

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 182 OF 2004

The Board of Trustees of the	]	
Port of Mumbai, a Statutory	]	
Corporation incorporated under the	]	
Major Port Trusts Act, 1963 having	]	
its administrative Office at	]	
Shoorji Vallabhdas Marg, Mumbai	]	
400 038	]	...Petitioner

VERSUS

1.	The State of Maharashtra	]	
2.	The Senior Inspector of Police	]	
	Yellow Gate Police Station, Mumbai	]	
3.	The Commissioner of Customs -	]	
	Imports, Ballard Estate, Mumbai – 400 038	]	
4.	The Drugs Inspector (IB), Food	]	
	and Drugs Administration,	]	
	Maharashtra State, Survey No.	]	
	341, Bandra Kurla Complex,	]	
	Bandra (East), Mumbai – 400 051.	]	
5.	M/s. Magna Laboratories (Gujrat)	]	
	Plot No. 712, J Road, 40, Shed Area, G.I.D.C.,	]	
	Vapi – 385 196, India.	]	...Respondents

Mr. Umesh Shetty a/w. Rama Nagaswaman i/by Mulla and Mulla and
Craigie Blunt and Caroe for Petitioner.

Mr. A.R. Patil, APP for Respondent – State.

CORAM : S.S. SHINDE, J.
RESERVED ON : 24th JUNE 2019
PRONOUNCED ON : 09th OCTOBER 2019

JUDGMENT

1. This Writ Petition takes an exception to the order dated 29.07.2002 passed by the learned Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai.

2. Briefly stated, the fact that led the Petitioner to file the present Petition are as follows:

On 22nd January, 2002 the Respondent No. 5 had imported 60 cartoons of Gentamycin Sulphate BP98 under IGM Item No. 1072/403 of 2002. On 22nd January 2002 the said consignment was discharged at the Port of Mumbai on the Vessel of Nordsun. On 5th February 2002, in view of the theft of 30 cartons out of the above 60 cartons, necessary FIR was lodged by the Petitioner on 5th February 2002.

3. It is case of the Petitioner that, on 21st February 2002, the Petitioner was informed by Respondent No. 2 that three persons including Respondent No. 6 were arrested in connection with the offence of theft of the said 30 cartoons of Gentamycin Sulphate BP 98. On 5th March 2002,

the Respondent No. 2 had informed the Petitioner that pursuant to the application moved by one Sachin Gandhi, Director of Respondent No. 5 (who were the importers of the consignment), the Hon'ble Court passed an order directing possession of the said stolen property be given to Respondent No. 5 on submission of bond of Rs. 12,00,000/- (Rupees Twelve Lacs only) and that he had no objection for the said property given to Respondent No. 5 after completion of customs and MBPT (Mumbai Port Trust) formalities. In the aforesaid premises, as per the order, the Petitioner was required to handover the said 30 cartoons of Gentamycin Sulphate to Respondent No. 5 importers after completion of custom and MBPT formalities.

4. In the circumstances, the Petitioner vide their letter dated 8th March, 2002, requested the Respondent No. 2 to handover the said 30 cartoons of Gentamycin Sulphate BP 98 (which were supposed to have been recovered by the Police Authorities). On 16th March 2002, the drums (consisting of Gentamycin Sulphate) stuffed in gunny bags and cartoons has evidenced by the receipt dated 16th March 2002 were handed over by the Respondent No. 2 to the Petitioner for safe custody.

5. It is further the case of the Petitioner that, by a letter dated 26th March 2002 the Petitioner requested to Respondent No. 5 to expedite clearance of the said consignment after presenting proper documents and on completion of necessary customs and MBPT formalities and payment of upto date demurrage charges. The said letter was followed by the petitioner subsequent letters dated 23rd May 2002 and 9th July 2002. Subsequently on 2nd August 2002, the Respondent No. 2 informed the Petitioner that as per the orders passed by the learned Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai the Muddemal was to be returned to Respondent No. 6. Initially, the Petitioner believing bonafide that the said stolen property was not an imported consignment but belonged to Respondent No. 6, vide Petitioner letter dated 7th August, 2002 expressed their willingness to handover the said property to Respondent No. 2.

6. That, on 9th August, 2002 however, the Respondent No. 5 addressed a letter informing the Petitioner that the office of the Drug Controller Inspector had inspected the stolen cargo on 9th May 2002 and had ordered its destruction as the same was not fit for human consumption. It was also informed by them that they had approached for clearance of non-stolen goods of 30 cartoons of Gentamycin Sulphate BP 98 which was

in possession of the Petitioner. On 10th August, 2002 the Respondent No. 5 cleared the non-stolen imported consignment of 30 cartoons of Gentamycin Sulphate BP 98. On 29th August, 2002 the Petitioner forwarded to Respondent No. 2 the aforesaid letter of Respondent No. 5 dated 9th August, 2002. Subsequently, it was learnt that pursuant to the application moved by the Respondent No. 6 the learned Metropolitan Magistrate, 16th Court, Ballard Pier had passed the said impugned order dated 29th July 2002 directing that 500 Kgs of Gentamycin Sulphate contained in 50 containers be returned to Respondent No. 6 on executing bond of Rs. 13,88,000/-.

7. On 11th November 2002, the Revision application that was moved by Respondent no. 2 before the Hon'ble City Civil Court of Sessions, 18th Court was rejected by an order dated 11th November 2002 passed by the said Hon'ble Court.

8. On 17th January 2003 the Writ Petition No. 1670 of 2002 filed by Respondent No. 2 challenging the order dated 29th July 2002 passed by the said learned Metropolitan Magistrate, 16th Court for return of the said property to Respondent No. 6, and the said order dated 11th November 2002 passed by the City Civil Court of Sessions rejecting the said Criminal

Revision, was dismissed by the Hon'ble High Court primarily on the ground that the Respondent No. 6 had purchased the said property. So far as the aspect of the said property being an injurious drug was concerned, the Hon'ble High Court by the said order clarified that the concerned authorities may take appropriate action in that behalf. However, in none of the above proceedings, the Petitioner was neither impleaded as party and nor was heard in the matter.

9. It is further the case of the Petitioner that, by a letter dated 28th July 2003, the Respondent No. 2 informed the Petitioner that the documents produced by Respondent No. 6 i.e. invoice and other papers (covered by the said application dated 18th July 2002 moved by the Respondent No. 6) were verified by the Food and Drug Authority and it was found that the said documents were bogus and an offence had been registered with Yellow Gate Police Station inter alia under Sections 467, 468, 471, 420, 321 of the Indian Penal Code and Drug and Cosmetic Act and that inter alia Respondent No. 5 had been arrested.

10. Subsequently, the Advocate of Respondent No. 6 vide letter dated 3rd October 2003 informed the Petitioner that by an order dated 30th September 2003 passed by the learned Metropolitan Magistrate. 16th Court,

Ballard Pier, the application moved by Respondent No. 2 seeking possession of the stolen property had been rejected.

11. It is further the case of the Petitioner that, Respondent No. 2 vide letter dated 15th October 2003 referring to the said order dated 30th September 2003 requested the Petitioner to return the said property for the purpose of handing over the same to Respondent No. 6. The petitioner in the aforesaid premises, by a letter dated 18th October 2003 informed Respondent no. 2 that, the said property involved in theft, it may handed over to Respondent No. 6 on completion all MBPT, Customs and Assistant Drug Controller Formalities. On 21st November 2003, the Respondent No. 2, however in view of the aforesaid impugned order passed by the learned Metropolitan Magistrate insisted upon handing over of the said goods as per the said order. Being aggrieved by the impugned order dated 29th July 2002 passed by the learned Metropolitan Magistrate the Petitioner filed the present Writ Petition.

12. Learned counsel appearing for the Petitioner submits that, the learned Metropolitan Magistrate erred in passing the impugned order permitting the Respondent No. 6 to clear the said goods in question without clearance of customs and port trust formalities and without even

payment of demurrage charges which as on date of passing of the said order amounted to Rs. 32,454/-.

13. Learned counsel further submitted that, in law and particularly under Section 59 of the Major Port Trusts Act, so far as the unpaid demurrage in respect of the said goods is concerned, the Petitioner has a statutory lien on the said goods. Therefore, legally, the Petitioner could not have been compelled to give up their said statutory lien without payment of the said statutory charges. In support of his contention, learned counsel appearing for the Petitioner placed reliance on the expositions of the Supreme Court in the case of Board of Trustees of Port of Bombay and Ors. Vs. Shreyas Knittles¹ and Mumbai Port Trust Vs. Shree Laxmi Steels².

14. Learned counsel further submits that, the said stolen goods were not even fit for human consumption as the same were in fact required to be destroyed. Further, even the documents produced by Respondent No. 6 as per the investigation conducted by Respondent No. 2 were forged and fabricated. The said development is subsequent to the said impugned order and the aforesaid order passed by the Hon'ble High Court.

15. Learned counsel further submits that, the impugned order of

¹ (1997) 7 SCC 359

² (2018) 14 SCC 317

the learned Metropolitan Magistrate is in violation of the Petitioners' legal right to recover demurrage in respect of the said goods under the said Major Port Trust Act, 1963 and particularly Section 59 thereof, which confers statutory lien upon the petitioner's for recovery of unpaid demurrage and Section 61 of the said Act which authorizes petitioners to sell the concerned goods in respect whereof demurrage is not paid.

16. Learned counsel further submits that, the aforementioned order of the Hon'ble High Court in Writ Petition No. 1670 of 2002 and all other earlier orders by the learned Metropolitan Magistrate including the impugned order and the order of the Hon'ble Sessions Court in Criminal Revision Application No. 516 of 2002 were passed without hearing the Petitioner as Petitioner was not party to the said proceedings. Therefore, the Petitioner's right to claim demurrage and to seek retention of the said stolen goods, for recovery of demurrage and in exercise of statutory lien under Section 59 of MPT Act are not affected by the said orders. Further, the said goods being not fit for human consumption cannot be delivered to Respondent No. 6 without clearance of MBPT and customs formalities and without payment of demurrage. Therefore, learned counsel appearing for the Petitioner submits that Writ Petition may be allowed.

17. Heard counsel appearing for the Petitioner and learned APP appearing for Respondent Nos. 1 to 4. Though, fifth Respondent is served none appears to represent said respondent. With the able assistance of learned counsel appearing for the Petitioner and learned APP appearing for Respondent Nos. 1 to 4 perused the pleading in the Petition, grounds taken therein and also the annexures thereto and written notes submitted by the learned counsel appearing for the Petitioner.

18. It is an admitted position that, the order dated 29th July 2002 passed by the learned Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai has attained finality inasmuch as, the said order was challenged by the second Respondent by way of Revision Application in the City Civil Court of Sessions, 18th Court, Mumbai. However, the said Court rejected the revision application filed by the Respondent No. 1. Being aggrieved by the said order of the City Civil Court of Sessions, second Respondent filed Writ Petition being Writ Petition No. 1670 of 2002 before the High Court. However, the High Court by an order dated 17th January 2003 was pleased to dismiss the said Writ Petition. In that view of the matter, merely because the Petitioner was not party to the said proceedings before the learned

Metropolitan Magistrate, cannot be ground to quash and set aside the said order when Writ Petition filed by the second Respondent has been dismissed by this Court. However, there is a substance in the contention of the counsel appearing for the Petitioner that, in absence of impleading the Petitioner as party Respondent, the order passed by the learned Metropolitan Magistrate, may not bind the Petitioner. There is considerable force in the submission of the learned counsel that, under Section 59 of the Major Port Trusts Act, so far as unpaid demurrage in respect of subject goods is concerned, the Petitioner have statutory lien on the said goods as held by the Supreme Court in the case of Board of Trustees of Port of Bombay and Ors. Vs. Shreyas Knittles (Supra). In that view of the matter, as rightly submitted by the learned counsel, petitioner was entitled to the recovery of demurrage on said goods in exercise of statutory lien under Section 59 of the Major Port Trusts Act. Said rights of the Petitioner, in the facts of the present case, have not affected by the order passed by the Magistrate and confirmed by the City Civil Court of Sessions and by the High Court. The contention of the Petitioner that the said goods being not fit for human consumption and hence cannot be delivered to Respondent No. 6 without clearance of MBPT and Customs formalities and without payment of demurrage, needed consideration but the petitioner was not

party to said proceedings before the Magistrate.

19. It is true that the learned Metropolitan Magistrate has not considered the aforesaid aspect however, as already observed the order passed by the Magistrate which is impugned in the present petition, has been confirmed by this Court, the said order cannot be quashed and set aside as prayed by the Petitioner. However, it is clarified that the legal right of the Petitioner as argued by the learned counsel for the Petitioner, to recover demurrage in respect of the said goods under the Mumbai Port Trusts Act, 1963 and particularly Section 59 thereof, remained intact and not affected due to the aforesaid order passed by the learned Metropolitan Magistrate. Secondly, the learned Metropolitan Magistrate ought to have considered mandatory provisions of the Customs Act, that the Government clearance is necessary for of imported goods before said goods are handed over to concern person, so also the fact that the goods were stolen and the said goods were not fit for human consumption and cannot be delivered to Respondent No. 6. However, as already observed the impugned order is confirmed by this Court and even slightest interference in said order would amount to review of the earlier order passed by this Court.

20. With the aforesaid observations without causing interference in the order of the learned Metropolitan Magistrate which has been confirmed by the City Civil Court of Sessions and by this Court the Writ Petition stands disposed of. Rule stands discharged.

(S.S. SHINDE, J.)