IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40966 of 2013
Arising Out of PS.Case No. -381 Year- 2012 Thana -BEGUSARAI TOWN District- BEGUSARAI

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1. Sri Shambhu Sharan @ Shambhu Saran Son Of Surendra Prasad Singh Resident Of Village - Mokama (Sakarwar Tola), P.S. - Mokama, District - Patna Presently Manager At Begusarai Branch Of Sree Azad Transport Company Private Limited Near G.D. College, Pipra Road Begusarai

.... Petitioner

Versus

1. The State Of Bihar Through The Commissioner Cum Principal Secretary, Commercial Texes Govt. Of Bihar At Patna
2. Sacchidanand Jha, Joint Commissioner Commercial Taxes, Head Quarters, Bureau Of Investigation, Bihar At Patna
3. Ajit Kumar, Commercial Taxes Officer, Begusarai Circle, District - Begusarai, Bihar

.... Opposite Parties

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Appearance :
For the Petitioner/s : Mr. Mithilesh Kumar Sharma
For the Opposite Party/s : Mr. Jharkhandi Upadhyay (App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL ORDER

7 21-04-2016 This application has been filed seeking quashing of the First Information Report of Begusarai Town P.S. Case No. 381 of 2012 disclosing offences under Sections 420, 379, 406 read with Section 34 of the Indian Penal Code.

The quashing of the First Information Report is being sought on three basic premises, viz:-

(1) the provision of Section 81 (1), 81(2), 81 (3),

81 (4) and 81 (5) of the Bihar Value Added Tax, Act, 2005 cover the allegations made against the petitioner in the F.I.R.

(2) Section 81 (3) of Bihar Value Added Tax, Act, 2005 the special provision, same prevail over general provisions of the Indian Penal Code.

(3) Section 81 (5) of the Bihar Value Added Tax, Act, 2005, puts a bar against prosecution for the commission of offences referred to under Section 81 (1) to 81 (4) of the Bihar Value Added Tax, Act, 2005 if total amount of tax, interest or penalties evaded or attempted to be evaded is less than fifty thousand rupees.

It must be mentioned at the very outset that there is specific plea in para-5 and 6 of the present application that demand notice nos. 829 dated 21.08.2012 and 934 dated 05.10.2012 were served upon the petitioner disclosing the amount of penalties to be realized from him. It has been stated that total demand of Rs. 49, 150/- has been made against the penalties, which the petitioner has already deposited. A counter affidavit has been filed on behalf of the O.P. No. 3 in which there is no denial of the specific assertion made in the present application seeking quashing of the F.I.R.

Now coming to the First Information Report, which is based on written report of the Commercial Taxes Officer, Begusarai Circle dated 05.10.2012 addressed to the Officer-in-charge of Town Police Station, Begusarai, wherein it is alleged that on inspection of godown of Sri Azad Transport Company Private Limited situated at different places in Begusarai, was carried out at the behest of Commissioner-cum-Principal Secretary, Commercial Taxes Department, on 18.08.2012 and illegal goods worth lacs of rupees were found. Accordingly, penalties were imposed. The petitioner was admittedly Manager at Begusarai Branch of Sri Azad Transport Company Limited at the relevant point of time. It is further alleged that the company was earlier warned orally not to transport goods without D-IX Road permit, making it clear that F.I.R would be lodged. It is also alleged that despite several warnings, the transport company continued transporting goods without D-IX Road permit. On inspection conducted on 03.10.2012, again goods worth lacs of rupees were seized for which no documents were produced and the company had not disclosed with respect to various godowns which it owned, to the Circle in-charge, which is mandatory under law. It is further alleged that on 3rd of October also, illegal goods without relevant documents were found being transported to other States and stored in the godowns of the Company.

It is evident from the F.I.R. that inspection conducted on two occasions i.e. 18.08.2012 and 03.10.2012. Relevant portion of Section 81 of Bihar Value Added Tax Act, 2005 reads: -

> "(1) Whoever-
> (a) carries on business as a dealer without being registered in willful contravention of section 19, or
> (b) fails without sufficient cause to furnish any information required by section 23, or
> (c) fails, without sufficient cause, when directed so to do under section 59, to keep any accounts or record in accordance with the directions, or
> (d) fails, without sufficient cause, to furnish any return as required by section 24 by the date and in the manner prescribed, shall, on conviction, be punished with imprisonment, of either description, for a term which shall not be less than three months but which may extend to six months and with fine not exceeding one thousand rupees.
> (2) Whoever-
> (a) knowingly keeps false account of the value of the goods bought or sold by him in contravention of sub-section (1) of section 52 or section 53, or
> (b) willfully attempts, in any manner whatsoever, to evade any payment of

any tax, penalty or interest, shall, on conviction, be punished with imprisonment, of either description, for a term which shall not be less than six months but which may extend to one year and with fine not exceeding two thousand rupees.

(3) Whoever-

(a) not being a registered dealer under section 19, falsely represents that he is or was a registered dealer at the time when he sells or buys goods; or

(b) knowingly furnishes a false return; or

(c) knowingly produces before the prescribed authority, false bill, tax invoice, cash- memorandum, voucher, declaration, certificate or other document for any of the purposes of this Act; or

(d) issues to any person a certificate or declaration under this Act or the rules framed or notifications issued thereunder, a bill, cash- memorandum, tax invoice, voucher or other document which he knows or has reason to believe to be false; or

(e) obstructs any officer making inspection or search or seizure under section 56 or section 61 or section 62, shall, on conviction, be punished with imprisonment, of either description, for a term which shall not be less than one year but which may extend to three years and with fine not exceeding three thousand rupees.

(4) Whoever aids or abets any person in the commission of any offence specified in sub- section (1) or sub- section (2) or sub- section (3) shall, on

> conviction, be liable for punishment of the description specified in respect of the offence in the commission of which he has aided or abetted.
> (5) Notwithstanding anything contained in sub- sections (1) to (4), no person shall be proceeded against under these sub- sections for the commission of the offences referred therein if the total amount of tax, interest or penalties evaded or attempted to be evaded is less than five thousand rupees.
> (6) Where a dealer is accused of an offence specified in sub- section (1) or sub- section (2) or sub- section (3), the person declared as manager of the business of the dealer under section 22 shall also be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission thereof".

Upon comparison of the allegations made in the F.I.R and provisions of Section 81 of Bihar Value Added Tax Act, 2005 it is easily evincible that the offences declared under the said Act cover the allegations made in the F.I.R. For instance, carrying of business as a dealer without being registered in willful contravention of Section 19 as an offence Section 81 (d) of the Act, failure without sufficient cause to furnish any return as required by Section 24 by the date and in the manner prescribed, is an offence under 81 (1). Keeping false account of the value of the goods bought or sold by a person in contravention of sub-section (1) of section 52 or section 53 is an offence under Section 81 (2) of the Act. Sub-section (3) of Section 81 describes that a person not being a registered dealer under section 19, falsely represents that he is or was a registered dealer at the time when he sells or buys goods; or whenever goods a false return knowingly shall be liable for punishment with imprisonment and fine.

For a breach of various provisions of Bihar Value Added Tax Act, 2005 the department had admittedly imposed penalties and demands for realization of penalties were made in compliance of which the petitioner has already deposited the penalty amount. The total penalty amount imposed upon the petitioner is admittedly less than Fifty thousand rupees. In such circumstance, the learned Counsel appearing on behalf of the petitioner appears to be right in his submission that Section 81 (5) of the Act will apply with full force and criminal prosecution by lodging of F.I.R. under various provisions of the Indian Penal Code is an abuse of process of law.

Learned Additional Public Prosecutor appearing on behalf of the State has referred to the counter affidavit filed in this case and has submitted that the conduct of the petitioner constitutes offence under various provisions of Indian Penal Code also and therefore, the present F.I.R may not be quashed exercising jurisdiction under Section 482 of the Cr.P.C. He has submitted that the conduct of the petitioner is of grave nature and therefore the inherent jurisdiction of this Court may not be exercised.

However, as discussed above, I am of the view that criminal prosecution of the petitioner is impermissible in the facts of the present case since the amount of penalties imposed upon him for violation of various provisions of Bihar Value Added Tax Act, 2005 is less than fifty thousand rupees. The settled law is that if an Act is covered by Special provisions, governing particular act, the general provisions shall not apply and the special provision shall over ride the general provisions.

This application is accordingly allowed. The F.I.R and the entire proceeding arising out of Begusarai Town Police Station Case No. 381 of 2012 registered for the offences punishable under Sections 420, 379, 406 read with Section 34 of the Indian Penal Code stand quashed.

(Chakradhari Sharan Singh, J.)

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