



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Pronounced on: 20th May, 2025***
+ **W.P.(CRL) 68/2017, CRL.M.A. 289/2017**

KAMAL KUMARPetitioner

Through: Mr. H.G.R. Khattar, Advocate.

Versus

UNION OF INDIA & ANRRespondents

Through: Mr. Satish Aggarwala, Sr. Standing
Counsel with Mr. Gagan Vaswani,
Advocate for R-2/DRI.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Articles 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed on behalf of the Petitioner-Kamal Kumar seeking quashing of Criminal Complaint bearing CC No. 113/1/11, filed for the offence punishable under Section 177 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*).
2. ***Briefly stated***, the officers of DRI were investigating a case of purported misdeclaration and undervaluation of various types of Pesticides.



The Petitioner was summoned under Section 108 Customs Act, 1962 in compliance of which he tendered his Statement dated 02.08.2011 and 14.09.2011.

3. *According to the Petitioner*, he duly cooperated during the investigations. However, he was shocked to receive a summons in the Complaint case bearing CC No. 113/1/11 wherein the allegations were made against him that during the recording of Statement on 14.09.2011 by Respondent No. 2, he gave vague replies and did not provide details of his employees or his Bank transactions. It was alleged that the Petitioner admitted certain facts only when confronted with the documents. It was further alleged that his aforesaid conduct, constituted offence under Section 177 IPC as he had furnished information which he believed to be false.

4. Petitioner moved an Application under Section 245(2) Cr.P.C. seeking discharge in the aforesaid Complaint Case. Learned MM *vide* order dated 06.06.2016 dismissed his Application by observing that *prima facie* offence under Section 177 IPC was disclosed from the averments made in the Complaint.

5. It is asserted by the Petitioner that the Complaint itself is an abuse of process of law and therefore, it is liable to be quashed. The *grounds* essentially on which the quashing of the Complaint is sought, is that no offence under Section 177 IPC has been disclosed. Furthermore, it is evident that proceedings under Customs Act or offences thereof, is not covered under Section 177 IPC as a separate Complaint bearing CC No. 125/1/14 under Sections 132/135 Customs Act has already been filed against the



Petitioner, on which cognizance has been taken by the Magistrate.

6. It is submitted that Section 177 IPC affects the persons, who are under legal obligation to assist public servants by furnishing the information. The term “*legally bound*” has not been defined in the Code. The obligation of answering questions, does not imply a duty of furnishing information; it does not bring a person under 177 IPC.

7. It is submitted that the Customs Act, 1962 is a self-contained Act, which contains provisions regarding the seizure, search, arrest, confiscation of goods in possession, penalties for breach of Procedures; for prosecution of persons accused of offences. **Section 41 IPC** defines special laws as applicable to a particular subject. **Section 132 Customs Act** deals with false declaration, false documents, etc.

8. **Section 26 General Clauses Act, 1977** states that where an act or omission constitutes an offence in two or more enactments, then the offender shall be liable to be prosecuted and punished under either of the two enactments and shall not be liable to be punished for the same offence under two Acts.

9. **Article 20(2) of the Constitution of India** also gives protection to a person from being prosecuted and punished for the same offence more than once.

10. Likewise, **Section 300 Cr.P.C.** prohibits the person being subjected to *double jeopardy*.

11. The offence under Section 177 IPC and Section 132 of the Customs Act both deal with providing false information and, therefore, a separate



Complaint under Section 177 IPC amounts to subjecting the Petitioner to prosecution twice for an offence under two different Complaints, which is not permitted under the law. Hence, the quashing of the present complaint has been sought.

12. Petitioner has relied upon the judgement of Bombay High Court in Emperor v. Ganpat Subarao Kashyapi MANU/MH/0003/1934 to show that when there was no contract between him and the DRI officers, he was not legally bound to furnish information.

13. He has further placed reliance on the case of Sukamal Kanti Ghosh v. Soulmari Ashram & Ors. MANU/WB/0050/1970_ wherein, the principle of prohibition of *double jeopardy* as provided under Article 20(2) of the Constitution of India was upheld.

14. Further, in the case of Kolla Veera Raghav Rao v. Gorantla Ventaeshwara Rao MANU/SC/0086/2011, Hon'ble Apex Court it was held that Section 300 (1) Cr.P.C. is wider than Article 20 (2) of the Constitution.

15. Reliance has also been placed on the case of Doongarshi Das v. The State, MANU/WB/0046/1965 wherein it was observed that the special provision under special law cannot be ignored over the general law as provided under Cr.P.C.

16. In the case of Superintendent of Customs and Central Excise v. R. Surendar MANU/TN/0139/1992, wherein the alleged contraband articles were seized and the disposal of such properties was made under the Customs Act 1962, it was held to be permissible only under the machinery provided therein and not otherwise and the Criminal Court has no



jurisdiction or power to order interim custody of such articles or return of the same, except to pass an Order for disposal extreme cases only in accordance with the Customs Act 1962.

17. Reliance was also placed on the case of Zaverbhai Amaidas v. The State of Bombay MANU/SC/0040/1954, wherein the rule of construction of statutes was stated and it was observed that when a latter statute again prescribes an offence created by a previous one and imposes a different punishment or varies the procedure as prescribed in the previous Statute, the earlier Statute is repealed by the later Statute.

18. **Submissions heard and record perused.**

19. Essentially, the contentions of the Petitioner are that during his interrogation by the DRI in a Complaint, he had given a statement which is claimed to be false, for which, the present Complaint has been filed under Section 177 IPC. According to him, a separate Complaint under Section 132 Customs Act, has already been filed for the same offence and the present Complaint is not maintainable, as it tantamounts to subjecting the Petitioner to suffer for the same offence twice, which is prohibited under Section 300 Cr.P.C. as well as it amounts to violation of his Constitutional Right protected under Article 20(2) of the Constitution of India.

20. Pertinently, it is mentioned in the Complaint itself and has also been admitted by the learned Counsel on behalf of the Petitioner that in his Discharge Application which was filed under Section 245(2) Cr.P.C., same grounds had been taken and the said Application was dismissed by the learned MM *vide* order dated 06.06.2016. Admittedly, he filed a Revision



Petition challenging the order of learned MM wherein the same grounds as agitated in the present Writ Petition in addition to other grounds, were taken by on behalf of the Petitioner.

21. From the submissions made in the Complaint and the admissions made during the arguments, it is evident that the grounds on which the quashing of Complaint has been sought, have already been agitated before learned MM, who has dismissed the Application for Discharge. The Petitioner most appropriately, has availed the appropriate remedy of assailing the order by way of Revision and in these circumstances, the parallel challenge to Complaint on same grounds cannot be agitated by way of this Writ Petition.

22. In fact, filing this Writ Petition amounts to bypassing the determination by learned ASJ and the Petitioner should continue with his Revision rather than seeking a direct challenge to the order of learned MM, by way of present proceedings.

23. There is no merit in the present Petition, which is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 20, 2025

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