

THE HIGH COURT OF SINDH, KARACHI

Spl. Cr. Revision Appl. No. 35 of 2020

[Muhammad Idrees & others versus The State]

Applicants : Muhammad Idrees and 06 others, through Mr. Khawaja Shams-ul-Islam, Advocate.

The State : Through Model Customs Collectorate of Appraisement (East) through Mr. Khalid Rajpar, Advocate, and Mr. Mubashir Ahmed Mirza, Assistant Attorney General for Pakistan.

Dates of hearing : 19-09-2022 and 26-09-2022

Date of decision : 25-10-2022

ORDER

Adnan Iqbal Chaudhry J. - FIR No. 06/2019-R&D (East) was lodged on 23-04-2019 at the Model Customs Collectorate of Appraisement (East), Customs House, Karachi, for surreptitiously removing certain goods from a bonded warehouse without paying customs duty and taxes, thus constituting offences under the Customs Act, 1969 and allied statutes. The bonded warehouse was licensed to M/s. General Services, and the goods removed were of the importing firm of M/s Steel Co. The FIR nominated Muhammad Arif (Applicant No.2) who was a partner in both firms, Muhammad Ibrahim as the partner of the importing firm, and Muhammad Idrees (Applicant No.1) as the partner of bonded warehouse, alleging that they had acted in collusion to remove the goods from the bonded warehouse.

2. The Applicants herein, who are the partners of said firms, challenged the FIR by way of C.P. No. D- 7524/2019 and C.P. No. D-7166/2016, which were disposed of by a learned Division Bench by a consent order dated 05-12-2019 by directing the I.O. to complete the investigation and submit a final challan, and by directing the petitioners/Applicants to cooperate in the investigation, with the

observation that they are at liberty to move the Special Judge (Customs & Taxation) for quashment of the FIR if they deem fit.

3. The I.O. submitted the final challan, wherein the other partners of the bonded warehouse and those of the importing firm were also implicated, some arrayed as absconders. Upon receipt of the final challan on 10-02-2020, the learned Special Judge passed the following order which has been challenged by this revision under section 185-F of the Customs Act, 1969:

“File. Issue NBW against absconders and BW against the lady absconder”

4. Learned counsel for the Applicants submitted that the Applicants were not involved in the day-to-day business respectively of the bonded warehouse and of the importing firm; that one of the accused (not Applicant herein) also resided abroad; and yet, the final challan proceeded to rope-in all of them because they were, or had been, partners in the respective firms. He submitted that in view of section 24-A of the General Clauses Act, 1897, the learned Special Judge was required to apply his mind to the final challan, but he proceeded to accept the same mechanically and issued warrants against the Applicants.

On the other hand, learned counsel for the Respondent submitted that the learned Special Judge has only taken cognizance on the final challan which was submitted also in furtherance of the order passed by a Division Bench of this Court; that a preliminary inquiry by the Special Judge into the offence alleged is envisaged only under sub-section (3) of section 185A which does not apply to a report/challan submitted by an officer of customs under clause (a) of sub-section (1) of section 185A; and that on a challan submitted under said provision, the Special Judge is not required to assign reasons for taking cognizance of an offence.

5. Heard the learned counsel. The impugned order has been passed under section 185A(1)(a) of the Customs Act, 1969 which

empowers the Special Judge to take cognizance of an offence punishable under said Act upon a report in writing made by an officer of customs. It is similar to the taking of cognizance by a Magistrate under section 190(1)(b) Cr.P.C. upon a report in writing made by a police officer¹, and where the settled law is that the exercise of such power should not to be interfered with lightly as it is not strictly a judicial order *albeit* it has to be exercised judiciously.²

6. The ground urged by the Applicants for interfering with the impugned order is that since it does not assign reasons for taking cognizance, it is an order without application of mind. While I agree with learned counsel for the Applicants that the act of taking cognizance upon an investigation report/challan implies the application of some mind to the report, but that submission would have been of force had the Applicants demonstrated *prima facie* that the report did not disclose a triable offence. It is not the case of the Applicants that the bonded goods had not been removed from the warehouse and there was no offense, but their case is that they were not the ones who committed that offence. Thus, when the challan discloses a triable offence, I do not see the purposing of requiring the Special Judge to pass an order afresh. In any case, in passing the impugned order the Special Judge has only taken cognizance of the offence, and has not determined the guilt of the Applicants, and if the Applicants feel wrongly accused, they are free to apply to the Special Judge for acquittal as had also been observed by the learned Division Bench *supra*. For these reasons, I am not inclined to interfere with the impugned order. The revision is dismissed.

JUDGE

Karachi
Dated: 25-10-2022

¹ *Abdul Rauf v. The State* (1980 SCMR 58).

² *Bahadur v. The State* (PLD 1985 SC 62).