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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(CRL) 2227/2006

SUDHIR GOEL ..... Petitioner

Through: Ms. Charu Sangwan, Advocate with Mr. Anmol Jain, Advocate. & Mr. Ramit Rana, Advocate.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr. Bhagwan Swarup Shukla, CGSC with Shekhar Gahlat, Adv. for UOI/R-1.
Mr. Narender Mann, Spl. PP for CBI with Mr. Manoj Pant, Adv.
Mr. Sanjeev Narula, Sr. Standing counsel with Mr. Abhishek Ghai, Adv. for R-3 to 5.

**CORAM:**
**HON'BLE MR. JUSTICE R.K.GAUBA**

**<u>O R D E R</u>**

% **21.04.2017**

1. This petition invoking Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was submitted on 23.09.2006 praying for issuance of writ of mandamus, *inter alia,* for directions to the Union of India (first respondent) and Director, Central Bureau of Investigation (CBI) (second respondent) to investigate and to initiate appropriate proceedings and prosecution against the other respondents, they being R.K. Gupta, Commissioner of Customs (third respondent), Mr. Sanjeev Gautam, Deputy Commissioner, Special

Intelligence Investigation Branch (SIIB) (fourth respondent), Mr. S.S. Ahuja, Appraiser SIIB (fifth respondent), Mr. S.K. Bahot, Inspector SIIB (sixth respondent), and Dr. Badri Prasad, Director Central Revenue Control Laboratory (CRCL) (seventh respondent) on the grounds that they had committed offences punishable under Sections 166, 167, 192, 211, 343, 348 and 471 read with Section 120 B of Indian Penal Code, 1860 (IPC) and for compensation to be awarded in favour of the petitioner since he had been subjected to unlawful and illegal detention thereby depriving him of his liberty besides public ridicule, harassment, humiliation, lowering his dignity in the eyes of friends, relatives and public at large.

2. When the petition came up for hearing for the first time on 27.09.2006 it was observed by the learned Single Judge then in seisin of the case that the averments in the petition were deficient in clarity. Thus, the petitioner was directed to file a brief synopsis giving datewise events upto the date of the cause of action claimed so that the grievances of the petitioner could be identified. The petitioner submitted a synopsis in compliance on 29.09.2006.

3. Upon perusal of the writ petition, the synopsis and documents filed therewith it is revealed that the case of the petitioner is that he was one of the directors of M/s Mangali Impex Ltd., he also being the proprietor of M/s J.K. Impex. The company M/s Mangali Impex Ltd. had exported 21 consignments of calcium stearate while M/s J.K. Impex had exported 6 consignments of calcium stearate, both to M/s Fair Deal Building Chemical, Sharjah, the cargo having been booked for export from Inland Container Depot (ICD), Tughlakabad (TKD), New Delhi. On the basis of these exports, the said entities availed of benefits under Duty Entitlement

Passbook Scheme (DEPB), the proceeds having been released through banking channels. At the time of exports, the officials of the Customs Department drew samples at ICD/TKD. According to the case of the petitioner, the samples thus drawn were examined at CRCL of the Customs Department confirming the contents to have characteristics of calcium stearate.

4. It appears the officials of SIIB made certain searches in the business and residential premises of the petitioner on 9.8.2000. It is alleged by the petitioner that he was subjected to illegal confinement for three days i.e. from 9th to 11th August, 2000 and it was only upon intervention of the National Human Rights Commission (NHRC), to which telegraphic messages had been sent, that he was released. It is stated that on 8.12.2000, the custom officials of SIIB prepared fresh samples in the customs house in the presence of Deepak Sharma of M/s Deepak Sharma & Company, custom house agent (CHA) whose services had been availed by the petitioner for these exports. It is his case that for such purposes, while drawing samples against the *panchnama* dated 8.12.2000, the samples which had been earlier retained were desealed and tampered with before being sent for second testing at CRCL. The samples thus drawn and sent to CRCL, statedly at the instance of the third to sixth respondents, allegedly were subjected to testing under the control of seventh respondent in CRCL, the report issued in its wake stating that the goods exported were not calcium stearate but calcium carbonate.

5. Against the above backdrop, per the petitioner, he was constrained to move an application for anticipatory bail under Section 438 Cr.P.C. before Punjab & Haryana High Court which granted him protection against arrest

by directing advance notice of 15 days to be given. It is stated that on 27.4.2001, the petitioner was arrested by SIIB on the allegations that calcium carbonate had been exported against the declaration that the exported goods were calcium stearate, such case being founded on the basis of second test report of CRCL.

6. On 11.5.2001, the application moved by the petitioner for release on bail under Section 439 Cr.P.C. came up before the Court of Additional Sessions Judge, New Delhi. While the petitioner was ordered to be released on bail subject to he furnishing personal bond with a surety bond on such terms as were specified, the sessions court directed that the matter required probe by Central Bureau of Investigation (CBI) suspecting that the episode which had come to light could not be an isolated case and that exports made against false declarations could be part of an ongoing racket wherein there may have been involvement of public servants including those of the Department of Customs and the Laboratory attached thereto.

7. The Department of Customs moved this Court by filing Crl. Misc. (Main) 1775/2001 praying for cancellation of the bail under Section 439 (2) Cr.P.C. and Crl.Mis. (Main) 1776/2001 praying for order dated 11.5.2001 of the sessions court to be set aside. By order dated 14.5.2001, the learned Single Judge directed that the order dated 11.5.2001 of the sessions court shall not be implemented. It is stated that by order dated 21.5.2001, the release of the petitioner on bail in terms of order of the Sessions Court was stayed but the directions regarding investigation by CBI were permitted to be complied with.

8. It is against the above-noted backdrop that on the basis of complaint made by Chief Commissioner of Customs to CBI, *inter alia,* with reference

to the order dated 21.5.2001 of this Court, and the order dated 11.5.2001 of the court of sessions, that a crime was registered by CBI vide RC.SIG 2001 E-0001, for investigation into offences punishable under Sections 120 B IPC read with 420 IPC and Sections 13(2) read with 13(1)(d) of Prevention of Corruption Act (PC Act), 1988 and substantive offences under Sections 420 IPC and 13(2) read with 13(1)(d) of PC Act.

9. It is stated that on 14.9.2001 an order of detention was passed against the petitioner under Section 3(1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) and in its wake, the petitioner was subjected to detention w.e.f. 17.9.2001. The order of detention was eventually held to be illegal and consequently quashed by a division bench of this Court by order dated 21.2.2003.

10. On 21.6.2004, the CBI submitted report under Section 173 Cr.P.C. in the Court of Special Judge (PC Act) on conclusion of investigation into above mentioned regular case which had been registered on 11.6.2001, it having not been able to gather any evidence which could substantiate the allegations made in the complaint received from Commissioner of Customs. The closure report was considered by the Special Judge, New Delhi and accepted by order dated 3.2.2006.

11. It is stated that during the course of investigation, samples of the subject consignments had been retrieved from the office of Commissioner of Customs ICD/TKD, New Delhi and subjected to re-testing by Indian Institute of Chemical Technology, Hyberabad, its test reports dated 15/17 May, 2002 revealing that all the samples were of calcium stearate with varying amounts of unreacted fatty acid (free fatty matters).

12. It is the allegation of the petitioner that the samples had been changed

and false case had been foisted against him by third to seventh respondents and that the matter required further investigation so as to arrive at the truth in accordance with law.

13. Though the petition was filed in September, 2006, it has suffered from delay due to failure at diligent prosecution by the petitioner, it having remained pending for more than ten years in this Court. It came up for consideration on various dates but with no effective assistance for expeditious adjudication. So much so that it came to be dismissed, by order dated 27.9.2013, in default and for non-prosecution on account of continued absence on the part of the petitioner, only to be later restored on his application by order dated 27.11.2014. The subsequent proceedings also reveal that the matter has remained hanging fire without requisite interest shown for assistance at hearing till 5.10.2016.

14. On 5.10.2016 when the matter was heard, submissions were made on behalf of the petitioner, *inter alia,* to the effect that the CHA M/s Deepak Sharma and Company had been wrongly joined in the proceedings of 8.10.2000 when samples were drawn for retesting, the contention of the petitioner company being that after the exports, the said CHA was no longer the agent of the petitioner. It may be added here that though time was taken by the counsel for the petitioner to place on record communications indicating coercion exercised upon the said CHA, no such material has been submitted.

15. On 5.10.2016, the learned counsel for CBI submitted that at the time of exports, three samples had been drawn, one being sent to CRCL which had reported the exported substance to be calcium stearate, the second sample having been retained at ICD/TKD, New Delhi and the third

accompanying the exported goods. He submitted that the samples tested at Dubai, the point of import, had indicated the exported consignments to be calcium carbonate instead of calcium stearate and, on such information being received, the third sample which had been retained with the Commissioner of Customs ICD/TKD was called for the purpose of drawing sample for retesting. The counsel for the petitioner pointed out lack of clarity in the closure report submitted by CBI as to the movement of the sample from the office of Commissioner of Customs ICD/TKD, New Delhi to IGI Airport where, in the premises of the new custom house, the *panchnama* dated 8.10.2000 had been prepared. In this context, reference was made to the averments in the reply submitted by the respondents on this subject.

16. The learned counsel on all sides have been heard against the above backdrop.

17. The petitioner through counsel submitted that he has been the victim of offences punishable under Sections 166, 167, 211 and 120 B IPC by the intentional acts of commission and omission on the part of third to seventh respondents herein and that the investigation carried out by the CBI into the case registered on the complaint of Commissioner of Customs at the instance of the court of sessions is not complete. It is noted that the third to seventh respondents to whom *mens rea* is attributed are public servants, they being officials of the department of customs or of CRCL connected thereto. The report under Section 173 Cr.P.C. submitted by the CBI on conclusion of investigation indicates the allegations made against public servants have been properly and thoroughly investigated. The allegations of intentional tampering of the sample by these officials for false report of retesting are in

the relm of speculation without any foundation. The petitioner concededly does not have any evidence from which even an inference to such effect could be drawn. As explained by the counsel for CBI, the need for retesting had arisen because of the input received from the authorities in Dubai, the point of import. There is no explanation worth the name in such regard.

18. Against this backdrop, without any substantive evidence being presented or offered, dishonest or fraudulent motive cannot be assumed on part of the third to seventh respondents. It must be added that questions of facts raised cannot even otherwise be investigated or addressed in the writ proceedings. There is nothing before the Court on which it can be concluded that the initial arrest of the petitioner in case of customs was groundless or that the subsequent detention under COFEPOSA was for reasons attributable to the second to seventh respondents.

19. Thus, the petition does not call for any relief or directions in the nature prayed.

20. The petition is dismissed with above observations.

**R.K.GAUBA, J**

**APRIL 21, 2017**
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