

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.904 of 2021

Arising Out of PS. Case No.- Year-0 Thana- District- East Champaran

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M/s. Road Star Logistics Pvt Ltd, a Company registered under the Provisions of the Companies Act, 1956 having its registered office at 126, Chittaranjan Avenue, Kolkata (West Bengal) through its Authorized Signatory, Mukesh Kumar Yadav, Son of Raj Kishor Yadav, Resident of 1st Floor, 126, Chittranjan Avenue, Md. Ali Park, VTC: Chittranjan Avenue, P.O.-Chittranjan Avenue, P.S.-Chittranjan Avenue, District- Kolkata (West Bengal).

... .. Petitioner/s

Versus

1. The Union of India through Director General, Narcotic Control Bureau, Ministry of Home Affairs, Government of India, New Delhi.
2. The Deputy Commissioner of Customs, Land Customs Station, Department of Customs and Excise, Government of India, Raxaul, District- East Champaran.
3. The Inspector (Prevention)-cum-Seizure Officer, Land Customs Station, Department of Customs & Excise, Government of India, Raxaul, District- East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. S.D. Sanjay, Sr. Advocate with Mr.Mohit Agarwal, Advocate
For the Union of India	:	Dr.K.N.Singh, Sr.Advocate (A.S.G.I) with M/s Sriram Krishna, Prakritika Sharma, A.C. to ASGI
For the Customs	:	Mr. Anshuman Singh, Sr.S.C., Customs
For the NCB	:	Mr. Manoj Kumar Singh, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT

Date : 31-01-2022

The writ petition has been filed under Articles 226 and 227 of the Constitution of India praying for quashing of Memo No.01 of 2021 dated 06.06.2021, prepared by the Inspector (Prevention)-cum-Seizure Officer, Land Customs Station at Raxaul, in the district of East Champaran (Respondent No.3). By



the said Memo, trailer TATA LPS 3518 has been seized along with container, which was loaded on it.

2. The brief facts are that the Inspector (Prevention), Land Customs Station, Raxaul had received information on 05.06.2021 at about 1800 hours regarding movement of manufactured psychotropic drugs by a trailer, bearing Registration No.NL01AB3612. The trailer was loaded with Customs Transit Declaration (hereinafter referred to as “CTD”) consignment from India to Nepal through Laxmipur, I.C.P. Raxaul road.

3. A preventive team was thus constituted by the Deputy Commissioner, Land Customs Station (LCS), Raxaul. The team rushed towards the said road and found the trailer in question standing by the side of the road in queue with other vehicles at the Indo-Nepal border. A 40 (forty) foot sealed container was loaded on the trailer. There was no one inside the trailer. On inquiries, the preventive team was informed that the Driver was there a short-while ago. The trailer was thus brought inside I C P by taking the help of a driver of another vehicle and search was conducted in presence of the witnesses. A bunch of keys and folder containing some documents of the vehicle like registration certificate etc. were found in the cabin. Two cartons were also found containing bottles of ONEXREX Cough Syrup packed in units of 100 ML.



Bottles. A suspicious looking cavity was found underneath the chassis of the trailer, which was locked. The lock could be opened with one of the keys, which had been found in the cabin. On opening the cavity, more bottles of the same cough syrup was found stacked inside in tray type packets. 1170 bottles of the same syrup were thus recovered and seizure list was prepared.

4. In view of such recovery of psychotropic substance, the competent authority effected seizure of the vehicle in question, alleging violation of Sections 8 and 21 of the NDPS Act, 1985 read with Sections 7, 11, 50 and 51 of the Customs Act. The seizure was in exercise of powers under Section 60(3) of the NDPS Act. The seizure led to institution of a criminal case, bearing NDPS Case No.52 of 2021.

5. The instant petitioner on 12.07.2021 moved an application for release of the sealed container, which was loaded on the trailer in question. His petition for release of the container has been rejected on 12.07.2021 by the Special Judge, East Champaran, Motihari.

6. Additional Solicitor General Dr.K.N. Singh, Senior Advocate, at the very outset, has raised a preliminary objection regarding maintainability of the writ petition and the *locus* of the petitioner to claim release of the container in question. Dr. Singh



has contended that the petitioner is not the owner of the container or the goods inside the container. The petitioner was merely a transporter who hired the trailer in question from one M/s. Rai Paribahan, Kolkata. The trailer was hired to transport a Rice Mill Machine Set (hereinafter referred to as “the machine”, for brevity) purchased from China by one M/s Mamta Traders of Nepal. The rice mill had reached India by ship in the container in question, and unloaded at Kolkata. The container was sealed by the customs authorities. From there it was being transported by road to M/s. Mamta Traders through a specified route corridor passing through the State of Bihar within the territory of India, in terms of the Treaty of Transit between the Government of India and the Government of Nepal.

7. It is submitted that owner of goods in question is one M/s Mamta Traders and owner of the trailer in question is one M/s Rai Paribahan. The petitioner-Company is engaged in the business of providing carriage facilities for carriage of goods from one place to the other and had arranged transportation of the machine in question. Since it is neither owner of the container, nor it is owner of the machine loaded and sealed in the container, the petition for release in the court below, as well as the instant writ



petition at the instance of the petitioner seeking release of the container in question is not maintainable for want of *locus*.

8. Learned Senior Counsel representing the petitioner Mr. S.D. Sanjay, on the other hand, has submitted that the petitioner had moved the petition for release and is praying for the relief of release of the container in question by way of these writ proceedings as an authorized representative of M/s. Mamta Traders from Nepal.

9. The objection raised regarding *locus* of the petitioner, in view of authorization dated 01.10.2021 (Annexure 15 to the second supplementary affidavit filed by the petitioner), is misplaced and without any substance. From perusal of Annexure 15, it is apparent that the owner of the goods, sealed in the container and in transit through the territory of India, has authorized the instant petitioner to get delivery of the machine from the concerned department/authority/court. He further submits that the admitted case of the respondent-authorities is that the manufactured psychotropic substance (ONEXREX Cough Syrup) was recovered from the cabin of the trailer and cavity underneath the trailer. Even as per the case of the respondent-authorities, there is no recovery of any narcotics drugs or psychotropic substance from the container in question. The goods in transit was sealed in



the container by the Customs Department based on a Customs Transit Declaration (CTD) made by the purchaser M/s Mamta Traders at the Kolkata Port for its transportation to Nepal through the State of Bihar in India. Admittedly, the seal of the Customs authorities is intact on the container in question. Therefore, in the wildest of the imagination, it cannot be said that there could be, or that there has been recovery of any narcotics drugs or psychotropic substance from the container in question.

10. Since admittedly there is no recovery from the container in question, the provisions of Section 60 of the NDPS Act would not be attracted. Seizure of the container therefore in purported exercise of the powers under the NDPS Act is without jurisdiction and is fit to be quashed by this Court, exercising jurisdiction under Articles 226 and 227 of the Constitution of India.

11. Bare perusal of Section 60 of the NDPS Act would reveal that it is only an animal or conveyance used in carrying any narcotics drugs or psychotropic substances, which are liable for confiscation. It is nobody's case that the psychotropic substance in question was packaged in the container or that the container was used for carrying any narcotics drugs or psychotropic substance. Therefore, the seizure is without jurisdiction, illegal and



unsustainable in the eyes of law. He prays for release of the container in question.

12. Learned ASG on merits of the matter submits that in the garb of transporting a container duly sealed by the Customs authorities, the manufactured psychotropic substance (ONEXREX Cough Syrup) has been carried for being smuggled to Nepal. The trailer has been used as a smokescreen for the purpose of carrying the psychotropic substance in question and liable for seizure. Regarding the seal put by the Customs authorities on the container in question at the Port in Kolkata, he fairly submits that the seal is intact. Regarding the machine, being the contents of the sealed container, he thus does not raise any issue of the same being in any way part of the offence.

13. He submits that the so-called authorization dated 01.10.2021 (Annexure 15 to the second supplementary affidavit) is no valid authorization either for the purposes of instituting any judicial proceedings nor is it a valid authorization for obtaining release of the container. The same was obtained pursuant to specific query regarding the *locus* of the petitioner made in the instant proceedings on 05.10.2021. However, the same has purportedly been issued on 01.10.2021, i.e. at least four days



before the issue was raised in the instant proceedings; but still, after institution of the instant writ proceedings.

14. He submits that the petitioner may be liable under the NDPS Act as he was the transporter who had hired the trailer from M/s. Rai Paribahan, from which the psychotropic substance has been seized. He further submits that there are two authority letters on record; one is Annexure 2 and the other is Annexure 15 to the supplementary affidavit, purportedly issued by the purchaser of the machine, which was being transported in the container in question. He submits that the signatures of the person giving the authority in both these documents are at variance and do not tally. He has also submitted that against the final order dated 12.07.2021 rejecting the petitioner's petition for release, revision would lie under Sections 397 and 401 of the Cr.P.C. In this connection, he relies upon a decision in the case of *Girish Kumar Suneja Vs. Central Bureau of Investigation*, reported in (2017) 14 SCC 809. He submits that in view of the judgment of the Hon'ble Apex Court in the case of *Pepsi Foods Ltd. Vs. Special Judicial Magistrate*, reported in (1998) 5 SCC 749, writ petition would not be maintainable for the relief since the authority has reason to believe that manufactured psychotropic substance was being transported by the trailer on which the container in question was



being transported and the same has been found to be true by reason of the recovery of ONEXREX Cough Syrup from the trailer. It does not lie in the mouth of the petitioner to contend that seizure of the trailer and container was without jurisdiction.

15. Lastly, the learned ASG submits that if the owner of the purchased machine, which was being transported in the container duly sealed by the Customs Department, was to come forward and claim the same, at the appropriate forum, then only the authorities could consider such a claim having regard to *bona fides* of the claimants and observing the legal requirements and formalities.

16. Having considered the rival submissions, this Court would proceed to consider the issue of the petitioner's *locus* with respect to the prayer made in the writ petition and maintainability of the same. The petitioner, admittedly, has provided transportation facility for carriage of the goods sealed in the container. He is neither owner of the goods (Rice Mill Machine Set), or the container in question. The container was duly sealed by the Customs authority at the port of entry, Kolkata based on Customs Transit Declaration made by owner of the goods in question, namely, M/s Mamta Traders of Nepal.



17. It is the petitioner's case in the writ petition that the vehicle in question was hired by him. It is also the petitioner's case that the container, in which the goods in transit was sealed, was loaded by the petitioner on the trailer, which has been seized.

18. In this factual background, this Court would consider it apt to reproduce the prayer made in the writ petition, with a view to considering maintainability of the same at the instance of the petitioner. The following reliefs have been prayed for:

“(i) For quashing the Seizure vide Memo No.01 of 2021 dated 06.06.2021, prepared under signature of the Respondent No.3, wherein the Container in question (duly sealed by the Respondent Customs Department itself) has also been seized along with the vehicle (Trailer TATA LPS 3518) on which the Container was loaded on the ground that Cough Syrup namely ONEXREX (Cholorpheniramine Maleate and Codeine Phosphate Syrup) was recovered from the cabin of the said Trailer as being wholly illegal and without any authority of law;

ii) For consequential release of the Container (1'x40') No.OOCU6959842 containing CTD goods Rice Mill Machine Set duly sealed vide Seal bearing No.OOLGQ86490 & WINT00017202 which has been illegally and arbitrarily seized vide Seizure Memo No.01 of 2021 dated 06.06.2021 under the signature of the Respondent No.3 for alleged violation of provisions of Sections 8 & 21 of the NDPS Act, 1985 read with Sections 7, 11, 50 & 51 of the Customs Act, 1962, without considering the fact that the Container was duly sealed and has merely been conveyed from Kolkata Port to Nepal on the



Trailer from cabinet of which ONEXREX Cough Syrup has been recovered and not from the said Container which is admittedly sealed;

iii) For quashing of the impugned order dated 12.07.2021 passed in NDPS Case No.52 of 2021 arising out of Customs Unit Case No.01/2021-22 by the learned Court of Sessions Judge/Special Judge, East Champaran, Motihari wherein the prayer for release of the Container in question duly sealed has been rejected;

iv) For a declaration that the Container in question was not liable to be seized for alleged violation of Section 8 & 21 of the NDPS Act, 1985 read with Sections 7, 11, 50 & 51 of the Customs Act, 1962 as the Container in question is neither a narcotics nor a conveyance mean used to convey alleged narcotic being ONEXREX Cough Syrup as the same is itself an article under conveyance being conveyed from Kolkata Port to Nepal on a heavy carriage vehicle called Trailer and therefore, not being a medium of conveyance, the Respondent Customs officials had no jurisdiction/authority to seize the Container in question along with the vehicle; and/or pass such other order(s) as Your Lordships may deem fit and proper in the facts and circumstances of the present case.”

19. The petitioner has prayed for release of the container. There is no prayer for release of the goods in the container, namely, Rice Mill Machine Set, duly sealed by the Customs authority, based on Customs Transit Declaration made by the purchaser.

20. As per averments made in the writ petition, the trailer was hired by the petitioner. The container carrying the goods under seal of the Customs Department was got loaded on



the trailer by the petitioner. It is from the trailer that the psychotropic substance has been recovered.

21. The petitioner is admittedly not the owner of the trailer. He is also not the owner of the container, release of which is prayed for in the instant writ proceedings. He has hired the trailer and loaded the container thereupon. The petitioner has not produced in these proceedings any authorization issued in his favour by the owner of the container or the trailer in question. The disputed authorization, for whatever it is worth, is in respect of the machine loaded in the container under the seal of the Customs Department. However, there is no prayer for release of the Machine either before the Special Court in seisin with the criminal case, or before this Court in these proceedings.

22. In the circumstances, this Court would observe that the petitioner is neither owner of the container, nor any authorization has been produced by the owner of the container. Relief sought for in the instant writ petition for release of the container, at the instance of the petitioner, therefore is clearly unsustainable.

23. From perusal of the order dated 12.07.2021 passed in NDPS Case No.52 of 2021, it is apparent that before the Special Judge, petitioner had prayed for release of the container.



Substantially, the same prayer has been made in these proceedings by the petitioner. The petitioner being neither the owner of the container in question, nor producing any authorization from the owner, this Court would hold that no case is made out by the petitioner for maintaining such prayer in respect of the container in question. Having said so, this Court would make it clear that recording of submissions, or observations in this order are not to be treated as any opinion whatsoever on the merits of the matter pending in NDPS Case No.52 of 2021 before the Special Judge, East Champaran, Motihari.

24. The writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

PNM

AFR/NAFR	NAFR
CAV DATE	03.11.2021
Uploading Date	
Transmission Date	N.A.

