

Container Corp. Of India vs.state

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Court : Delhi

Decided On : May-31-2017

Appellant : Container Corp. Of India

Respondent : State

Judgement :

CRL.REV.P.349/2017 * % + CONTAINER CORP. OF INDIA STATE versus IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

23. 05.2017 Delivered on:

31. 05.2017

... Petitioner

..... Respondent Advocates who appeared in this case: For the

... Petitioner

: Ms.Pinky Anand, ASG with Mr.Balendu Shekhar, Ms.Snidha Mehra, Mr.Hemant Arya and Mr.Piyush Singhal. : Mr.Rahul Mehra, Standing Counsel with Dr.M.P.Singh, APP with Mr.Sanjeev Narula, Sr.Standing counsel with Mr.Abhishek Ghai. For the Respondent CORAM:-

"HONBLE MR JUSTICE ASHUTOSH KUMAR JUDGMENT ASHUTOSH KUMAR, J1 On 06.05.2017, at about 7.30 AM, the duty officer at police station Pul Prahaladpur was informed on telephone about the leakage of poisonous gas

behind Senior Secondary School in front of the Container Corporation of India (hereinafter called CONCOR), Tuglakabad. The emission caused irritation in the eyes of many residents of the locality including children. CRL.REV.P.349/2017 Page 1 of 20 2. On such report, the police galvanized into action. The entire area from where the emission had taken place was cordoned off with the help of staff and efforts were made for quick evacuation and transportation of the victims to the hospital. Fire brigades, Delhi Disaster Management team and the police staff swooped into action for finding out as to whether any victim was trapped in the school premises situated nearby.

3. It was then learnt through a CISF staff deployed near the exit gate of the CONCOR that some kind of poisonous gas/chemical had leaked from a truck. It was found that the chemical/gaseous substance which escaped from one of the containers kept in the truck was chloromethyl pyridine 60%, which was imported from China for Crystal Crop Protection Pvt. Ltd and the same was being transported in the truck No.HR-38T-8972 from the custom bound area of the CONCOR. As an emergency measure, the name of the chemical/gas was passed on to all hospitals in order to facilitate the diagnosis and the treatment of the victims accordingly.

4. The gas leak soon spread over a larger area and maximum number of persons who were adversely effected were the female students at Rani Jhansi Senior Secondary and Government Girls Senior Secondary School No.2, Railway Colony, Tuglakabad.

5. The Court of Sub Divisional Magistrate, District South East, Old Gargi College Building, Lajpat Nagar-IV, New Delhi on coming to know that about more than 500 students/residents have been admitted to nearby hospitals, enquired into the matter on the same day i.e. on 06.05.2017 and came to the prima facie conclusion that the leakage was because of negligence on the part of CONCOR/Custom Department. It was, CRL.REV.P.349/2017 Page 2 of 20 therefore, held that the storage/transportation of any obnoxious chemical is a public nuisance which could endanger the lives of public in the area.

6. Invoking its powers under Section 133(1)(b) Cr.P.C on 06.05.2017, the learned Magistrate directed the CONCOR/Custom Department and SHO of the concerned police station to close down the inland container depot at Tuglakabad (hereinafter as ICD) and submit a report along with photographs personally or through authorized representatives to him by 09.05.2017 and also show cause as to why the order be not made absolute.

7. On 09.05.2017, after going through the reply filed by the CONCOR and after hearing its representatives, the learned Magistrate directed the following in public interest and to avoid recurrence of any such mishap in future:-

"a) To remove all the material i.e. all obnoxious chemical/gas, any explosive material and any other material which could cause health hazard to the public in the vicinity. b) To release all the containers from the site in a phased manner c) No fresh containers should be allowed at this particular site till further orders. d) Disaster Management plan be submitted immediately to mitigate any emergency/disaster. e) An undertaking from CONCOR be filed in this Court to the effect that no container having obnoxious chemical/gas/explosive be allowed at the site, which may lead to any disaster. The case was thereafter fixed for 12.05.2017. The present revision petition has been filed against the order dated 8.

9. 09.05.2017, referred to above, on the ground that such directions by the learned Magistrate were not sustainable under Section 133(1)(b) of the CRL.REV.P.349/2017 Page 3 of 20 Code of Criminal Procedure as no evidence was taken prior to passing of such an order and that the order was in the nature of a knee jerk reaction.

10. This Court heard the matter for the first time on 09.05.2017 only. The initial response of Ms.Pinky Anand, learned Additional Solicitor General who appeared on behalf of the petitioner was that there was no quarrel with directions contained in (a), (d) and (e) viz. to remove all the materials i.e. all obnoxious chemical/gas, any explosive material and any other material which could cause health hazard to the public in the vicinity; disaster Management plan be submitted immediately to mitigate any emergency/disaster and an undertaking from petitioner/CONCOR be filed in the Court of the Magistrate to the effect that no container having obnoxious

chemical/gas/explosive be allowed at the site, which may lead to any disaster.

11. However, the directions in (b) i.e. to release all the containers from the site in a phased manner and (c) not to accept any container at the site, were stated to be unwarranted and harsh. It was submitted on behalf of the petitioner that CONCOR is a Government of India undertaking which is conscious of its responsibilities and in the past, had been exercising due diligence in the storage of containers. It was submitted that special care is always taken with respect to containers having chemicals, gases and explosives.

12. The CONCOR was incorporated in March, 1988 under the Companies Act, 1956, as a Public Sector Enterprise under the Ministry of Railways. It is, today, in the business of providing terminal services and facilities for container traffic and has been providing inland transport of containerized cargo. Inland transport is provided mainly by rail, though CRL.REV.P.349/2017 Page 4 of 20 CONCOR also provides road transport on certain sectors, either as an alternative option to rail or as an operationally superior mode of transport. Movement of rail however forms the predominant mode.

13. The operations at CONCOR consists mainly of two kinds of traffic which is transport to and from the gateway ports for import and export, termed as international or Exim traffic; and domestic movement within the country. The CONCOR provides a single window facility for coordinating with all the different agencies and services namely Customs, Gateway Ports, Railways, Road Haulers, Consolidators, Forwarders, Custom House Agents and Shipping lines.

14. The area of ICD, Tuglakabad is the declared/notified station/custom bonded area for loading and unloading of exported and imported goods. The petitioner has been appointed as custodian of goods for Central Board of Excise and Customs (CBEC) under Section 45 of the Customs Act, 1962 vide public notice No. with effect from 01.09.1993. The petitioner being the custodian of the loaded imported and exported goods under the provisions of the Customs Act, 1962 is bound to keep the same in ICD, Tuglakabad.

15. It was further submitted on behalf of the petitioner that for handling multimodal cargo, International Maritime Dangerous Goods Code (IMDG) is operational since 01.01.2004. The Code, referred to above, operates under SOLAS Convention, 1977 (Safety for life at Sea Convention). The IMDG Code lays down the procedure for the multimodal transport and handling of hazardous cargo. All members of the U.N including India are bound to adhere to the provisions of this Code. There is also an order by the DG Shipping that all vessels which are handled at Indian Ports will ensure compliance with the IMDG Code.

16. It was, also, stressed upon that the ICD, Tuglakabad is also used for storing goods other than poisonous/obnoxious commodities and that it would be really difficult, albeit unnecessary for all the containers to be removed from the site and not to accept any container till further orders. It was suggested that such a blanket order is, in the first instance, not sustainable in the eyes of law and in the second, it would be prejudicial to the national interest. The petitioner would be duty bound to store containers which have IMDG, Customs and DGFT clearance.

17. However, as an interim measure, this Court directed for the stay of the directions contained in (b) and (c) till further orders.

18. Thereafter, on hearing the parties and on realizing that the Customs Department would be a necessary party in the present case, directed the Customs Department to be arraigned as respondent No.2. In the meantime, because of petitioner and respondent No.2, demonstrating that even directions in (a) is uncalled for, this Court stayed the operation of direction in (a) as well.

19. It was also submitted on behalf of the petitioner that CONCOR, right from its inception has been carrying out its Exim activities strictly in terms of the Indian Customs Act and DGFT guidelines. The aforesaid guidelines have also been imposed on the importers through their shipping lines. In that view of the matter, closing down of ICD, Tuglakabad would not be the most appropriate solution.

20. Apart from this, what was argued was that the leakage actually happened outside the ICD premises when the containers were gated out

CRL.REV.P.349/2017 Page 6 of 20 after due process and the importer had taken the delivery of the containers after fulfilling the custom formalities. In the premises, every care is taken for safe storage of the containers. The material, in the present case is commonly used for crop protection as a pesticide and is freely movable.

21. Additionally, transportation of hazardous cargo in containers by Rail mode are also subject to statutory provisions of ICRA Red Tariff. The Railways have also accorded permission for carriage of dangerous/hazardous goods which fall under the IMDG Code in containers, but only subject to the packing and stuffing being under the specifications of IMDG Code.

22. That apart, this Court has been informed, the ICD at Tuglakabad has a comprehensive and effective disaster management plan in place which is fully compliant with the Disaster Management Act, 2005.

23. Respondent No.2 has also sought to assail the order of the learned Magistrate on the ground that necessarily the Customs Department was to be heard, which opportunity was not given.

24. Mr.Sanjeev Narula, learned advocate appearing on behalf of respondent No.2 further submitted that in order to exercise effective control over import and export activities, goods are allowed for import/export at notified places under Section 7 of the Customs Act, 1962. Custodians are appointed under Section 45 of the Customs Act, 1962 for safe storage of goods till they are cleared for consumption or warehouse. For the ICD site at Tuglakabad, CONCOR is the custodian appointed under Section 45 of the Customs Act. The area of ICD, Tuglakabad has been declared as custom bonded area for loading and unloading of imported and exported goods. CRL.REV.P.349/2017 Page 7 of 20 25. The Government has also, it has been argued notified the Handling of Cargo in Customs Area Regulations, 2009 which lays down the conditions and responsibilities to be fulfilled by custom cargo service providers. It is only the CONCOR which is required to comply with the Regulations relating to transportation and storage of hazardous commodities. Respondent No.2 has only to perform a regulatory function under the Customs Act, 1962 in the premises of CONCOR. Its role, therefore, is limited to ensuring that goods imported are in consonance with the

Foreign Trade Policy of India and that proper duties have been paid on them.

26. While assailing the order containing the directions to be complied with, Mr.Narula, learned advocate submitted that the commodity in question (Chloromethyl pyridine) is a freely importable item under the Exim policy and Foreign Trade policy. The direction contained in (a) is of such a wide range which includes phasing out of chemical gases and materials which may be even freely importable that it cannot be executed. Any direction for removing of such materials would not only gravely prejudice the export and import of freely importable goods but would also be prejudicial in national interest.

27. The directions to remove the containers from the ICD, Tuglakabad would only be in conflict with various provisions of the Customs Act. Removal of any container is only possible after normal assessment and duty payment in cases where Bills of Entry under Section 46 of the Customs Act has been filed. In other cases, where the Bills of Entry have not been filed, there cannot be any removal before the expiry of 30 days of the unloading which is mandated by Section 48 of the Customs Act. CRL.REV.P.349/2017 Page 8 of 20 Containers which have been kept on hold because of pending investigations by different agencies such as DRI and SIIB, cannot be removed at the instance of the Customs Department as no objection certificate would be required by the custom department from the agency which is carrying out its investigation. In some cases, goods could also be the subject matter of Court proceedings or investigation and may not have undergone the inventory certification in accordance with Section 110(1A) of the Customs Act.

28. It was then submitted that there are some containers in which fire crackers have been stored. They have been directed to be disposed. The CONCOR is requested to arrange for such destruction. Such containers can possibly be removed without any objection. For such containers for which Bills of Entry have not been filed it would be the responsibility of the CONCOR to dispose of the same in terms of CBEC circular and in such cases the shifting would require the permission of higher authorities under the CBEC.

29. Not only the chemical cargo but other goods which are of strategic importance are also stored at the site of ICD, Tuglakabad. The Tuglakabad port is one of the

most important ports in North India which has, for the last year, generated more than Rs.700 crores net customs revenue and has provided immense employment opportunities. Thus it has been argued by respondent No.2 that the learned SDM has acted in undue haste and without taking into consideration the stand of the Customs Department. CRL.REV.P.349/2017 Page 9 of 20 30. Section 133 of the Cr.P.C forms part of Chapter 10 of the Code which deals with maintenance of public order and tranquility and public nuisance. Section 133 reads as follows:-

"the keeping 133. Conditional order for removal of nuisance. (1) Whenever a District Magistrate or a Sub- divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers- (a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or (b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or thereof regulated; or (c) that the construction of any building, or, the disposal of any substance, as is likely to occasion configuration or explosion, should be prevented or stopped; or (d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or (e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or (f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or CRL.REV.P.349/2017 Page 10 of 20 owning or possessing such animal or tree, within a time to be fixed in the order- (i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or (iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or (iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or (v) to fence such tank, well or excavation; or (vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the Order, and show cause, in the manner hereinafter provided, why the order should not be made absolute. (2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court. Explanation- A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes. 31. The power under the aforesaid Section can be exercised either on receipt of a police report or other information under certain circumstances which have been enumerated in this Section. It begins with a conditional order under Section 133, which could be served on the person against whom the order is made as if it were a summons. On the service being effected, the person concerned may carry out the order, in which case, the proceedings will come to an end. If he does not, he has to show cause CRL.REV.P.349/2017 Page 11 of 20 against the order or apply to the Magistrate to test whether the order is reasonable and proper. If the person does not comply with the order and fails to appear before the Magistrate, the order is made absolute. He may also be prosecuted under Section 188 of the Indian Penal Code. If he successfully shows cause, the order is discharged. But if the cause shown is not satisfactory, the order is made absolute. The Magistrate, may, when the person against whom an order is made under Section 133 appears before him or contests the existence of any public right before him, direct a local investigation or summon and examine any expert. If the person disputes the existence of any public right, the Magistrate will hold preliminary enquiry and if he finds the contention good, the question will be left to be determined by a Civil Court. If there is no substance in the contention, the enquiry will proceed. When an order is made absolute under Section 136 or Section 138, the person will be called upon to carry

it out within the specified time and if he fails to carry it out, he could be prosecuted under Section 188 of the Indian Penal Code.

32. From a reading of Sections 133 to 138, it would appear that the enquiry which is contemplated in the aforesaid sections is mandatory and any order for removal of public nuisance without following the mandatory provisions is unsustainable.

33. For a conditional order under Section 133(b), after the invocation of the Section either on the basis of a police officers report or other information and on taking such evidence as it thinks fit, a conditional order could be passed.

34. From the order dated 06.05.2017 which is a conditional order of closing down the ICD, Tuglakabad and submitting the report along with CRL.REV.P.349/2017 Page 12 of 20 the photographs before the learned Magistrate on 09.05.2017, it does not appear that any enquiry was held by the learned Magistrate. As such, thereafter, the order dated 09.05.2017 containing the impugned directions only means that the order of 06.05.2017 has been made absolute by order dated 09.05.2017. However, the order dated 09.05.2017 has been nomenclatured as an interim order under Section 133 Cr.P.C. If this order dated 09.05.2017 is taken to be as an interim order under Section 133 Cr.P.C, then, the petitioner and respondent No.2 ought to get another opportunity for explaining that the storage of the containers in the premises of ICD, Tuglakabad cannot be termed as a nuisance, for the Magistrate to initiate proceedings and pass conditional orders. Now, in that event, the petitioner and respondent No.2 would be under an obligation to appear before the Magistrate who would question them and on showing cause by them, would take evidence in the matter as in a summons case (Section 138 of Cr.P.C). In that event, if the Magistrate is satisfied with the order passed as it originally stood or subject to such modification as is considered necessary, reasonable and proper, the order shall be made absolute with or without modification. If the Magistrate is not so satisfied, no further proceeding shall be taken in the case. The provisions of the Code enjoin the Magistrate, for the purposes of an enquiry under Section 137 or 138, to direct a local investigation or summon and examine any expert, subject to the provisions of Section 140 of Cr.P.C.

35. From the perusal of the orders dated 06.05.2017 and 09.05.2017 it appears that both are conditional orders have been passed without any inquiry as contemplated under Section 133 of the Code of Criminal CRL.REV.P.349/2017 Page 13 of 20 Procedure. However, taking into account the fact that the matter was posted for another date, it could be presumed that the petitioner and perhaps, the respondent No.2 would be given an opportunity to explain, for the purposes of annulling/varying or modifying the aforesaid impugned orders.

36. During the pendency of the present petition, an undertaking was given on behalf of the petitioner by the Chief Manager of the petitioner which indicated that out of 8845 containers lying in the premises of ICD, Tuglakabad, only 230 containers were identified as hazardous cargo as covered under the IMDG Code. Out of the aforesaid 230 containers, 99 containers have been received in the ICD after 01.01.2017. Those 99 containers, it has been undertaken by the petitioner, would be delivered to the importers/shipping lines after clearance of the Customs within a period of three weeks. In case any container is unclaimed, abandoned or put on hold by the Customs Department, it would be dealt with as per the provisions of the Customs Act. 6 out of 99 containers belong to the aforesaid category. 27 containers, in which fire crackers have been stored, have been confiscated by Customs. They have been released to the ICD for destruction with a direction to dispose of through a custom approved agency namely M/s.Ramky Enviro Engineers Ltd under the supervision of the Customs authorities. It has been undertaken that the destruction of these containers would be completed within six weeks.

37. Out of 104 containers which were received in the ICD prior to 01.01.2017, the petitioner would require necessary clearance from the Customs and other agencies. In this connection, a request has been made CRL.REV.P.349/2017 Page 14 of 20 by the petitioner that the Deputy Commissioner of Customs be directed to permit the petitioner to shift the undelivered containers in this category to any depot away from the ICD, Tuglakabad. During the course of arguments, Ms.Pinky Anand, learned Additional Solicitor General suggested that the aforesaid containers could be shifted to other depots at Khatwas, Dadri, Panipat or Rewari, all of which are not located in as heavily populated area as the ICD, Tuglakabad.

38. Mr.Narula, learned advocate appearing for the Customs, however, submitted that shifting out of the containers to other depots would not serve any purpose as it would require further clearance from various departments especially the customs for notifying such depots as custom bonded. The risk of mishap would still be looming large, if not at ICD, Tuglakabad then at any other suggested depots.

39. On a conspectus of the aforesaid facts, this Court is of the opinion that necessary care and caution is required to be taken for the storage and also transportation of dangerous and hazardous goods.

40. What has been argued by the learned advocates appearing for the petitioner and respondent No.2 is that such blanket order passed by the Magistrate was not sustainable on several accounts namely:-

"(i) there was no enquiry as contemplated under Section 133 of the Code of Criminal Procedure; (ii) the second conditional order dated 09.05.2017 appeared to be an absolute order; (iii) the Magistrate did not give hearing to the Customs Department even when it was made known to him that the ICD, Tuglakabad, is custom bonded and that for implementation of any direction, necessary clearance from the Customs Department would have to be, per force, obtained; (iv) the learned Magistrate did not at all advert CRL.REV.P.349/2017 Page 15 of 20 to the facts that the storage, shipment and the transportation of the hazardous goods were subject to various regulations and the compliances to such regulations are mandatorily enforced; (v) the learned Magistrate, without realizing that the ICD, Tuglakabad is one of the biggest gateway ports, ordered for its closure; (vi) the learned Magistrate did not apply its mind to the fact that certain non-hazardous commodities which are required in nation building have also been stored in the ICD, Tuglakabad and not the last; (vii) the learned Magistrate has not displayed a balanced approach in weighing the safety and security of the lives of people on the one hand and compulsions of a modern nation which is still under process of building and commercial expediency on the other.

41. What the learned Magistrate, while passing the impugned directions, has forgotten is that with the growing business and variety of cargo being transported in containers throughout the length and breadth of the country, some risk is always

posed but handling such containers would, in any event, be an important aspect of the growth of the nation.

42. A comprehensive disaster management plan of the petitioner is already in place. A copy of the disaster management plan of the petitioner has been handed over in Court which has been taken on record.

43. Taking into account that handling of such containers with hazardous substances poses high risk not only in the premises but also while on transport, the disaster management plan of CONCOR includes technical and organizational measures to control and neutralize the unintentional escape of hazardous material at all places. The plan of the petitioner, it is urged, is aimed at preventing such mishaps and minimizing accidents and losses. CRL.REV.P.349/2017 Page 16 of 20 44. It appears that the plan contains guidelines for all types of possible disasters like fire, chemical leaks, spills, terrorist activities, earthquakes etc. Various standard operating procedures, instructions and guidelines have been issued for minimizing the chances of mishap and losses. The guidelines are all comprehensive and take into account the precautions for storage and transportation of hazardous goods, cargo at different levels. Emergency response instructions have also been issued and an awareness programme is also in the offing.

45. It has also been submitted on behalf of the petitioner that within a time bound manner, such instructions and guidelines would be available at all terminals of the CONCOR and in fact a kind of instruction booklet also would be prepared in a bi-lingual form which would be distributed to all yard staff so as to enable them to take confident measures while taking necessary precautions as well as dealing with all possible crisis situations and accidents while handling hazardous cargo.

46. The plan definitely evinces the commitment of the organization to the safety of its employees, the public and the environment.

47. Learned counsels for the petitioner and respondent No.2 have also drawn the attention of the Court that other agencies have also taken up the issue, obviously for the purposes of finding out and fixing the responsibility for such mishap which

occurred on 06.05.2017 and for any corrective measure which could be put in place.

48. The preliminary enquiry revealed that the leakage of the obnoxious gas occurred while the containers containing chloromethyl pyridine were being loaded on the lorry. Leakage was, perhaps, because of damage to a CRL.REV.P.349/2017 Page 17 of 20 container by a pitch fork which was used for loading the containers and friction between the two containers while being loaded on the lorry.

49. Ms.Pinky Anand, learned Additional Solicitor General further submitted that no sooner this was detected, the staff deployed in the premises, who had some idea of the disaster management, tried to plug the escape of the obnoxious gas by putting sand over the damaged container.

50. In this context, this Court records its appreciation for the prompt action taken by the Delhi Police and the ICD, Tuglakabad in immediately galvanizing into action for evacuating the residents from around the area after cordoning it off and using all means to take the injured/victims to the nearest hospitals. In fact, prompt instructions were given in all hospitals regarding the name of the chemical in the container so as to make it convenient for the doctors to diagnose and provide medicine/help/succor.

51. All these aspects, as has been stated earlier could have been brought to the notice of the learned Magistrate if he would have undertaken the enquiry as contemplated under Section 133 (b) of the Code of Criminal Procedure.

52. It, therefore, appears to be imperative, that the matter be referred to the learned Magistrate for a final determination regarding making of an absolute order for removal of nuisance. The Magistrate would definitely have to apply its mind as to whether the existence of ICD, Tuglakabad with the storage facilities and with the requirement of complying with the safety standards under the DGFT and IMDG Code, can at all be called nuisance. CRL.REV.P.349/2017 Page 18 of 20 53. In the meantime, the petitioner Corporation shall respect its undertaking and would ensure that no untoward incident takes place.

54. Thus, the matter is remitted to the Court of the learned Magistrate for holding an enquiry, hearing the petitioner and the respondent No.2 and if needed directing for local investigation by summoning and examining any expert under Sections 139 and 140 of the Code of Criminal Procedure, and thereafter passing necessary orders to remove nuisance if at all it exists and to ensure the safety of people and environment. The learned Magistrate shall also take into account what has been stated in the order.

55. During the intervening period, the conditions imposed in entry (b) and (c) of the order dated 09.05.2017 shall remain stayed. With respect to direction under entry (a), the same is modified to the extent that the petitioner Corporation shall maintain the time frame for shifting the hazardous containers as undertaken by it before this Court. The Customs Department is also directed, in the meanwhile, to take necessary steps for avoidance of any such mishap in the interregnum period and in future including giving necessary clearance for shifting of containers having hazardous substances which cannot be handled safely and can pose threat in any form.

56. For the aforesaid purpose, the case would be listed before the learned Magistrate on 10.07.2017.

57. The revision petition is disposed of with the aforesaid directions. CRL.REV.P.349/2017 Page 19 of 20 CrI.M.A.7856/2017 1. In view of the main petition having been disposed of, this application becomes infructuous.

2. This application is disposed of accordingly. MAY31 2017 k ASHUTOSH KUMAR, J CRL.REV.P.349/2017 Page 20 of 20

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