

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
**Cr.Misc.Appln. No.323 of 2014**

Date	Order with signature of Judge
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1. For orders on office objection at 'A'.
2. For orders hearing of case
3. For hearing of M.A No.9259/2014

**04.06.2018**

Mr. Najeeb Jamali, advocate for Applicant.  
Syed Muhammad Ali, advocate for Respondent No.2.  
Mr. Ashfaq Rafiq Junjua, Asstt: Attorney General.

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**NAZAR AKBAR, J:-** This Crl. Misc. Application is directed against an order dated 23.9.2014 whereby Special Commercial Court for Sindh & Baluchistan at Karachi has been pleased to dismiss an application under Section 265-K read with Section 561-A Cr.P.C filed by the applicant for quashing complaint No.03/2014 under **Section 5** of the Imports and Exports (Control) Act, 1950 (hereinafter the Act of 1950) against the applicant filed by Respondent No.2.

2. Briefly stated, the applicant is an exporter against whom on **20.6.2014** a complaint was received from a foreign buyer namely M/s. Cannon de, Colombia that despite having received advance payments worth US\$ 2052797 (US\$ Two million fifty two thousand seven hundred ninety seven dollar) the applicant has neither delivered the goods nor refunded the said amount. The said complaint of M/s. Cannon de. Colombia was sent to the applicant for his reply and after through enquiry when it was found that the explanation offered by the applicant was not satisfactory, Respondent No.2 lodged a complaint in the Special Commercial Court through one Mr.Khurram Ikram, Assistant Director (Trade Dispute Directorate) Trade Development Authority of Pakistan for contravention of **Section 4(a)(b)** of Exports (Quality Control) Order 1973 made under **Section 3** of the Act of 1950.

3. The applicant has challenged the authority of Assistant Director (Trade Dispute Directorate) Trade Development Authority of Pakistan to lodge such a complaint only on the sole ground that it was filed without proper authorization in terms of **Section 5B(1)(2)** of the Act of 1950. In reply to the application under Section 265-K Cr.P.C the respondents did not place anything on record except half page formality of filing objections. However, learned trial Court dismissed the application by order dated **23.11.2014**, which is impugned in this CrI. Misc. Application. The respondents have filed parawise comments / reply to this Criminal Misc. Application but again there is no direct reply to the legal infirmity in the complaint with reference to compliance of **Section 5-B(2)** of the Act of 1950. However, during the course of argument learned counsel for the respondents has placed on record a letter dated **28.10.2014** with a certificate issued by Deputy Director (Admin) dated **27.10.2014** which reads "TO WHOM IT MAY CONCERN" and through this letter it is certified that in terms of **Section 5-B(2)** of the Act of 1950 the competent authority has been pleased to authorize Mr. Khurram Ikram, Assistant Director (Trade Dispute Directorate), TDAP, to file complaints in writing against as many as 17 firms / companies. The name of appellant is at serial No.17. Learned counsel for the applicant has contended that even this letter is after the date of impugned order and therefore, it cannot be treated as authorization in accordance with law. Be that as it may, it is mind boggling that what has prevented Mr. Khurram Ikram, Assistant Director, (Trade Dispute Directorate) to place on record a formal written authorization for lodging complaint before the trial Court. He was fully conscious of this legal position as is apparent from para-24 and 25 of the complaint itself. Both paragraphs are reproduced below:-

24. That Trade Development Authority of Pakistan has filed this Complaint as a Statutory Complainant

U/S.5 of the Imports & Exports (Control) Act 1950 through its authorized officer.

25. The complaint has been filed by the authorized officer of TDAP namely Mr. Khurram Ikram, Assistant Director, (Trade Dispute Directorate), who has been authorized U/S 5-B(2) of Imports and Exports (Control) Act 1950 by the Secretary TDAP to file complaint in writing against the above named accused on behalf of the Authority.

When it was so emphatically stated in the complaint, then why such authorization was not filed with the half page reply available at page 79 and even on **28.3.2016** when detailed para-wise comments / reply to this Cr. Misc. Application was filed. In presence of the above emphatic assertion of existence of authorization in the memo of complaint, the very fact that the applicant has challenged the jurisdiction of Commercial Court on the sole ground of lack of authorization, was definitely on guarantee by respondent No.2 to the applicant that such authorization in writing will never be placed in Court and the applicant may exploit it in Court. The guarantee seems to have been fully honored. Nevertheless, it was only an irregularity which should have been taken care of by obtaining even a fresh authorization as soon as objection was raised or the authorization emphatically asserted in para reproduced above should have been placed on record. But it was not done. The record and conduct of respondent in pursuing the complaint is such that the element of corruption in the office of Respondent No.2 cannot be ruled out.

4. It is more regrettable when the aggrieved party is foreign buyer and not any of the respondents. The grievance of foreign buyer against the applicant is still intact since it has not been decided on merit by Commercial Court nor dropped by the Trade Development Authority of Pakistan who is under statutory obligation to ensure protection to the foreign buyer from any hardship and cheating and fraud on the part of the Exporters in Pakistan. It may be appreciated that the Commercial Court under the scheme of prosecution under the Act of 1950 is Court of

Sessions Judge and the proceedings are governed by Cr.P.C 1898, therefore, it would not be out of place to observe that the complaint under **Section 5** of the Act of 1950 was not merely a complaint rather it was a challan submitted before the Sessions Court after inquiry / investigation by the prosecution agency on a trade complaint dated **2.7.2013** filed by a foreign buyer. The complaint filed by the foreign buyer in the office of Respondent No.2 on **2.7.2013** on which enquiry was conducted assumes the status of First Information Report (FIR). The applicant as a result of enquiry was prima facie charged with an offence triable by the Session Court and it was statutory duty of respondent No.2 to pursue the case diligently to the logical end. The status of Mr. Khurram Ikram, Assistant Director was that of a Investigation Officer (I.O) who after inquiry had to file challan in the Commercial Court to be prosecuted by the Public Prosecutor according to **Section 5-A(7)** of the Act of 1950.

5. Learned counsel for the applicant has argued that when the law requires a particular act to be done in a particular manner, then all the other ways of performance of that act are forbidden. The counsel for respondent insist that Mr. Khurram was duly authorized and therefore, there was nothing wrong in the manner. He, however, has no reply as to where is the written authorization to pursue the complaint. The record shows that either the authorization was deliberated withheld or there was no compliance of **Section 5-B(2)** of the Act of 1950. There is no cavil to this preposition advanced by counsel for the applicant and particularly after the addition of **Article 10-A** to the Constitution through eighteenth amendment on 20.4.2010, strict adherence to law has become more serious an issue. The **Article 10-A** of the constitution is reproduced below:-

**10-A. Right to fair trial.** – For the determination of his civil rights and obligations or in any criminal

charge against him a person shall be entitled to a fair trial and due process.

Any lacuna left by the prosecution may give rise to question of fair trial and due process. However, in my humble view the guarantee of a fair trial and due process in terms of **Article 10-A** of the Constitution is not limited to the person facing proceeding of civil nature or criminal charge but the guarantee of fair trial & due process is also equally extended to the complainant party. The aggrieved party / complainant is also entitled to “fair trial and due process” guaranteed under Article 10-A of the Constitution for adjudication on his grievance. In the case in hand when the applicant is aggrieved by violation of the provision of **Section 5-B(2)** of the Act of 1950, the rights of foreign buyer (aggrieved party) protected under **Section 5-B(7)** of the Act of 1950 is also violated by one and the same respondent No.2 in very questional manner. The complainant, too, is entitled to “fair trial and due process” of law on his complaint to respondent No.2. The provisions of **Section 5-B(2)** and **Section 5-B(7)** of the Act of 1950 are reproduced below.

5 B. JURISDICTION

- (1) .....
- (2) A Commercial Court shall not take cognizance of an offence triable under sub section (1) except upon a complaint in writing made by an officer of the Export Promotion Bureau authorized by its Chairman or Vice Chairman by a general or special order in this behalf.
- (3) .....
- (4) .....
- (5) .....
- (6) .....
- (7) Where a Commercial Court finds an exporter against whom a complaint has been made guilty of contravening any provision of an order made under section 3 relating to export trade, it may, in addition to any punishment provided under section 5, make an order requiring the exporter to deposit in Court within the time specified by the Court for payment to the Foreign buyer as compensation such amount as is in his opinion

equivalent in value to the loss or damage suffered by the foreign buyer.

6. As discussed in paragraph No.3 above apparently it was willful and malafide failure of Mr. Khurram Ikram, Assistant Director of Respondent No.2, to file the basic document of his authorization in terms of **Section 5-B(2)** of the Act of 1950 and it has adversely affected the case of foreign buyer inasmuch as the protection given to the foreign buyer under **subsection 7** of **Section 5-B** of the Act of 1950 reproduced above was taken away. The act of prosecutor cannot prejudice the case of an aggrieved party in absence of or notice to him. The foreign buyer should have also been taken into confidence and fully informed about the steps taken by respondent No.2 since the said buyer was actual sufferer, if any, and not the incompetent or otherwise willful negligent respondents. Therefore, in view of the above fact and legal proceedings while I am inclined to quash the proceeding on complaint No.3/2014, respondent No.2 is directed to file fresh complaint on the basis of material available with them on the complaint of **M/s. Cannon de, Colombia** dated 2.7.2013 after obtaining permission as required under the law in writing. It goes without saying that there is no concept of limitation in initiating criminal prosecution against the accused under criminal procedure code. The foreign buyer should also be informed and if so desired, the foreign buyer may also assist the respondent and the learned Commercial Court during the proceeding to be initiated afresh by Respondent No.2. The respondent No.2 is directed to file fresh complaint under **Section 5** of the Act of 1950 with 15 days from the date of receiving this order under intimation to the foreign buyer. The Respondent No.2 should also take disciplinary action against Mr. Khurram Ikram, Assistant Director, if he is still in service.

The above revision is disposed of in the terms.

Copy of this order must be sent to the Secretary Ministry of Commerce, Government of Pakistan, for compliance and compliance report through MIT-II be sent to this Court for perusal in chamber. Copy of this order may also be sent to the Complainant M/s. Cannon de, Colombia.

**JUDGE**

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