

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Const. Petition No.D-6342 of 2018

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Date

Order with signature of Judge  
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FOR DIRECTIONS

1. For orders on Misc. No.569/2019.
2. For orders on Misc. No.570/2019.

11.01.2019

Mr. Obaydullah Mirza, advocate for the petitioner(s).

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1. Granted.
2. Through above contempt application, it has been stated that the alleged contemnor has committed contempt of Court's order dated 31.10.2018 passed in the aforesaid petition, whereby, aforesaid petition was finally disposed of along with connected petitions through a combined order. It has been contended by the learned counsel for the petitioner/applicant that inspite of specific directions as contained in the Court's order dated 31.10.2018, alleged contemnor, while mis-interpreting the Court's order and in total disregard of Court's directions, has not allowed provisional release of the consignment, whereas, reference has been made to the provisions of Section 81 and 83 B of the Customs Act, 1969, whereas, according to learned counsel, the respondents were directed to allow the provisional release of the consignment of the petitioner subject to securing of disputed amount of duty and taxes in accordance with law. It has been prayed that the contempt of Court proceedings may be initiated against the alleged contemnor for defiance of Court's order as referred to hereinabove.

In order to examine the veracity of above contention, record was examined, which shows that above petition along with other petitions was dismissed as not pressed vide combined order dated 31.10.2018 in the following terms:-

“ Learned counsel for the petitioner, under instructions, does not press instant petition, as according to learned counsel the

Orders-in-Original in all these cases have already been passed, whereas, the petitioner intends to file appeal against such Orders-in-Original before Collector (Appeals) Customs Karachi, in accordance with law, however, requests that the respondents may be directed to allow provisional release of the subject consignments, as the petitioner is willing to secure disputed amount of duty and taxes, along with fine and penalty in accordance with law. Learned counsel for respondents, as well as Assistant Attorney General, do not oppose disposal of instant petitions in the above terms.

Accordingly, instant petitions are dismissed as not pressed along with listed applications, whereas, petitioner will be at liberty to seek remedy against the Orders-in-Original passed in the instant matters in accordance with law. However, the request of the petitioner for provisional release of subject consignments shall be examined and processed by the respondents, subject to securing disputed amount of duty and taxes along with fine and penalty, strictly in accordance with law."

Perusal of hereinabove order shows that in view of Order-in-Original having been passed against the petitioner during pendency of above petitions, above petition along with connected petitions was dismissed as not pressed by the petitioner, who intended to file appeal against such Orders-in-Original before the Collector of Customs (Appeals), Karachi, to seek further remedy in accordance with law, whereas, respondents were however, directed to consider the request of the petitioners for provisional release of consignment(s) subject to securing the amount of duty and taxes along with fine and penalty, strictly in accordance with law. Nothing has produced on record to show as to whether the petitioner has secured the amount of duty and taxes along with fine and penalty before the concerned Collectorate, with a request to allow provisional release of consignment of

the petitioner, nor any order of refusal of such request of the petitioner has been annexed along with listed application. Moreover, respondents were directed to consider the request of the petitioner for provisional release of the consignment(s) in accordance with law, whereas, no such directions were issued to the respondents/alleged contemnor, to the effect that subject consignment of the petitioner shall be necessarily released, irrespective of any factual or legal impediment defect, if any, in this regard. Since main petitions were dismissed as not pressed by the petitioners in view of the fact that Order(s)-in-Original were passed during pendency of petitions as no stay was operating in the above petitions, and the petitioners intended to seek further remedy by approaching the relevant statutory forum i.e. Collector of Customs (Appeals), in accordance with law, and there were no specific directions to the respondent/alleged contemnor to release the subject consignment of the petitioners, therefore, we are of the opinion that no prima-facie case of violating the Court's order has been made out under the facts and circumstances of the instant case. It may be further observed that tendency to file contempt application, without any factual or legal justification, after final disposal of the case, has recently been increased, whereas, in the garb of contempt application, some different or additional relief is sought, which is not even part of the relief as claimed in the main case. In the instant matter, neither the Order-in-Original passed against the petitioners have been placed on record nor this Court is aware of the nature of proceedings initiated against the petitioner, moreover, further progress after final disposal of above petition has also not been placed on record. Accordingly, we are not in a position to form any opinion either on the merits of the case or subsequent development, if any, after final disposal of above petition vide order dated 31.10.2018.

In view of above facts and circumstances of instant case, we do not find any substance in the contempt application, which appears to be

misconceived, hence, dismissed in limine. However, in case of any grievance against any order or inaction on the part of the respondents, petitioner will be at liberty to seek further remedy by filing fresh proceedings in accordance with law.

J U D G E

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Nadeem