Customs Act cannot be compelled to write down his own statement. Such a contention was raised and has been overlooked. We have

heard the learned Senior Central Government Standing Counsel also. We have not been able to find any authority in any provision of law which

can compel a witness to write down his own statement.

10. It is open to the Customs Officer to ask questions and whatever answers are given by the witness can be taken down by the Officer.

