

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.18589 of 2010

Date of decision: 09.02.2015

Naresh K. Parekh son of Shri Khatau Parekh, aged 49 years,
Managing Director, Parekh Marine Agencies Private Limited, and
others.

... Petitioners

versus

State of Punjab, through Principal Secretary to Government of
Punjab, Department of Home and Justice, Punjab Civil Secretariat,
Chandigarh, and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. R.S. Cheema, Senior Advocate,
with Mr. Sanjog Parab, Advocate,
and Mr. A.S. Cheema, Advocate,
for the petitioners.

Mr. Ranbir Singh Pathania, DAG, Punjab.

Mr. Naresh Kumar Joshi, Senior Counsel Special
Engagement for respondents 2 and 3.

Mr. Prantap Sharma, Advocate, for
Mr. Sanjeev Manrai, Senior Advocate,
for respondent No.5.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. From the day when this court passed an order on
04.10.2011 observing that the report presented under Section 173

Cr.P.C. did not reveal any incriminating materials as having been gathered to sustain the imputation of commission of offences under Sections 420, 403, 407, 408, 409, 379, 506 and 120B IPC, no better progress has been made. This complaint was registered at Ludhiana City Police Station by an importer of goods against the petitioners who were but Discharge Port Agents operating at the port of Bombay. The complainant was an importer of certain shipment said to contain copper cathodes but when 4 of the containers were opened, they revealed that they did not conform to the specification at the Bill of Lading but there were only some stones. The goods were reported to have been shipped from Tanzania and evidently for any discrepancy in the goods from what were mentioned in the Bill of Lading and the goods that were actually discharged at the port, an action against the petitioner could have been sustained only if there was any modicum of evidence or materials brought to show that the seals at the port of discharge had been tampered with and the petitioners had substituted the goods described in the Bills of Lading to the stones as they turned out to be.

2. The petitioners would rely on the fact that there were no inculpatory circumstances brought against the petitioners to justify a report from the police that the petitioners had any role in the acts attributed to them. On a complaint which was made before the Commission of Customs, the Deputy Commissioner of Customs had

undertaken an investigation and on the basis of statements recorded and documentary evidence submitted, he was of the following view:-

“A. The seals of the containers were not tampered with after the containers landed in India and the seals remained intact from the time the container entered into Jawaharlal Nehru Port till it reached the Container Freight Station.

B. As regards the difference in Seal Numbers shown on the Bill of Lading issued by M/s Delmas, it was stated that Bill of lading was prepared on the basis of details given by the shipper to the Line at the port of shipment, hence different seal number is reflected on the bill of lading issued by M/s Delmas.

C. The seal numbers found on the containers belonged to the same series of the bottle seals mentioned in the B/L (which is supposed to have been supplied by the Shipping Agent at the time of stuffing by M/s Delmas).

D. The theory of replacement of the original cargo by tampering with the seals on the way to the CFS, may not hold water as the seal remained intact from the Jawaharlal Nehru port to the CFS. And also in some of the containers the time taken to reach the CFS from the Port Gate is as less as 56 minutes, thereby ruling out the possibility of cargo being replaced en route to CFS.

E. From the preliminary investigations it is apparent that this is a fraud by an organized group operating internationally by cheating importers.

Further investigations are being carried out in this matter.”

After the writ petition was filed and when the details were again gathered, the Assistant Commissioner of Customs has reiterated along with the affidavit the very same observations as we have extracted above. Independently of the investigation and the report by the Commission of Customs, the joint inspection reports made and brought on record would reveal that the seals were intact and there had been no tampering done at the port of discharge. As regards the discrepancy in the seal number shown in the Bill of Lading issued by the shipper M/s Delmas and the seals that were found in the containers, the report of the Assistant Commissioner of Customs itself reveals that on the basis of the details given by the shipper (consignor), the seal numbers had been given to the containers and the discrepancy emanated even at the port of export.

3. It appears that the State of Tanzania were also apprised about the fraud said to have been committed by the exporter/consignor and the State authorities of Tanzania were reported to have found the fraud as having been made at the place of export itself. With all the details relating to the integrity of the seals at the time of discharge and the impossibility of any tampering to have been done, there ought to be some basis for the police to present a challan before a court for a prosecution to continue.

4. Indeed, the limit of intervention for a court to quash a complaint is at all times restricted to examining whether the averments as contained in the FIR are sufficient to sustain the commission of offence. If, in this case, the Bill of Lading would show the place of discharge at Bombay and the complaint would state that the present petitioners had given some undertaking to deliver the goods at Ludhiana where the complaint was registered, there should have been at the first some material to show that there was a cause of action at Ludhiana where the complaint could have been registered. There was simply no basis for the police to even undertake an investigation at Ludhiana when no materials were disclosed in the complaint by the complainant that there was any criminal offence committed within the jurisdiction where the complaint was registered. On registration of FIR, any further investigation would have only meant appropriate investigation by collecting documentary evidence or oral evidence of tampering with the seals or act of substitution of the shipments. If the materials collected from the customs authorities and the joint reports only showed that the seals were intact that there had been no tampering done, there was no scope for finding that the discharge agents at Bombay could be made answerable. The action could have been carried on only against the consignor/shipper or the liners, if the complainant had any ground to suspect that there had been

substitution of goods by the liner. It appears there had been actions before the High Court at Bombay in its admiralty jurisdiction claiming the monetary value of goods that were contracted to be supplied but failed to be supplied and for other reliefs. What was possible of redressal as a breach of contract against the exporter has been converted as a criminal case against Discharge Port Agents, with no materials at all to carry forth investigation further and for going through a process of trial before the court at Ludhiana. The entire exercise is a wasteful one on the part of the police and I do not even find any sincerity of purpose with the police authorities in the manner that they have responded to the court's directives ever since the order was passed by this court on 04.10.2011 till date. The FIR and the subsequent proceedings are quashed and the writ petition is allowed. I assess a cost of ₹25,000/- as recoverable against the State for the untenable conduct and for the waste of judicial time. The State shall be at liberty to secure the cost from the officer who was incharge and who was responsible for prosecuting the case without any material and recover the same.

(K.KANNAN)
JUDGE

09.02.2015
sanjeev