

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29708-2014 (O&M)

Date of decision: 11.09.2015

Ajay Kumar Sandhu

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. R.S. Tacoria, Advocate
for the petitioner.

Mr. Manoj Kumar Sangwan, DAG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of impugned FIR No.161 dated 09.06.2011 (Annexure P-1) under Section 406 of Indian Penal Code ('IPC' for short), registered at Police Station Manesar, District Gurgaon and the consequential proceedings arising therefrom, including the order dated 16.07.2014, whereby charge was ordered to be framed against the petitioner.

Notice of motion was issued and therefore, further proceedings before the learned trial Court were stayed. Reply has been filed on behalf of

the respondent-State.

Learned counsel for the petitioner submits that only alleged irregularity committed by the petitioner, was the alleged non-payment of service tax of Rs.1,05,705/-. He refers to the official communication dated 26.05.2011 (Annexure P-2) before registration of the impugned FIR, wherein an amount of Rs.15,440/- which was outstanding against the petitioner, had been paid and nothing remained balance against the petitioner on account of EPF and ESI. He also refers to Annexure P-3, another official communication dated 29.12.2011, whereby the petitioner has deposited exactly the same amount i.e. Rs.1,05,705/- on account of service tax and even if there was some irregularity, the same stood removed, vide Annexure P-3. He submits that after deposit of amount in question, the investigating agency ought to have prepared the cancellation report in favour of the petitioner.

Learned counsel for the petitioner would next contend that no competent authority has ever held the petitioner liable to pay any other amount, by resorting to the procedure laid down under Section 75 of the Finance Act, 1994 ('Act of 1994' for short). He further submits that since the Act of 1994 was a complete Code in itself, providing a procedure for recovery as well as for penalty, registration of impugned FIR was wholly unwarranted. He also submits that in view of the law laid down by the Hon'ble Supreme Court in **Jeewan Kumar Raut and anr. Vs. Central Bureau of Investigation, 2009 (7) SCC 526**, since the Act of 1994 was a special Act, general provisions of IPC would not be attracted. Learned counsel for the petitioner concluded by submitting that if the competent authority, after following the procedure provided under the Act of 1994 would arrive at a

conclusion, holding the petitioner liable for any amount, petitioner would not be averse in paying the said amount. He prays for quashing the impugned FIR and the consequential proceedings arising therefrom, including the impugned order of charge (Annexure P-5), by allowing the present petition.

On the other hand, learned counsel for the State, on instructions from ASI Shobha Singh, Police Station Manesar, Gurgaon, submits that when the impugned FIR was registered against the petitioner, he was found to have committed an offence under Section 406 IPC, while not depositing the amount of Rs.1,05,705/- on account of service tax. So far as factum of deposit of said amount by the petitioner vide Annexure P-3 was concerned, learned counsel for the State submits that said fact alone would not absolve the petitioner from his criminal liability. He prays for dismissal of the present petition.

After hearing the learned counsel for the parties and after careful perusal of the record of the case, this Court is of the considered opinion that in the given fact situation of the present case, noticed hereinabove, instant petition deserves to be allowed and the impugned FIR as well as the consequential criminal proceedings arising therefrom, are liable to be quashed, for the following more than one reasons.

It has gone undisputed on record that the Act of 1994 is a special and complete Code in itself. Before proceeding further, it would be appropriate to refer to the provisions of Sections 75 and 76 of the Act of 1994 and the same read as under: -

75. Interest on delayed payment of Service Tax.

Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to

credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by Notification in the Official Gazette for the period by which such crediting of the tax or any part thereof is delayed.

Provided: - that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice or during the last preceding financial year, as the case may be, such rate of interest, shall be reduced by three per cent per annum.

76. Penalty for failure to pay service tax.

Any person, liable to pay service tax in accordance with the provisions of section 68 or the rules made under this Chapter, who fails to pay such tax, shall pay, in addition to such tax and the interest on that tax amount in accordance with the provisions of section 75, a penalty which shall not be less than two hundred rupees for every day during which such failure continues or at the rate of two per cent of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax:

Provided that the total amount of the penalty payable in terms of this section shall not exceed the service tax payable in terms of

this section shall not exceed the service tax payable.”

There is no denial to the fact that the moment petitioner received any demand put to him by the competent authority, he immediately deposited the amount of Rs.1,05,705/-, which is so mentioned in the official communication (Annexure P-3). This amount deposited by the petitioner reflected in Annexure P-3, was towards service tax because this fact has also not been disputed by learned counsel for the State. This fact is referred in para 2 of the preliminary submissions of reply also.

When a pointed question was put to learned counsel for the State, as to how the impugned FIR was registered under the general provisions of IPC, when the Act of 1994 was a special Act, which would prevail upon the general provisions, he had no answer and rightly so, it being a matter of record. It has also not been argued on behalf of the respondent-State that any competent authority, after following the procedure provided under the abovesaid relevant provisions of law contained in the Act of 1994, has arrived at a conclusion, pointing out any financial liability of the petitioner, which might have been outstanding against him. Having said that, this Court feels no hesitation to conclude that once the Act of 1994 was a special and complete Code in itself, wherein even the procedure for penalty has been provided, governing the fact situation as obtaining in the present case, registration of the impugned FIR was nothing but abuse of process of Court and the same cannot be sustained.

The abovesaid view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Jeewan Kumar Raut's** case (supra). Relevant observations made by the Hon'ble Supreme Court in paras

15, 16 & 20 of the judgment, which can be gainfully followed in the present case, read as under: -

“TOHO being a special statute, Section 4 of the Code, which ordinarily would be applicable for investigation into a cognizable offence or the other provisions, may not be applicable. Section 4 provides for investigation, inquiry, trial, etc. according to the provisions of the Code. Sub-section (2) of Section 4, however, specifically provides that offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, tried or otherwise dealing with such offences. TOHO being a special Act and the matter relating to dealing with offences thereunder having been regulated by reason of the provisions thereof, there cannot be any manner of doubt whatsoever that the same shall prevail over the provisions of the Code.

The investigation in terms of Section 13(3)(iv) of TOHO, thus, must be conducted by an authorized officer. Nobody else could do it. For the aforementioned reasons, the officer incharge of the Gurgaon Police Station had no other option but to hand over the investigation to the appropriate authority.

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It is a well-settled principle of law that if a special statute lays down procedures, the ones laid down under the general statutes shall not be followed. In a situation of this nature, the respondent could carry out investigations in exercise of its authorization under Section 13(3)(iv) of TOHO. While doing so, it could exercise such powers which are otherwise vested in it. But, as it could not file a police report but a complaint petition only; Sub-section (2) of Section 167 of the Code may not be applicable. The provisions of the Code, thus, for all intent and purport, would apply only to an extent till conflict arises between the provisions of the Code and TOHO and as soon as the area of conflict reaches, TOHO shall prevail over the Code. Ordinarily, thus, although in terms of the Code, the respondent upon completion of investigation and upon obtaining remand of the accused from time to time, was required to file a police report, it was precluded from doing so by reason of the provisions contained in Section 22 of TOHO.

To put it differently, upon completion of the investigation, an authorized officer could only file a complaint and not a police report, as a specific bar has been created by the Parliament. In that view of the matter, the police report being not a complaint and vice-versa, it was obligatory on the part of the respondent to choose the said method invoking the jurisdiction of the Magistrate concerned for taking cognizance of the offence only in the manner laid down therein and not by any other mode. The

procedure laid down in TOHO, thus, would permit the respondent to file a complaint and not a report which course of action could have been taken recourse to but for the special provisions contained in Section 22 of TOHO.”

Further, learned counsel for the petitioner was fair enough to submit that if any competent authority, after following the procedure laid down under the Act of 1994, comes to the conclusion that some amount was outstanding against the petitioner on account of service tax or any other financial liability for that purpose, petitioner would not be running away from his legal obligation and he would deposit the same, as he had been doing on earlier occasions also. In this view of the matter, it can be safely concluded that continuation of the criminal proceedings arising out of the impugned FIR, would certainly result in further abuse of process of Court, therefore, the same cannot be sustained, for this reason as well.

No other argument was raised.

In view of what has been discussed hereinabove, present petition deserves to be accepted. Consequently, impugned FIR No.161 dated 09.06.2011 (Annexure P-1) under Section 406 IPC, registered at Police Station Manesar, District Gurgaon, as well as the consequential criminal proceedings arising therefrom, including the order dated 16.07.2014 (Annexures P-4 and P-5), are ordered to be quashed, so as to prevent any further abuse of process of Court and also to secure the ends of justice.

However, before parting with the order, it is clarified as an abundant precaution that the competent authority under the Act of 1994, would be at liberty to proceed further against the petitioner, as per the

procedure provided therein. If the competent authority, after following the procedure under the Act of 1994 arrives at a conclusion that petitioner is liable to pay any amount, he shall be duty bound to pay the same, in accordance with law.

Resultantly, with the abovesaid observations made and directions issued, present petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

11.09.2015
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