

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

**CWP No.5573 of 2016
Date of decision:4.4.2016**

**Jeewan Mehra (s/o Late Shri Kedar Nath Mehra), Partner M/s
Swastika Enterprises, 13/1 Rani Ka Bagh, Amritsar**

.....Petitioner

Union of India and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vishal Aggarwal, Advocate
for the petitioner.

Ajay Kumar Mittal, J.

1. The petitioner prays for issuance of a writ of mandamus directing any independent agency to conduct impartial enquiry against the role of the respondents in coercively taking six post-dated advance cheques from him without any liability or notice regarding any proceedings. Further prayer has been made for quashing the five complaints, Annexures P.3 to P.7 and five notices of accusation, Annexures P.11 to P.15 issued under section 138 of the Negotiable Instruments Act, 1881 (in short, "the N.I.Act") against the petitioner by the learned Judicial Magistrate Ist Class, Amritsar on 18.12.2015. Direction has also been sought to respondent No.2 to return the amount of ₹ 5 lacs alongwith interest at the rate of 18% per annum w.e.f 20.1.2004 till the date of actual payment, for which three

pay orders dated 20.11.2004 had been taken from the petitioner.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. During the years 1995-96 to 1999-2000, M/s Swastika Enterprises – the petitioner-firm had obtained Advance licences issued by the office of the Regional Joint Director General, Foreign Trade, Amritsar as per the Export and Import policy for the relevant years announced by the Ministry of Commerce. Under the Advance licences, import of raw material was allowed at concessional rate of customs duty on the condition that the importer shall make export of the goods manufactured out of the material imported. Each advance licence was to be got redeemed from the Director General Foreign Trade (DGFT) for which the importer of the material had to submit the documents relating to the import and export of the goods. In the case of the petitioner firm, the raw materials were acrylic fibre and synthetic waste and the goods to be exported were blankets. On 2.8.2001, officers from the Directorate of Revenue Intelligence, Amritsar Unit (DRI) visited the business premises of the firm and seized almost all the records including the ledgers for the years 1995-96 to 1999-2000. On 8.5.2003, officers of the DRI recorded statement of the petitioner concerning the advance licences taken by the firm during the years 1995-96 onwards regarding the imports and exports made and the redemption of the licences by the DGFT etc. The petitioner as partner of the firm explained everything to the said officer. Thereafter, the Senior Intelligence Officer, DRI issued summons under section 108 of the Customs Act, 1962 (in short, “the Customs Act”) in the name of the petitioner for attending the DRI office in person on 7.1.2004.

Due to the marriage of his daughter, the petitioner could not appear on the said date. On 19.1.2004 on return to Amritsar, the petitioner went to the office of DRI, Amritsar. On 19.1.2004, the officers of DRI questioned the petitioner regarding the spinning charges per kg. of the yarn from acrylic fibre and synthetic waste and regarding the extent of waste taking place in the spinning. The petitioner explained that the charges had been increasing over the years and the wastage was around 19%. According to the petitioner, the questions which were asked were hypothetical and could not be answered on the basis of the information available in the ledgers for the years in question. Based on the rough calculations, the petitioner was made to admit that the total amount of spinning charges of ₹ 2,20,03,995/- paid during the years 1996-97 to 1999-2000 were divided by ₹ 8 per kg. The quantity of yarn worked out to 275.5 MT and secondly if the maximum of 19% wastage as informed by the petitioner was taken into consideration, then the total import of acrylic fibre/synthetic waste came to 327.8 MT whereas the firm had imported about 400 MT of acrylic fibre/synthetic waste. After obtaining the statement of the petitioner on 19.1.2004, he was detained in the DRI office during the night of 19/20.1.2004. On 20.1.2004, when the petitioner was not well, he was made to make another statement to the effect that total four licences were yet to be redeemed by the DGFT. Further, the export obligation had been met with after purchasing the blankets from open market or after the firm's own manufacture. Further, in the name of voluntarily payment of the duty saved on 49.241 MT material imported against the two licences dated 23.4.1998 and 19.3.1998, the petitioner was coerced to arrange demand drafts of ₹ 5 lacs and also give

advance cheques for ₹ 13,44,861/- in the name of the Commissioner of Customs, Amritsar on the spot without any notice or liability. The petitioner had to arrange three pay orders dated 20.1.2004 for ₹ 5 lacs and he had to give six advance cheques for ₹ 13,44,861/- in the name of Commissioner Customs, Amritsar. The petitioner issued stop payment instructions to the bank regarding the six cheques which had been obtained from him. When the cheques were presented for encashment by the Commissioner, the same were returned dishonoured on account of stop payment instructions given to the Bank by the petitioner. Thereafter, five complaints under section 138 of the N.I. Act were filed by respondent No.2 against the petitioner. A show cause notice dated 29.3.2004 under section 28 of the Customs Act was also issued to the petitioner by the Deputy Director, DRI, Amritsar to explain to the Commissioner of Customs as to why the amount of duty allowed as concession on the material imported by the firm against the licences dated 23.4.1998 and 19.3.1998 should not be recovered alongwith interest and why a penalty should not be imposed upon him. Reply was filed by the petitioner to the notice. According to the petitioner, the show cause notice issued on 29.3.2004 was in respect of imports made in the year 1998 whereas the maximum period of five years under Section 28 of the Customs Act was already over. The Central Board of Excise and Customs vide notification dated 18.2.2005, Annexure P.8 transferred the case from the Commissioner of Customs, Amritsar and appointed Commissioner of Customs (Export Promotion) Mumbai to act as Commissioner of Customs, Amritsar for the purpose of adjudication of the case. The Judicial Magistrate Ist Class, Amritsar vide judgment dated

13.9.2011 convicted the petitioner in five complaint cases to undergo RI for two years and to pay fine of ₹ 2000/- in each of the five cases. The appeals filed against the said judgment were dismissed by the Additional Sessions Judge, Amritsar vide order dated 13.9.2011, Annexure P.9. The petitioner filed five criminal revisions in this court which were allowed vide order dated 31.10.2015, Annexure P.10 with a direction for de novo decision in the cases. The trial court issued five notices dated 18.12.2015, Annexures P.11 to P.15 regarding notices of accusation in each case. Hence the instant petition by the petitioner.

3. We have heard learned counsel for the petitioner.

4. The primary grievance of the petitioner raised in the petition relates to holding of an enquiry by an independent agency into the events that had taken place in the year 2004. Further, quashing of five complaints Annexures P.3 to P.7 filed in the years 2004 and 2005 and summoning orders (Annexures P.11 to P.15) now issued in pursuance to the remand order passed by this Court, has been prayed. A prayer has also been made for return of ₹ 5,00,000/- recovered from the petitioner in the year 2004. Reliance was placed upon judgment of this court rendered in CWP No.4709 of 2015 (*Sumit Agencies vs. State of Punjab and others*) decided on 8.7.2015 in support of the claim made in the writ petition.

5. Admittedly, the complaints in the present case relate to the year 2004 whereas the present petition has been filed in the year 2016 after a lapse of about twelve years. The Apex Court in *State of Jammu & Kashmir vs. R.K.Zalpuri and others*, (2015) 4 SCT 457, while delving into the issue of delay in approaching the court summed up the relevant case law as

under:-

“21. In this regard reference to a passage from ***Karnataka Power Corpn. Ltd Through its Chairman & Managing Director & Anr Vs. K. Thangappan and Anr, (2006) 4 SCC 322*** would be apposite:-

“Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party”.

After so stating the Court after referring to the authority in ***State of M.P. v. Nandalal Jaiswal, (1986) 4 SCC 566*** restated the principle articulated in earlier pronouncements, which is to the following effect:-

“the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked,

unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction”.

22. In *State of Maharashtra V Digambar, (1995) 4 SCC 683* a three-judge bench laid down that:-

“19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person’s entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.”

23. Recently in *Chennai Metropolitan Water Supply and Sewerage Board & Ors. Vs. T.T. Murali Babu, (2014) 4 SCC 108*, it has been ruled thus:

“Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in

the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis”.

24. At this juncture, we are obliged to state that the question of delay and laches in all kinds of cases would not curb or curtail the power of writ court to exercise the discretion. In ***Tukaram Kana Joshi And Ors. Vs. Maharashtra Industrial Development Corporation &Ors, (2013) 1 SCC 353*** it has been ruled that:-

“Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience”.

And again:-

“No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in

favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide *Durga Prashad v. Chief Controller of Imports and Exports*, (1969) 1 SCC 185, *Collector (LA) v. Katiji* (1987) 2 SCC 107, *Dehri Rohtas Light Railway Co.Ltd. v. District Board, Bhojpur*, (1992) 2 SCC 598, *Dayal Singh v. Union of India*, (2003) 2 SCC 593 and *Shankara Coop. Housing Society Ltd. v. M. Prabhakar*, (2011) 5 SCC 607)”

6. The present petition at this belated stage is not maintainable and is not bonafide as well. The petitioner had been convicted in the five criminal complaints by the trial court which was upheld on appeal by the Additional Sessions Judge (A-1), Fast Track Court, Amritsar. However, this court on technical ground in view of judgment of the Apex Court in ***Nitinbhai Seevatilal Shah and another vs. Manubhai Manjibhai Panchal and another***, (2011) 4 RCR (Criminal) 148 had remanded the matter to the trial court for *de novo* trial. The factual matrix shows that it is an attempt to thwart the legal process being adopted against the petitioner which was put into motion in the year 2004.

7. The prayer for quashing of complaints and the summoning order also cannot be granted as on merits on earlier occasion, the petitioner had been convicted and sentenced but it was only for technical reasons that the matter has been remanded. Thus, no case for quashing the complaints or summoning order would arise. Equally, then the prayer for return of ₹ 5 lacs also cannot be accepted.

8. With regard to the judgment in *Sumit Agencies'* case (supra), suffice it to notice that in such circumstances, each case has to be decided on its own facts. In the present case, the controversy relates to the year 2004. Complaints under Section 138 of the N.I. Act were filed against the petitioner by the Commissioner of Customs, Amritsar in the year 2004 wherein the petitioner was convicted and appeal was dismissed though on technical grounds it has been remitted to the trial court for *de novo* trial. The situation in the present case is, thus, different. Therefore, the petitioner cannot derive any advantage from the said decision.

9. In view of the above, we are not inclined to interfere in writ jurisdiction under Articles 226 of the Constitution. Consequently, the petition is dismissed. Needless to say, nothing observed hereinabove shall be taken to be an expression of opinion on the merits of the controversy.

(Ajay Kumar Mittal)
Judge

April 04, 2016
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(Raj Rahul Garg)
Judge