IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-4758-2015 (O&M)
Date of decision: 17.08.2015

Mandeep Singh Dhaliwal

... Petitioner

Vs.

State of Punjab and anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Preetinder S. Ahluwalia, Advocate
for the petitioner.

Mr. Daljit Singh Virk, AAG, Punjab.

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

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RAMESHWAR SINGH MALIK, J.

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), prays for quashing of FIR No.16 dated 08.09.2012 (Annexure P-1) under Sections 409, 420, 467, 468, 471, 120-B of Indian Penal Code and Sections 13 (1) (D) read with Section 13 (1) (D) read with Section 13 (2) of the Prevention of Corruption Act, 1988, police report under Section 173 Cr.P.C. (Annexure P-2) and all the subsequent proceedings.

Notice of motion was issued and pursuant thereto, reply by way of affidavit dated 24.07.2015 was filed, on behalf of the respondents.

Learned counsel for the petitioner, while referring to the statutory provisions contained in the Indian Stamp Act, 1899 ('Stamp Act' for short) and particularly Sections 27, 47-A, 62, 64 and 70 thereof, submits that since the Stamp Act is a complete Code in itself, including for the purpose of prosecution, registration of the impugned FIR for the alleged offences under the Indian Penal Code ('IPC' for short) amounts to abuse of process of law, particularly when parallel proceedings for recovery of the amount on account of alleged evasion of stamp duty were going on. He further submits that the prosecuting agency has not invoked the procedure provided for institution and conduct of prosecution under Section 70 of the Stamp Act. In support of his contentions, learned counsel for the petitioner places reliance on the following three judgments of this Court: -

1. ***Piyara Singh and ors. Vs. The State of Haryana, 2002 (3) RCR (Crl.) 290.***
2. ***M/s Bikaner Steel Mills Vs. State of Punjab, 2007 (1) RCR (Crl.) 773.***
3. ***Raman Kapila and another Vs. State of Punjab, 2012 (4) RCR (Crl.) 634.***

Drawing the analogy from these three judgments rendered under Trade and Merchandise Marks Act, 1958, Copyright Act, 1957 and Electricity Act, 2003, learned counsel for the petitioner concluded that keeping in view the specific provisions contained in the Stamp Act, including for the purpose of institution and conduct of prosecutions, invoking the general provisions of IPC will not be permissible, as the special law prevail upon the general law. Thus, impugned FIR and the consequent proceedings arising therefrom is nothing but an abuse of process of Court. So far as the allegations under the Prevention of Corruption Act, 1988 ('PC Act' for short) are concerned, those were only against the co-accused of the petitioner Sh. Gurinder Singh Walia, the then Sub-Registrar, Patiala and he has since expired as per the impugned police report (Annexure P-2) itself. He prays for allowing the present petition.

On the other hand, learned counsel for the State vehemently contended that it was legitimate prosecution which is not liable to be quashed. He submits that since there is no specific bar, the impugned FIR was rightly registered. The allegations were direct and serious because of which the present petition is liable to be dismissed. He would next contend that the judgments relied upon by learned counsel for the petitioner are not applicable. The prosecuting agency was entitled to prosecute the petitioner and simultaneously initiate proceedings for recovering the amount on account of evasion of stamp duty. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant one has been found to be a fit case which deserves interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

Before proceeding further, reference to the provisions contained in Sections 27, 62, 64 and 70 of the Stamp Act would be necessary and the same read as under: -

27. ***Facts affecting duty to be set forth in instrument.***

(1) The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with

duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

(2) In the case of instruments relating to immovable property chargeable with an ad valorem duty on the value of the property, and not on the value set forth in the instrument, the instrument shall fully and truly set forth, the annual land revenue in the case of revenue paying land, the annual rental or gross assets, if any, in the case of other immovable property, the local rates, municipal or other taxes, if any, to which such property may be subject, and any other particulars which may be prescribed by rules made under this Act."

62. Penalty for executing etc., instrument not duly stamped.

(1) Any person-

(a) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange[1] [payable otherwise than on demand], [2] [-] or promissory note without the same being duly stamped, or

(b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped; or

(c) voting or attempting to vote under any proxy not duly stamped, shall, for every such offence be punishable with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under Section 35, Section 40 or Section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

64.Penalty for omission to comply with provisions of section 27.

Any person who, with intent to defraud the Government: -

(a) executes any instrument in which all the facts and circumstances required by Section 27 to be set forth in such instrument are not fully and truly set forth; or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or

(c) does any other act calculated to deprive the Government of any duty or penalty under this Act, shall be punishable with fine which may extend to five thousand rupees.

70. Institution and conduct of prosecutions.

(1) No prosecution in respect of any offence punishable under this Act or any Act hereby repealed shall be instituted without the sanction of the Collector or such other officer as [the [State Government] generally, or the Collector specially, authorizes in that behalf.

(2) The Chief Controlling Revenue-authority, or any officer generally or specially authorized by it in this behalf, may stay any such prosecution or compound any such offence.

(3) The amount of any such composition shall be recoverable in the manner provided by Section 48.

A bare combined reading of the abovesaid provisions of law would show that Chapter VII of the Stamp Act deals with the criminal offences and procedure. Allegation against the petitioner is of evasion of stamp duty. Section 62 of the Stamp Act deals with penalty for executing etc., instrument not duly stamped, whereas Section 64 provides penalty for omission to comply with provisions of Section 27.

Again, Section 70 provides institution and conduct of prosecutions. In the present case, it is not even the pleaded or argued case on behalf of the respondent-State that the prosecuting agency resorted to the procedure for institution and conduct of prosecutions, as envisaged under Section 70 of the Stamp Act. Further, no reason is forthcoming as to why provisions of Sections 27, 62, 64 and 70 of the Stamp Act were not invoked, it being a special law and the Stamp Act being a complete Code in itself.

It is also a matter of record and not in dispute that parallel proceedings for recovery of the amount, on account of alleged evasion of stamp duty, were going on. In such a situation, the important law point that falls for consideration of this Court is whether the impugned FIR and criminal proceedings arising therefrom would amount to abuse of process of Court, particularly when prosecuting agency has failed to invoke the specific procedure provided under Section 70 of the Stamp Act, which is a complete Code in itself.

Section 64 (c) of the Stamp Act provides the punishment for depriving the Government of any duty. Such an act would be punishable with fine which may extend to Rs.5,000/-. Under somewhat similar fact situation, this issue fell for consideration of this Court in **CRM-M-13412-2010 (Smt. Mewa and others Vs. The Sub-Registrar (Tehsildar) Mahendergarh, District Mahendergarh, Haryana and another, decided on 09.01.2013.**

While relying upon the law laid down by the Hon'ble Supreme Court, this Court made the following observations and the same can be gainfully followed in the present case: -

> *"This issue to an extent is considered by the Hon'ble Supreme Court in **Himalaya House Co. Ltd. versus The Chief Controlling Revenue Authority and another**, AIR 1972 Supreme Court 899. It is noticed that Section 27 requires the parties to a document to set forth in the document fully and truly the consideration (if any) and all other facts and circumstances affecting the chargeability of that document with the duty or the amount of the duty with which it is chargeable. The failure to comply with the requirements of this Section is merely punishable under Section 64 but the Hon'ble Supreme Court did*

not find any provision in the Stamp Act, which empowers the revenue authority to make independent inquiry of the value of the property conveyed for determining the duty chargeable. That being the position, it may not be possible to hold that the inquiry can be held into the matter to reach the conclusion that the chargeable amount would be something different on the basis of some material, which may be open to the Collector.

The Hon'ble Supreme Court further considered the issue in the light of Article 23. It is stated that for the purpose of this Article, the value of consideration must be taken to be one as set forth in the conveyance deed. The question whether for the purpose of determining value of the consideration the revenue authority must have regard only to what the parties to the instruments have elected to state the consideration to be, or that it can also consider the value of the consideration as disclosed in the terms of the instrument as a whole is left open.

In this regard, Hon'ble Supreme Court has approved its views in ***Raman Chetty verus Mahomed Ghouse*** *(1889) ILR 16 Cal. 432,* ***Sakharam Shankar versus Ramchandra Babu Mohire*** *(1903) ILR 27 Bom. 279, in the matter of* ***Muhammad Muzaffar Ali*** *(1922) AIR 1922 All 82 (2) (FB),* ***Sitaram Kamalia versus State of Bihar*** *(1960) AIR 1960 Pat 210 and* ***Bharpet Mohammad Hussain Saheb versus Dist. Registrar, Kurnool*** *AIR (1964) Andh Pra 43 (SB).*

That being the position, it will be futile to direct *continuation of proceedings, end result of which ultimately is a fine, which can maximum extend to the tune of Rs.5000/-. Since the proceedings for impounding the sale deed on account of deficiency in court fee otherwise are in progress, it would be unfair to the petitioner to make him face proceedings for imposing fine, which can only be up to Rs.5000/-.*

In my view, it would not be worth the efforts which are required to be gone into while prosecuting the petitioner for this offence even if it made out from the facts of this case. In this regard, reference can be made to provisions of Section 95 IPC which provides that nothing can be an offence by reason that it causes or that it is intended to cause or that it is known to be likely to cause, any harm, if that harm is so slight that no person would complain of such harm. The offence alleged against the petitioner is too trivial in nature, especially so in the light of the fact that the proceedings for imposing the deficiency in the stamp duty if any, are already in progress."

Despite making his best efforts, learned counsel for the State could not distinguish the present case on facts as well as in law, as to why the abovesaid judgments in **Piyara Singh**'s case (supra), **M/s Bikaner Steel Mills**'s case (supra) and **Raman Kapila**'s case (supra), relied upon by learned counsel for the petitioner, would not be applicable in the present case.

The relevant observations made by this Court in paras 4 & 7 of its judgment in **Raman Kapila**'s case (supra) aptly apply to the facts of the present case and the same read as under: -

"In the present case after appreciating the peculiar facts, it appears that from the very inception there has been gross violation of the statutory provisions and the machinery of prosecution has been initiated against the petitioners solely on the misconceived opinion of District Attorney, Legal, who has fialed to appreciate the provisions of Section 135 of the Electricity Act, 2003, (for short 'the Act') and has also failed to note the relevant case law on the point in issue settled by this Court, Calcutta High Court and the Supreme Court in following cases:

i) ***M/s Mahalakshmi Spinners Ltd. and others v. State of Haryana and another, 2007 (1) RCR (Civil) 381: 2007 (1) RCR (Crl.) 387;***

ii) ***Biswanath Patra v. Divisional Engineer (E) S&LP and another, 2008 (1) RCR (Crl.) 836,*** *and*

iii) ***Avtar Singh v. State of Punjab, AIR 1965 SC 666.***

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Applying the ratio M/s Mahalakshmi Spinners Ltd. case (supra) to the facts of the present case, it is apparent that no complaint under Section 151 of the Act has been filed by any competent person under the Act, for theft of electricity under Section 135 of the Act. As the cognizance cannot be taken by a Court in the matter of theft of electricity. So far as offence under Section 379 IPC is concerned, in view of specific provisions of Section 135 of the Act, the general provisions of Indian Penal

Code contained in Section 379 IPC will not be permissible as special law will always prevail over the general law. The launching of prosecution under Section 379 IPC on the basis of complaint of Returning Officer is patent illegality. The FIR seems to have been registered for political rivalry of respondent No.2 against the petitioners. The law laid down by the Apex Court in Avtar Singh's case (supra) is fully applicable to the facts and circumstances of this case. In the said case Hon'ble Supreme Court while dealing with Section 29 of the Act which is pari-materia to Section 135 of the Act, in view of Section 50 of the unamended Act which is same as Section 151 of the present Act, held that the objection of Section 50 was to prevent prosecution for the offences under the Indian Electricity Act, 1910, unless and until the complaint was lodged by men possessing special qualifications. The subject matter of the FIR i.e. theft of electricity has to be established only by the persons well-versed with the techniques and instruments dealing with the electrical energy. As the electricity which is energy cannot be said to be a moveable property. Launching of prosecution by an unauthorised person regarding theft of electricity and registration of FIR on the basis of information of lay-man, framing of charges vide order dated March 25, 2008 and continuation of criminal proceedings against the petitioner are patently an abuse of the process of the Court as such the FIR, charge sheet and the order of framing of charges, Annexure P-3, *qua the petitioners, are hereby quashed.*

Further, as per the allegations levelled in the impugned FIR against the petitioner, it was the firm namely Chittosho Motors who had purchased the land in question. M/s Chittosho Motors was a partnership firm, as per its partnership deed (Annexures P-4 & P-5). It was an unregistered partnership firm. Initially the petitioner was partner to the extent of 60% and his father was partner to the extent of 40%, as per the partnership deed (Annexure P-4). Later on, share of the petitioner in the said firm was increased to the extent of 99%, vide partnership deed (Annexure P-5).

In this regard, there was a Civil Court decree dated 01.12.2012 (Annexure P-8), by virtue of which the sale deed in question was modified only to the extent of 1% share. However, while preparing the impugned final report under Section 173 Cr.P.C. (Annexure P-2), the investigating agency proceeded on a totally perverse and illegal approach, ignoring the abvoesaid Civil Court decree. The reasoning adopted by the investigating agency clearly runs counter to the law laid down by the Hon'ble Supreme Court in **V. Subramaniam Vs. Rajesh Raghuvandra Rao, 2009 AIR (SC) 1858**.

The relevant observations made by the Hon'ble Supreme Court in paras 14 and 17 of its judgment in **V. Subramaniam**'s case (supra) read as under: -

"It may be mentioned that a partnership firm, unlike a company registered under the Indian Companies Act, is not a distinct legal entity, and is only a compendium of its partners. Even the registration of a firm does not mean that it becomes a distinct legal entity like a company. Hence the partners of a firm are co-

owners of the property of the firm, unlike shareholders in a company who are not co-owners of the property of the company.

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It has already been mentioned above that a partnership firm, whether registered or unregistered, is not a distinct legal entity, and hence the property of the firm really belongs to the partners of the firm. Sub-section 2A virtually deprives a partner in an unregistered firm from recovery of his share in the property of the firm or from seeking dissolution of the firm."

In the present case, investigating agency exceeded its jurisdiction, while setting at naught the Civil Court decree passed by the Court of competent jurisdiction. It was not permissible in law. The Civil Court decree could not have been ignored until and unless it was set aside by the competent Court, in view of the law laid down by the Hon'ble Supreme Court in **Inderjit Singh Grewal Vs. State of Punjab, 2012 CriLJ 309.** In this view of the matter, the impugned FIR (Annexure P-1) as well as the impugned report under Section 173 Cr.P.C. (Annexure P-2) have been found to have resulted in the abuse of process of Court and the same cannot be sustained, for this reason also.

In view of what has been discussed hereinabove, the answer to the question posed at the outset is and has to be in the affirmative. It is held that the prosecuting agency was not entitled to get the impugned FIR registered, invoking the provisions of IPC-general law, over the provisions of Stamp Act-special law, which is a complete Code in itself. Thus, continuation of the criminal proceedings arising out of the impugned FIR (Annexure P-1) including the impugned report under Section 173 Cr.P.C. (Annexure P-2), would amount to further abuse of process of law, besides resulting in miscarriage of justice and the same cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition deserves to be accepted. Consequently, the impugned FIR (Annexure P-1), impugned final report under Section 173 Cr.P.C. (Annexure P-2) and all the subsequent criminal proceedings arising therefrom, are hereby quashed, however, only qua the petitioner.

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

[RAMESHWAR SINGH MALIK]
JUDGE

17.08.2015
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