

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Muhammad Junaid Ghaffar, J.**  
**Agha Faisal, J.**

SCRA 443 of 2019 : Director Intelligence & Investigation  
(Customs) vs. Nasir ul Haq & Another

CP 4524 of 2020 : Nasir UI Haq vs. Federation of Pakistan

For the Applicant : Mrs. Masooda Siraj, Advocate

For the Petitioner : Ms. Dil Khurram Shaheen, Advocate

For the Respondent : Mr. Khalid Rajpar, Advocate

Mr. Kafeel Ahmed Abbasi  
Deputy Attorney General

Date of hearing : 13.04.2021

Date of announcement : 13.04.2021

## JUDGMENT

**Agha Faisal, J.** A Nissan dumper truck bearing *dummy* registration number TUD-304 (“Dumper Truck”) was apprehended and therein a concealed specially designed tank, loaded with smuggled diesel (“Diesel”), was discovered. Upon forensic examination, it was discovered that the Dumper Truck itself had a tampered chassis number and appeared to be smuggled / non duty paid. Pursuant to a show cause notice, an order in original was rendered, whereby the Diesel and the Dumper Truck were outright confiscated. In the appeal, ostensibly to the extent of the Dumper Truck, the learned appellate tribunal, in perceived reliance on SRO 499(I)/2009 dated 13.06.2009 (“SRO”) and vide Judgment dated 05.04.2019 (“Impugned Judgment”), allowed the release of the Dumper Truck against payment of fine equal to twenty percent of ascertained customs value. The present reference application has assailed the Impugned Judgment; whereas, the present petition seeks implementation of the same. Since the two matters are interlinked, therefore, they were heard conjunctively and shall be determined vide this common judgment.

2. In order to illustrate the *lis* before us, it is considered expedient to reproduce the relevant findings of the order in original and the Impugned Judgment herein below:

## Order in Original

"Brief facts of the case as reported by the Directorate General of Intelligence & Investigation, FBR, Regional Office, Karachi vide Seizure Report enclosed with their letter No. M-2478/DCI/Seiz/2018 dated 17.7.2018 the case as reported by ASI, Police Station Manghopir District West, Karachi, that while performing routine checking/surveillance, within the limits of Police Station Manghopir District West, Karachi, on 20-07-2018 at 10:30 hours, a suspected Nissan Dumper Truck bearing registration Mark/Plate No. TUD-304, was signaled to stop. The driver of Dumper although stopped, however, ran away, in the darkness and never came back. On cursory checking of the Nissan Dumper Truck, it was found loaded with Iran Origin HSD Oil in a concealed container.

2. Since, detailed examination of Nissan Dumper Truck bearing Dummy Mark/Plate No. TUD-304 and the HSD Oil loaded in the concealed container was not possible on the spot, therefore, the said Dumper Truck was escorted to the Police Station Manghopir District West, Karachi, examination and was given into the custody of the staff of this Directorate on 09.07.2018 at about 22:30 hours.

3. Subsequent on taking over of the subject Dumper bearing registration Mark/Plate No. TUD-304, loaded with HSD Oil, by the staff of this Directorate General, on 09-07-2018, at about 22:30 hours, the subject Nissan Dumper Truck was brought to the Directorate General of Intelligence & Investigation-Customs, Karachi, and during checking/examination concealed container was found available, duly filled with F/o High Speed Diesel Oil. The quantity of loaded F/o High Speed Diesel was measured through dipping, in presence of witnesses, which resulted into recovery of 9,000 Liters (Approx) of Iran Origin smuggled, High Speed Diesel Oil. The search of the vehicle further revealed that a running page of Registration Book No.C0207256 was available, which shows registration of the subject Dumper Truck against Registration Mark/Plate as TAK-659, showing Chassis No. CG320WZ-00102, which was also appearing on the dumper.

4. In order to verify the chassis number of the seized Nissan Dumper Truck bearing Dummy Mark/Plate No. TUD-304, the Assistant Inspector General of Police, Forensic Division, Karachi, was approached, vide letter C.No.2478/DCI/SEIZ/2018/2873 dated 10.07.2018, for chemical examination. In response, thereof, the Assistant Inspector General of Police, Forensic Division Sindh, Karachi, conducted the forensic examination and submitted Report No.AIG/FD/Veh/OR/262/2018 dated 12-07-2018, conveying that the present chassis serial( CG320WZ-00102) is tempered after erasing the original digits, which could not be deciphered due to deep grinding. The contents of examination report are reproduced here under for perusal:-

SERIAL NO.FD/Veh-259/2018

### 01. General:

The vehicle examined at Regional office of Intelligence & Investigation-(Customs) FBR ASO PECHS, Karachi. Details are:

Maker:	Nissan Dumper Truck
Registration No.:	TUD-304
Received on:	10-07-2018
Chassis Serial before chemical process:	(CG320WZ-00102)

### 02. Opinion: The Chemical Examination of vehicle has led that:

(i) Chassis No: The present chassis serial (CG320WZ-00102) is tempered after erasing the original digits, which could not be deciphered due to deep grinding.

5. As the transportation of Iran origin HSD Oil is restricted and the aforementioned forensic examination report of the Assistant Inspector General of Police, Forensic Division, Sindh Karachi, wherein the Nissan Dumper Truck bearing Dummy Mark/Plate No. TUD-304 was found tempered, both the Nissan Dumper bearing a tempered Chassis No.CG320WZ-00102 loaded with a quantity of smuggled 9,000 Liters (approx.) Iran Origin HSD Oil in a concealed container, were seized in terms of Section 168 of the Customs Act, 1969, for violation of the provisions of Section 2(s), 16, 157(2), 168 and 178 of the Customs Act, 1969, punishable under clauses (8), (9), (77) & (89) of sub-Section (1) read with Sub-Section (2) of Section 156 of the Customs Act, 1969, under proper documentation. Notice under Section 171 of the Customs Act, 1969, issued to the unknown offender and pasted on the Notice board of the Directorate General, Regional office, Karachi. (Value of the seized goods & vehicle: Rs.7,032,300/- (Approx) Duty & Taxes involved: Rs.16,352,485/- as determined by the seizing agency in Seizure Report).

6. In the light of above reported facts, Anonymous / Unknown Owner of the vehicle (name & address not mentioned in Seizure Report) is called upon to show cause as to why the seized goods & vehicle "HSD Oil 9,000 Liters (approx.), Iran Origin, Nissan Dumper Truck One Unit, bearing Dummy Mark/Plate No. TUD-304 (Lasbela) Registration No.TAK-659 (as per running page of Registration Book, No.C0207256 found as a result of search of cabin of dumper). Chassis No.CG320WZ-00102 (Tempered), Model 1991" should not be confiscated and penal action as warranted under the aforementioned provisions of law should not be taken against them.

7. The case was fixed for hearing on 06.08.2018, 15.08.2018 & 28.08.2018, Mr. Khurram Saeed (Intelligence Officer) represented the detecting agency and reiterated the charges leveled in the Show Cause Notice. No one appeared on behalf of respondent nor any written reply has been received in this office. The case cannot be kept pending indefinitely for lack of interest of the respondent to defend the charges, therefore, the same is decided on the basis of evidences available on record.

8. Case record examined and charges leveled against respondent by seizing agency, i.e., Directorate General of Intelligence and Investigation (Customs) Regional Office Karachi taken into consideration. As per prosecution 9000 liters Iranian Origin smuggled High Speed Diesel was recovered from a concealed container found in Nissan Hino Dumper Truck bearing registration No.TAK-659. Prosecution also added the chassis number of the Nissan Hino Dumper Truck was found fake as per report of Police forensic Division bearing No.AIG/FD/Veh/OR/262/2018 dated 12-07-2018. The seizure was effected by the Directorate General of Intelligence and Investigation (Customs) Regional Office Karachi on the information of Mangopir Police Station, Karachi.

9. It is observed that despite issuance of the show cause notice followed by a number of hearing opportunities nobody attended the proceedings of adjudication neither any written reply to show cause was

provided on behalf of the respondent. On the other hand the Departmental representative present during hearing on different dates vehemently contended that the seized smuggled Diesel was not only smuggled but the seized Nissan Hino Dumper Truck was also having a tempered chassis. The narrated position leads me to conclude that the charges leveled against the respondent in respect of the seized High Speed Diesel and the Nissan Hino Dumper Truck stand established without any shadow of doubt. Therefore, the seized Iranian foreign origin smuggled Diesel (9000 Liters) alongwith the seized Nissan Hino Dumper Truck bearing Registration No.TAK-659 chassis NO.CG320WZ-00102 (Tempered), Model 1991 is confiscated outright for violation of provisions of Customs Act, 1969 as leveled in show cause notice No.Coll.Adj-I/2018-19 (C.No. M-2478/DCI/Seiz/2018) dated 24.07.2018.

(Underline added for emphasis.)

### Impugned Judgment

24. It is important to mention here that the custom officers, under the Customs Act, 1969, have got the essential powers analogues to powers of the police for prevention of crime or detection of crime. Within the meaning of Section 25 of the Evidence Act, the customs officer has the same powers like the police officer to collect and conduct the procedural relevant evidence from the place of incident as well as from the conveyance, in support of their seizure, Section 165 of the Customs Act, 1969, also empowers the appropriate officer who may during course of inquiry in connection with the smuggling of any goods have the power to examine any person concern or involved in the said alleged offence. In this case, such mandatory requirements of law are been avoided and record of the case is silent on this issue.

25. It is also evident from the record that in absence of said vital evidence, the claim of seizing agency does not have any warrant of law to consider or to treat it as admissible evidence in the present case. It is also the duty of the Court to analyze the facts and to follow the legal obligations whatever attributed in the controversy and proposition made thereon. Under the circumstances, the seizing agency hopelessly failed to establish the evidence of connivance and mens-rea against the owner of the vehicle. Being a public carrier, the vehicles were normally used on contract or rent basis for transportation of goods from one place to another within the country. There is no iota of evidence available on record which could prove the alleged offence as attributed against the present appellant, as such the stance taken by the appellant carries weight. Moreover respondent miserably failed to provide are identify and other vehicle having same chassis Number plying on road.

26. It is a fundamental principle of administration of justice that all judicial, quasi judicial and administrative authorities while exercising their mandatory or discretionary jurisdiction must follow the rule, for fair exercise of power in a reasonable manner and must ensure the dispensation of justice with spirit of law. The Honourable Lahore High Court Lahore in PLD 1988 (177) made the observations and passed the judgment about the issue of transportation of smuggled goods and liability of owner of vehicle "unless material was brought on record by customs staff to show that owner of vehicle, or owner of transport company, was criminally linked with smuggler or had definite knowledge that goods to be transported were smuggled or that either of them was consciously assisting or furthering commission of offence of smuggling, prima facie, ;presumption not to the effect that vehicle for transportation was being lawfully used in transportation of smuggled gods, order by the customs authorities were passed on basis of no evidence, such orders being illegal and without lawful authority were set aside."

27. The Honourable Supreme Court of Pakistan in a hallmark judgment namely Imtiaz vs. Ghulam Ali reported as PLD 1963 SC 382 laid down the rule that the proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. All the technicalities have to be avoided unless it is essential to comply with them on ground of public policy. Any system which by giving effect to the form not to the substance defeats substantive rights is defective to the extent. The ideal must always be a system that given to every person what is his right under the law.

28. Being a custodian of law, this court cannot allow the respondents to avoid a clear requirement of law, the State and the citizens must be treated alike. By getting the strength what has been discussed herein above, particularly the interpretation of law and legal propositions and observations made thereon and by following the dictum of the Superior Courts, I am constrained to order for the release of seized vehicles on payment of 20% redemption fine on custom value of the vehicles same may be appraised from Appraisalment / Valuation department accordance with law. The appeals are accordingly disposed off in above terms with no order as to cost."

3. Learned counsel for the applicant assailed the Impugned Judgment, by raising various questions of law, and submitted that the same was in *prima facie* dissonance with the law. On the other hand, the petitioner's learned counsel submitted that the Impugned Judgment ought to be maintained in the interests of justice.

4. We have heard the respective learned counsel and have also perused the documentation to which our surveillance was solicited. It appears to be admitted that the Diesel, being carried in a concealed specially designed tank in the Dumper Truck, was smuggled; hence, the confiscation thereof has not been impugned. The only issue that remains is whether the Dumper Truck

could be ordered to be released against payment of fine equal to twenty percent of ascertained customs value. In view hereof, the question re-framed for determination is “*Whether in the present facts and circumstances the Dumper Truck could be released per the SRO*”.

5. The forensic report in respect of the Dumper Truck clearly demonstrates that the chassis number has been tampered. The order in original maintains the said finding and the Impugned Judgment does not even advert to the facts under consideration and predicates its *findings* upon the facts of some other appeal. The learned tribunal appears to have been dealt with the issue of tampering, albeit in the context of some other vehicle, in a rather perfunctory manner, which cannot be appreciated.

6. The honorable Supreme Court has held in the *Sarfaraz case*<sup>1</sup> that while initial responsibility lies with the person tampering with a vehicle, however, any subsequent purchaser ought to have taken due care towards ensuring compliance with the requirements of law; in the absence whereof he cannot claim to be a bona fide purchaser. It was further illumined that a purchaser’s remedy lay in a claim for damages against the person from whom he purchased the vehicle. In a leave refusal order in the *Chaudhry Maqbool case*<sup>2</sup>, the honorable Supreme Court observed that a smuggled vehicle with an apparent tampered chassis frame, as denoted from uncontroverted forensic report/s, merited outright confiscation. In *Noor Muhammad*<sup>3</sup> the august Court maintained that a forensic report was to be given due credence and it was incumbent upon a person aggrieved to challenge / discredit the same in the proceedings concerned.

7. In the present case the forensic report was relied upon in the initial show cause notice issued by the department, and also in the order in original. The contents of the said report appear not to have been dispelled either by the petitioner, before the appellate tribunal and / or before this Court, or by the learned appellate tribunal in the Impugned Judgment. This Division Bench has maintained in the *Umer Zahid Malik*<sup>4</sup> case and the *Aurangzeb case*<sup>5</sup> that disregard of a forensic report could not be approved.

---

<sup>1</sup> Per *Mushir Alam J* in the judgment dated 28.05.2020 *Government of KPK & Others vs. Sarfaraz Khan & Another (Civil Petition 800-P of 2019)*.

<sup>2</sup> Per *M Javed Buttar J* in *Ch. Maqbool Ahmed vs. Customs, Federal Excise & Sales Tax Appellate Tribunal & Others* reported as 2009 PTD 77.

<sup>3</sup> Per *Ijaz ul Ahsan J* in *Noor Muhammad vs. Customs Appellate Tribunal & Others* reported as 2020 SCMR 246.

<sup>4</sup> *Umer Zahid Malik vs. Federation of Pakistan & Others (CP D 4514 of 2020)*.

<sup>5</sup> *Aurangzeb vs. Federation of Pakistan & Others (CP D 1853 of 2020)*.

8. The next aspect to address is the implication of the SRO. The said instrument expressly excludes smuggled items and conveyances carrying smuggled items from the purview of the relief granted therein<sup>6</sup>. Petitioner's counsel has articulated no cavil to the factum that the Diesel being carried in the Dumper Truck was smuggled and / or that the Dumper Truck had a concealed tank, ferrying the contraband. The Impugned Judgment has not given any findings to substantiate that the Dumper Truck was not smuggled; hence, there is no justification before us as to how the learned tribunal extended the benefit of the SRO in the said facts.

9. The honorable High Court of Balochistan was seized of a similar matter, in the *Muhammad Hanif case*<sup>7</sup>, wherein it was held that release of a confiscated vehicle carrying smuggled goods could not be sanctioned in lieu of payment of a redemption fine, pursuant to clause (b) of the SRO. The said judgment was recently maintained by the honorable Supreme Court<sup>8</sup>.

10. There is yet an essential aspect to consider, prior to parting with this judgment, being the manifest absence of nexus between the petitioner and the Dumper Truck. It is an admitted fact before us that the Dumper Truck and the Diesel was apprehended and the same were not claimed by any person whatsoever. No one appeared to contest the adjudication proceedings, culminating in the order in original. The Impugned Judgment is devoid of any deliberation in respect of the facts under consideration and sheds no light upon the *locus standi* of the present petitioner to prefer / maintain the appeal there before. No document of title, in respect of the Dumper Truck, favoring the petitioner is relied upon in the Impugned Judgment and no such documentation has been placed on record along with the petition. In such circumstances, we remain at a loss to comprehend the rationale whereupon the petitioner's appeal was even entertained by the learned appellate tribunal.

11. It is, thus, our deliberated view that the Impugned Judgment is in dissonance with the law, as enumerated supra, hence, cannot be sustained. Whereas, the findings contained in the order in original are in correct appreciation of the law, for the time being in force.

12. In view of the reasoning and rationale herein contained, the question framed for determination supra is answered in the negative; hence, in favor of

---

<sup>6</sup> ... the Federal Board of Revenue is pleased to direct that no option shall be given to pay fine in lieu of confiscation in respect of ... (a) smuggled goods ... (b) lawfully registered conveyance ... found carrying smuggled goods in false cavities or being used exclusively or wholly for transportation of offending goods...

<sup>7</sup> *Collector MCC Gaddani vs. Muhammad Hanif (SCRA 09 of 2020)*; judgment dated 23.07.2020.

<sup>8</sup> Per *Maqbool Baqar J* in *Civil Petitions 730-K to 760-K of 2020*; Order dated 11.02.2021.

the applicant department and against the respondent in the reference application. The reference application stands allowed in the above terms. As a consequence hereof, the subject petition, along with pending application/s, is hereby dismissed. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

JUDGE

JUDGE