

(2022) 02 DEL CK 0065

In the Delhi High Court

Case No : Criminal Writ Petition No. 1597 Of 2020, Criminal Miscellaneous
Application No. 13649 Of 2020

M/S KRBL Ltd

APPELLANT

Vs

CBI And Anr

RESPONDENT

Date of Decision : 08-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 21
Code Of Criminal Procedure, 1973 — Section 91, 102, 166, 482
Indian Penal Code, 1860 — Section 120B, 420, 468, 471
Customs Act, 1962 — Section 108
Foreign Trade (Development Regulation) Act, 1992 — Section 13

Citation : (2022) 02 DEL CK 0065

Hon'ble Judges : Subramonium Prasad, J

Bench : Single Bench

Advocate : Bishwajit Bhattacharyya, Ayush Puri, Anupam S Sharrma, Prakarsh Airan, Harpreet Kalsi

Final Decision : Disposed Of

Judgement

Subramonium Prasad, J

1. This petition under Section 482 Cr.P.C is for quashing RCSI82007E004 dated 27.03.2007 for offences under Sections 420, 468, 471 read with

Section 120B of the Indian Penal Code, 1860 [hereinafter "IPC"] registered by the CBI, that is, the Respondent No. 1 herein on the basis of a

written complaint dated 26.03.2007 made by the Director General of Foreign Trade, that is, the Respondent No. 2 herein.

2. Facts, in brief, leading to the present petition are as follows :

a. The petitioner is a public limited company and is engaged in the business of export of food related commodities since 1993. It had exported 20,000

MT (+/- 20% seller's option) of pulses, to be shipped during the period of July 2006 to March 2007 to Pan Global Trading LLC, Dubai.

b. For this purpose, on 21.06.2006, three irrevocable letters of credit [hereinafter "LCs"] were issued from the WSBC Bank to Karnataka Bank

Limited in favor of the petitioner herein. The details of the LCs are as follows :

i. LC No.: WSBC/LC/A1815/06 for an amount of USD 5,400,000/- expiring on 18.10.2006

ii. LC No.: WSBC/LC/A1814/06 for an amount of USD 6,300,000/- expiring on 17.12.2006. However, on the same date, WSBC sent another letter to

Karnataka Bank Limited amending the above-mentioned letter and, thereby, extending the expiry date to 17.03.2007.

iii. LC No.: WSBC/LC/A1813/06 for an amount of USD 6,300,000/- expiring on 17.12.2006.

c. On 27.06.2006, the Ministry of Commerce and Industry through the Director General of Foreign Trade issued Notification No. 15 (RE-2006)/2004-

2009 which prohibited the export of pulses, amongst other commodities, with immediate effect for a period of 6 months. Vide Notification dated

03.07.2006, the applicability of the notification was extended to 31.03.2007. Thereafter, on 04.07.2006, another notification was issued bearing number

19 (RE-2006)/2004-2009 that amended paragraph 3 of the earlier notification and clarified that the benefit of paragraph 1.5 of the Foreign Trade

Policy, 2006, which protected the irrevocable LCs established before the date of imposition of such restriction, will not be applicable for export of

pulses against irrevocable LCs opened on or after 22.06.2006.

d. The Special Intelligence and Investigation Branch of Exports, JLN Custom House, Navi Mumbai issued Summons No. CSP/176/07 dated

12.03.2007 calling upon the petitioner company to give details and present documents pertaining to the exports made by the petitioner to Pan Global

LLC in the period between 27.06.2006 and 28.02.2006. The Directorate of Revenue Intelligence also issued Summons No. 50D/39/2008-CI dated

13.03.2007 to the petitioner company under Section 108 of the Customs Act, 1962 to furnish details, documents and evidence pertaining to the export

of pulses by the petitioner. Similarly, vide Summons No. CSP/180/07 the Department of Customs asked the petitioner to appear on 21.03.2007.

Additionally, on the same day, the DRI again issued a summons asking the

petitioner to appear on the same date.

e. The Respondent No. 2 herein addressed a letter of complaint dated 26.03.2007 against the petitioner alleging that the petitioner had circumvented the export ban imposed vide notification dated 27.06.2006 by backdating and forging the LCs. It further stated that preliminary investigations conducted by the DRI suggested that the petitioner had connived with the buyers and manipulated and undervalued the LCs. Therefore, it requested the Respondent No. 1 to carry out a detailed investigation.

f. On 27.03.2007, the Respondent No. 1 registered FIR No. RCS182007E004 against the petitioner under Sections 120B, 420, 468 and 471 IPC.

Thereafter, on 30.03.2007, it conducted a raid at the premise of the petitioner and seized various documents vide search list and search cum seizure memo.

g. The Director General of Foreign Trade issued Show Cause Notice No. 01/91/171/43/AM07/PC-III/1474 dated 09.04.2007 to the petitioner for cancellation/suspension of the Importer Exporter Code Number and imposition of penalty under Section 13 of the Foreign Trade Act. The petitioner replied to the above show cause notice on 13.04.2007. Thereafter, on 24.04.2007, Respondent No. 2 passed an interim order against the petitioner suspending the IEC No. 0595031790. The Respondent No. 1 on 25.04.2007 instructed Karnataka Bank not to part with the payments received against the bills submitted under LCs.

h. However, the second interim order dated 24.07.2007 was set aside vide order dated 04.05.2007 by this Court in W.P.(C). 3124/2007 with the liberty to issue a fresh show cause notice. The instruction dated 25.04.2007 was set aside by the order dated 14.05.2009 passed by this Court in W.P.(C).

7543/2007. On 19.07.2007, a fresh show cause notice was issued by the Respondent No. 2 to which the petitioner gave its reply on 02.08.2007.

i. On 07.07.2020, the Respondent No. 1 sent a letter to the petitioner herein as a notice under Section 91 Cr.P.C in relation to its investigation of case RC:RC:S18 E 2007 E 0004/EOU-IV, requesting for an original copy of WSBC's letter addressed to the Karnataka Bank Limited which pertained

to the amendment of LC 1814 by which the expiry of the LC was extended to 17.03.2007. To this, the petitioner vide letter dated 21.07.2020 stated

that the original letter addressed to the bank is not in their possession, and is

likely to be in the possession of the bank.

j. Vide Letter dated 06.08.2020, the Respondent No. 1 referred to the letter dated 17.01.2007 from Karnataka Bank Limited and brought to the

attention of the petitioner that the original amendment had been forwarded to the petitioner by the Bank. On 27.09.2020 the Authorized Representative

of the petitioner appeared before the Respondent No. 1 and apprised the Respondent No. 1 that the original letter was not in their possession and the

same will likely be in the possession of the Bank. Thereafter, the present writ petition was filed with a prayer to quash RCSI82007E004 dated

27.03.2007 for offences under Sections 420, 468, 471 read with Section 120B of the Indian Penal Code, 1860 registered by the CBI.

3. Mr. Biswajit Bhattacharyya, Ld. Senior Counsel for the petitioner, at the outset, submits that the proceedings initiated by CBI are mala-fide and

arbitrary. He submits that the DGFT has not found any irregularity in the Letters of Credit dated 21.06.2006 advanced to the Petitioner by WSBC

Bank. A notice dated 07.07.2020 was sent asking the Petitioner to produce the original Letter of Credit (WBSC/LC/A1814/06) when the actual

investigation of the case was over in 2008-2009. He submits that the notice which has been sent after a lapse of 14 years from the date of registration

of the RC by the Respondent, is a gross abuse of the process of law and is being done to harass the petitioners for an oblique motive.

4. He submits that the Irrevocable Letters of Credit dated 21.06.2006, which are WBSC/LC/A1813/06, WBSC/LC/A1814/06,

WBSC/LC/A1815/06 were issued in favour of the Petitioner on the endorsement of Karnataka Bank. He submitted that LC No.:

WBSC/LC/A1814/06 was amended and the expiry date was extended by a period of five months, to 17.03.2007. The intimation of the amendment, he

submits, was communicated to the Petitioner as well as the Advising Bank on the same date on which the LCs were issued i.e. 21.06.2006.

He argues that the notification of the Director General of Foreign Trade banning the export of pulses and lentils was issued on 27.06.2006 and hence

valid LCs were already in existence and in possession of the Petitioner, which allowed it to export the pulse. He argued that the notification was

not made applicable to the Petitioner, which in other words means that Petitioner could continue exporting goods till the expiry of the LCs.

5. Mr. Bhattacharyya submits that the investigation by the CBI for allegations of fraud, forgery and manipulation against the petitioner was a result of

a Registered Complaint which was instituted at the instance of the then Deputy Director General, DGFT in its letter dated 26.03.2007. He submits that

the CBI mechanically registered a complaint without conducting a preliminary enquiry. He added that the investigation did not result in the filing of a

chargesheet, as the respondent could not find any infirmity or inaccuracy in the exports made, or demonstrate with evidence the allegations levelled

against the Petitioner and therefore the investigation is untenable.

6. He contends that this Court was approached on two separate occasions.Â This Court was pleased to intervene at both times. He contends that

vide order dated 04.05.2007, this Court W.P.(C). 3124/2007 quashed the show-cause notice dated 9.04.2007 issued by DGFT and consequently set

aside the order suspending the Importer-Exporter Code of the Petitioner, and directed it to issue a fresh show-cause notice, if it considered fit to do so,

and hear the Petitioner in adherence to the principles of natural justice. The second was order passed by this Court was on 14.05.2009 in W.P.(C).

7543/2007, where this Court quashed the attachment order passed by the Respondent under Section 102 Cr.P.C, which directed Karnataka Bank to

withhold all sums received into the petitioner's account against the exports made by it.

7. He submitted that a raid was conducted at the official premises of the Petitioner jointly by the CBI and Customs Department on 30.3.2007. The

Letters of Credit documents of transactions made during the relevant period, shipping and freight bills, pre-shipping inspection and testing reports were

all seized by the Respondent. He emphatically submits that Respondent failed to prove any foul play, connivance or manipulation on the part of the

Petitioner, that it got the LC's extended from 18.10.2006 to 17.03.2007 by collusion with officials or fraud or any other illegal actions.

Furthermore, he contended that the Respondents have no concrete material to show that the Petitioner was in contravention of the notification dated

27.06.2006 by back dating the LC's and is only raking the investigation after a delay of 14 years only to cause harassment and defamation of the

Petitioner and for the same, RCSI82007E004 of 2006 dated 27.3.2007 deserves to be quashed.

8. Mr. Bhattacharyya further places reliance on the judgment of Federal Bank Ltd. vs. VM Jog Engineering Ltd. & Ors, (2001) 1 SCC 663 and more

particularly on Para 35 of the said judgment to contend that the Uniform Customs and Practices for Documentary Credits are binding on all parties.Â

The code vide Article 7 states thatÂ the advising bank has the duty to check the authenticity of the LC's.Â He states that the petitioner being a

beneficiary has no role in the preparation of the LCs and cannot be prosecuted for the same. Mr. Bhattacharyya has taken this Court through the

Uniform Customs and Practices for Documentary Credits and more particularly Article 7 to substantiate his contention.

9. Per Contra, Mr. Anupam Sharrma, learned Special Public Prosecutor, submits that the present case is one which is a serious economic offence. He

submits that Notification No.15 (RE-2006) 2004/2009 which banned the export of a variety of pulses was issued at a time when the country was

facing an acute shortage in grains and pulses. He submits that the conduct of the petitioner was full of greed and profit-driven and instead of supplying

the pulses locally at reasonable rates to mitigate the distress in the Indian food market, the Petitioner contrived to earn more profits from exporting

pulses out of the country.

10. Mr. Sharma argued that the amended LCs, which were claimed to have been issued on 21.06.2006 only to circumvent the notification

banning export of pulses out of the country. He argues that the amended LCs were insufficiently stamped and did not bear the signature of the

appropriate bank official, which is the bank manager, who is duly authorized to permit such an amendment. He submits that during the course of

investigation, they approached Karnataka Bank and they found out that the bank had not received any intimation letter by WSBC Bank certifying the

amended LC in June 2006.Â He submitted that the LCs given to the Petitioner were opposed to the usual practice of Letters of Credit issued for

purposes of trade and commerce.

11. He submitted that the LCs did not contain the ports from which the goods could be exported to, in the countries mentioned therein and the

ports from which the goods could be shipped from in India. He submits that the LCs are bereft of specifications and details. He submitted that

the petitioners were known for exporting a variety of pulses, grains, lentils,

milletts etc; and yet all the LCs stipulated a uniform price per metric tonne, for all the pulses alike which is logically not possible. He contends that, given the fact that demand and supply of each country differs according to their external factors, the price of each pulses sought to be traded ought to have been different.

12. He argued that during the course of investigation, Letters of Rogatory dated 27.05.2008 were issued the Courts at the instance of the Respondent to the competent authority i.e. Asst. Crown Counsel in New Zealand requesting cooperation with in the investigation and supplying the original copies of Letters of Credit and other pertinent documents submitted prior to the issuance thereof. He submits that only after three years, the Respondent were provided five DVDs and two excel spreadsheets from New Zealand. He, therefore, contends that the CBI cannot be held responsible for the delay in investigation. Mr. Sharma contends that the materials which have been received are vital for further investigation, and the same is not being disclosed as the Petitioner may tamper with investigation.

13. He submits that the further cooperation with Asst. Crown Counsel was assured to the Respondent and the matter has moved forward. He states that the Respondent, through the Government of India has proposed to enter into an agreement with the Serious Fraud Office, New Zealand that would legally permit the sharing of information relating to white-collar crimes. He submits that this exchange of mutually beneficial information relating to purported crimes would enable faster exchange of correspondence and swifter prosecution. He submits that, the said agreement is in the pipeline and has been reformulated, and is being worked out only to facilitate faster completion of investigations and speedy trials. He submits that the reason behind the delay in investigation is, therefore, that the information was not forthcoming from abroad for which the CBI cannot be held responsible.

14. He further submits that the investigation, although has taken substantial time, new facts have emerged during the investigation, in the matter. He places reliance on the judgments of A.R. Antulayv. R.S. Nayak, AIR 1992 SC 1701; P. Ramachandra Rao v. State of Karnataka, AIR 2002 SC 1856; Ranjan Dwivedi v. CBI, AIR 2012 SC 3217, to contend that, the right to a speedy trial does not enjoin a time limit to be imposed on the investigating agency to complete investigation, especially in the present case

where the personal liberty of the Petitioner has not been curbed or affected.

15. Heard the counsels for both the parties and perused the material on record. The petitioner is a public limited company engaged in the business of export of food related commodities. On 21.06.2021, for the petitioner to export pulses during the period of July 2006 to March 2007 to Pan Global Trading LLC, Dubai, three irrevocable LCs were issued by the WSBC Bank to the Karnataka Bank Limited. The allegation against the petitioner is that it indulged in backdating, forgery and manipulation of the LCs to circumvent the export ban on pulses which was imposed vide notification dated 27.06.2006 read with notification dated 04.07.2006 for irrevocable LCs issued on or after 22.06.2006. However, the primary grievance of the petitioner, in addition to the allegation of baseless accusations as imposed by Respondent No. 2, is the delay in the investigation conducted by Respondent No. 1.

16. In response to the same, Respondent No. 1 has submitted that there has been no deliberate delay in the conclusion of the investigation and it is only because of the unavoidable exceptional circumstances, over which the Respondent No. 1 has no control, that the said investigation is taking a longer time to conclude. Therefore, the primary issue that arises for consideration here is whether a delay in investigation alone can be a ground for quashing of FIR under Section 482, Cr.P.C and what considerations should the court keep in mind to bring a balance between the right to a speedy trial and the right to fair trial.

17. The CBI has filed a detailed list of dates from 2007 when the case was registered showing the steps taken by them collecting the material from New Zealand. Considerable time has been spent by CBI in pursuing LOR issued by Courts to New Zealand for collecting material. The list of dates also indicates that the GoI is entering into an agreement at various levels in consultation with INTERPOL and Ministry of Home Affairs for speedy exchange of information. It is well settled that unreasonably long delay in investigation and trial violates the rights of the accused under Article 21 of the Constitution of India. But the Courts should look at the matter with a realistic and practical approach having regard to the facts of the case (refer to Seeta Hemchandra Shashittal & Anr. v. State of Maharashtra &

Ors., (2001) 4 SCC 525.Â The Apex Court, after emphasizing the need for speedy investigation and after explaining as to how a lethargic and lackadaisical manner of investigation over a prolonged period causes grave prejudice to the accused, struck a note of caution, by observing as follows:-

14. It is not possible to formulate inflexible guidelines or a rigid principles of uniform application for speedy investigation or to stipulate any arbitrary period of limitation within which investigation in a criminal case should be completed".

18. It is well settled that a realistic and practical approach should be made having regard to all attending circumstances including the nature of offence.Â Each case has to be considered on its own facts and circumstances with respect to being mechanically persuaded by the Courts merely because delay was occasioned during investigation.

19. In the present matter, it is imperative to look into the reason behind the prolonged investigation. The LCs in question were issued by a foreign bank, and therefore, a Letter Rogatory [hereinafter LR] had to be issued by the Chief Metropolitan Magistrate under Section 166 CrPC to New Zealand through the Interpol to investigate and unearth the facts and circumstances underlying the issuance of the LCs. These were in relation to the procedure for opening of LCs in WSBC Bank, identifying the persons involved, determining as to how the amended LC was issued, mode of dispatching the LCs, collection of documents and examination of witnesses.

20. For ease of investigation and further assistance, it was suggested that the SFO, New Zealand and the CBI enter into an agreement. Accordingly, a draft of the proposed agreement was sent under Section 51 of the Serious Fraud Office Act, 1990 on 25.01.2012. Since the proposed agreement was in the nature of a bilateral agreement between the two countries, the concurrence of the MEA and the Department of Legal Affairs (DoLA) was required. However, a lot of time was taken in receiving the requisite clearance from the Ministries despite regular follow ups made by the Respondent No. 1 at various levels. The final draft was approved on 06.07.2017.

21. The agreement got further held up when the general counsel of SFO informed the CBI that for the agreement to be accepted, the reference made to the LR had to be dropped. However, the implication of the same was that any evidence collected in derogation of the LR would make it

inadmissible in the Court of law. Therefore, on 11.04.2018, the Respondent No. 1 approached the Central Competent Authority of New Zealand for the execution of the LR's. Several periodical reminders were sent to the IPCC for early execution of the LR's on 28.08.2018, 22.01.2019, 07.10.2019, 09.03.2020 and 27.08.2020. Apart from this, LR's were also sent to Dubai, UAE and Hong Kong, to ascertain the facts and circumstances relating to the opening of the LC's in question.

22. At the outset, it is clarified that the stance of the petitioner that it is only a beneficiary who does not have the duty to check the authenticity of the LC's cannot preclude the Respondent No. 1 from interrogating the petitioner regarding the export made by the company and asking for the relevant documents in furtherance of the investigation. The further allegation that the bank advising the exporter and the bank advising the importer which have opened the LC and the importer have no quarrel with the LC and, therefore, no case is made out at all cannot be accepted. The allegation is that the LCs have been fabricated and back-dated in order to circumvent the Government's notification banning exports. Obviously, no one else will have a grievance over the transaction. It is the duty of the CBI who has received information regarding the manipulation of the LC's to investigate into the crime which has a serious effect on the economy of the country. A decision was taken to ban export of pulses to ensure that there is no dearth of the same in the local market and India is not forced to import pulses at a high cost. The reliance of the petitioner on the judgment of the Apex Court in Federal Bank Ltd. vs. VM Jog Engineering Ltd. & Ors, (2001) 1 SCC 663 is not applicable here. It has to be investigated as to whether the petitioner was in connivance with the banks in back-dating the LC's for their mutual benefit. The current matter at hand pertains to serious offences under Sections 120B, 468, 471 and 420. The investigation herein is bound to take time due to the complicated factual background and the presence of both national and international networks. It is clear that despite periodic reminders, there have been administrative and systemic delays over which the Respondent No. 1 had no control. It is also pertinent to note that there has been no substantial prejudice caused to the petitioner herein. The petitioner has also not been able to show any tangible loss in its trading activities.

23. Such offences have a great societal impact. Considering the fact that the present matter deals with a country wide export ban and the issuance of

LCs involving a huge sum of money and the fact that the investigation is in its crucial stage, the balance tilts towards having a fair investigation

even if it is facing considerable time. Therefore, this court is not inclined to quash the RCSI82007E004 at this juncture.

24. The CBI is directed to conclude the investigation as expeditiously as possible.

25. Accordingly, the petition is disposed of along with the pending application(s), if any.