IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. 12152 of 2014

Date of Decision: February 05, 2015.

Mangal Sain

PETITIONER

Versus

State of Punjab and another

RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Siddharth Gupta, Advocate,
for the petitioner.
Mr. S.S.Chaudhary, DAG, Punjab.

LISA GILL, J.(Oral)

This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of the FIR No. 138 dated 12.10.2012, under Sections 353, 186, and 420 IPC, registered at Police Station Talwandi Sabo, District Bathinda.

Petitioner is a partner of the Amar Transport Company. As per the prosecution version, on 12.10.2012, Rakesh Kumar, Excise & Taxation Officer, ICC, Talwandi

Sabo was on duty and when the vehicle No. PB-03Y-0524 was signaled to stop, it did not. On being chased by duty officers, it was apprehended and the driver of the truck was asked about the bill bilty of the goods carried in the vehicle. The said driver misbehaved and did not produce any document with regard to the goods being carried in the truck, thereby creating an obstruction in discharge of Government work. Barrier Incharge, Shri Parkash Singh talked to the Excise and Taxation Officer, on telephone and was advised lodging of the FIR/complaint at Police Station Talwandi Sabo. The driver in question revealed that the goods carried in the vehicle belongs to Amar Transport Company, Amrik Singh Road, District Bathinda and the names of the owners are Amar Chand and Mangal Sain. The present FIR was initially registered under Section 353 and 186, IPC against the driver of the vehicle as well as the present petitioner. Thereafter Section 420, IPC was added due to allegation of theft of sales tax and violation of Punjab Value Added Tax Act, 2005(hereinafter referred to as "Punjab Vat Act")

It is alleged that the petitioner is guilty of committing 'theft of sales tax' as well as violating the provisions of Punjab Value Added Tax Act, 2005. Aggrieved therefrom, present petition has been filed.

Learned counsel for the petitioner submits that no offences punishable under Sections 186, 353 and 420, IPC are made out against the present petitioner who is the partner of the Transport Company, namely, Amar Transport Company. Petitioner was not apprehended at the spot. Thus, there is no question of causing any obstruction in the discharge of duty by the Government officials. No offence punishable under Sections 186 and 353, IPC is made out against the petitioner.

It is submitted that as per provisions of Punjab VAT Act, it is only penalty which can be levied in the case of evasion of tax levied thereunder. There is no question of attracting the rigors of Section 420,IPC in this case. Furthermore, the entire amount due from the petitioner along with the penalty under the Act has been deposited by him which is evident from Annexure P-2. He refers to order dated 05.03.2012 passed in Criminal Miscellaneous No. M-26116 of 2010 (Annexure P-3) to buttress his argument that the provisions of the Act provide for imposition of penalty. There is no provision of registration of the FIR for the evasion of payment of tax. Punjab VAT Act, being a Special Act and a complete code in itself, there is no scope for proceeding against the petitioner under Section 420, IPC.

Learned counsel for the State submits that evasion of tax by the petitioner is apparent from the fact that he has deposited the entire amount along with the penalty after the registration of the FIR. Learned counsel for the State, however, is unable to point out any material which would show the commission of offences punishable under Sections 186, 353, IPC by the present petitioner who was admittedly not present at the spot. There is also no explanation as to why only one partner was proceeded against whereas two partners of the firm/company are revealed. It is submitted by the learned State counsel that the challan/report under Section 173, Cr.P.C. has been submitted before the trial court but charges are yet to be framed thus no ground for quashing of the FIR is made out.

I have heard learned counsel for the parties and gone through the file.

Evasion of liability to pay tax as mentioned in the FIR arises under the Punjab VAT Act.

Section 51(4) of the Punjab Value Added Tax Act reads as under:-

> *"(4) The owner of person Incharge of a goods vehicle entering the limits or leaving the limits of the State, shall stop at the nearest check posts or information collection centre as the case may be, and shall furnish in triplicate*

a declaration mentioned in sub-section (2) along with the documents in respect the goods carried in such vehicle before the officer Incharge of the check post or information collection centre. The officer Incharge shall return a copy of the declaration duly verified by him to the owner or person Incharge of the goods vehicle to enable him to produce the same at the time subsequent checking if any.

Provided that where a goods vehicle bound for any place outside the State passes through the State, the owner or person Incharge of such vehicle shall furnish, in duplicate, to the officer Incharge of the check post or information collection centre, a declaration in respect of his entry into the State in the prescribed form and obtain from him a copy thereof duly verified. The owner or person Incharge of the goods vehicle, shall deliver within forty eight hours the aforesaid copy to the officer Incharge of the check post or information collection centre at the point of its exist from the State, failing, which he shall be liable to pay a penalty to be imposed by *the Officer Incharge of the check post or information collection centre equal to fifty per cent of the value of the goods involved."*

Section 51(7)(a) and (b) of the Punjab Value Added Tax Act reads as under:-

" (7) (a) The officer detaining the goods under sub section (6) shall record the statement, if any, given by the consignor or consignee of the goods or his representative or the driver or other person Incharge of the goods vehicle and shall require him to prove the genuineness of the transaction before him in his office within the period of seventy two hours of the detention. The said officer, shall, immediately thereafter, submit the proceedings along with the concerned records tot he designated officer for conducting necessary inquiry in the matter.

(b) The designated officer shall, before conducting the inquiry, serve a

notice on the consignor or consignee of the goods detained under clause (a) of sub section (6) and give him an opportunity of being heard and if, after the inquiry, such officer finds that there has been an attempt to avoid or evade the tax due or likely to be due under this Act, he shall, by order, impose on the consignor or consignee of the goods, a penalty, which shall be equal to thirty percent of the value of the goods. In case, he finds otherwise, he shall order release of the goods and the vehicle, if not already released, after recording reasons in writing and shall decide the matter finally within a period of fourteen days from the commencement of the inquiry proceedings."

A perusal of the above mentioned provisions clearly shows that there is a provision of penalty to be imposed in case a goods vehicle is proceeding without the requisite documents or it is found on inquiry that there is an attempt to avoid or evade tax. The Act which is a complete code in itself, does not provide for initiation of criminal proceedings in the matter of evasion of tax. This court in CRM-M-26116 of 2010 decided on 05.03.2012 (Annexure P-3) has held that the provisions of VAT Act, 2005 are sufficient and equipped to deal with the matters where an attempt is made to evade the tax and registration of the FIR is an abuse of the process of law. In the present case, no offence punishable under Section 420, IPC also is made out against the petitioner on the allegations levelled. Furthermore, admittedly entire amount due along with the penalty has been paid by the petitioner.

Petitioner was undoubtedly not present at the spot when the vehicle was apprehended. Therefore, there is no question of the commission of offences punishable under Sections 186 and 353, IPC qua the petitioner.

Keeping in view of the facts and circumstances of the case, this petition is allowed and FIR No. 138 dated 12.10.2012, under Sections 353, 186, and 420 IPC, registered at Police Station Talwandi Sabo, District Bathinda as well as all subsequent proceedings arising therefrom are, hereby quashed qua the petitioner.

05.02.2015 (LISA GILL)
Anoop JUDGE