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

CRM-M No.39745 of 2024
Date of decision: 20th August, 2024

M/s BDS Trading Co. & another

… Petitioners

Versus

State of Punjab & another

… Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Sumeet S. Brar, Advocate for the petitioners.

MANJARI NEHRU KAUL, J.

1. The instant petition has been filed under Section 482 Cr.P.C. seeking quashing of Complaint No.COMA/7258/2021 (Annexure P-1) pending before the learned Chief Judicial Magistrate, Ludhiana along with all consequential proceedings including order framing charges dated 20.02.2024 (Annexure P-12).

2. Learned counsel for the petitioners submits that the complaint, annexed as Annexure P-1, is entirely baseless and not supported by any evidence, indicating that respondent No.2 has fabricated a false case against the petitioner.

3. It has been contended by the learned counsel that petitioner No.1 is a proprietorship Company, with petitioner No.2 serving as Manager and authorized signatory, managing the daily operations of the Company. The petitioners, are registered with the GST department, and

had imported a consignment of 'Dry Dates' under Chapter heading 0804 1030 of the First Schedule of Customs Tariff Act, 1975. On 26.11.2019, they filed bill of entry No.5837499 through M/s International Cargo Clearing Services, Ludhiana, declaring Iraq as the country of origin. The bill of entry was accompanied by all necessary documents, including the invoice, packing list, bill of lading, and certificates confirming Iraq as the origin of the goods.

4. Furthermore, it has been urged by the learned counsel that the petitioners acted in good faith, with no malafides, as evidenced by the proper declarations and supporting documents. Learned counsel has, in support, drawn the attention of this Court to the different documents, i.e. exporter's bill dated 06.10.2019 (Annexure P-2), packing list (Annexure P-3), transport bill showing shipment via Jebel Ali Port to Ludhiana (Annexure P-4), certificate of origin from Sharjah Chamber of Commerce & Industry (Annexure P-5), Phytosanitary Certificate of Re-export stating Iraq as the origin (Annexure P-6), declaration form of the petitioners (Annexure P-7), certificates from Al Sayyar Trading LLC confirming Iraq as the origin (Annexures P-8 & P-9). It has been asserted that all these documents conclusively show that the petitioners have not committed any offence and it was thus, evident that the complaint had been filed with a malicious intent to harass the petitioners and thus, constituted a misuse of the legal process.

5. It has also been argued by the learned counsel that the petitioners had ordered ‘dry small dates’ from Iraq and relied on the suppliers’ documentation, which consistently confirm Iraq as the origin of the goods. The petitioners even sought verification from the supplier, who confirmed on 20.12.2019 that the goods were not of Pakistani origin. There is no evidence to suggest otherwise.

6. It has been further argued that the leaned trial Court, on 20.02.2024, erred in framing charges without properly assessing the material on record, ignoring the arguments of the petitioners and the evidence provided by the petitioners. Hence, it clearly warrants the quashing of both the complaint in question as well as the charges as they are based on unfounded allegations.

7. I have heard learned counsel for the parties and perused the relevant material on record.

8. Undoubtedly, this Court is vested with extraordinary powers under Section 482 Cr.P.C./528 BNSS. However, these powers must be exercised with the utmost caution and circumspection. When dealing with a petition under Section 482 Cr.P.C./528 BNSS, the Court’s focus should be limited to determining whether the complaints/FIR discloses the commission of a cognizable offence. At this stage, the Court cannot go beyond the allegations made in the complaint by examining the defence presented by the accused/petitioner, nor can it consider the

material relied upon by the petitioner. In the present case, as per allegations levelled in the complaint, the petitioner deliberately provided incorrect information about the country of origin of the goods in question, stating it as Iraq, in order to evade customs duty and taxes. Although the petitioner has directed the attention of this Court to various documents, bills and other annexures attached with the instant petition, once the complaint prima facie reveals the commission of cognizable offences, the Court cannot investigate the veracity of the allegations by considering the documents submitted by the petitioner while deciding a petition under Section 482 Cr.P.C./528 BNSS. Instead, the petitioner in the present case has raised several disputed questions of fact, which can only be examined during the trial, where both the parties will present their evidence and such evidence will then be tested on the touchstone of cross examination.

9. As a sequel to the above, the instant petition stands dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

August 20, 2024
rps

Whether speaking/reasoned Yes/No
Whether reportable Yes/No