IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34373 of 2013

Arising Out of PS.Case No. -225 Year- 2012 Thana -DARBHANGA District- DARBHANGA

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1. Satish Kumar Mishra Son Of Shri Ram Sanjivan Mishra, Resident Of P-2 Kalkar Street, Solkata, P.S. Bara Bazar, District Kolkata, West Bengal.
2. Kumar Phulendra Singh(K.P. Singh), Son Of Resident Of Villge + P.O. Jaunapur, P.S. Shahpur Patori, District Samastipur.

.... Petitioners

Versus

The State Of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Adv.
Mr. Raghubir Chandrayan, Adv.

For the Opposite Party/s : Mr. S.D.Singh Yadav(App)
Mr. Anjani Kumar, Sr.Adv.
Mr. Deepak Sahay Jamuar, AC to AAG6

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

6 09-05-2016 Heard learned counsel for the parties.

2. The sole question, which this application under section 482 of the Code of Criminal Procedure, 1973 raises, is as to whether, in view of the provision under section 81(5) of the Bihar Value Added Tax Act, 2005, the present First Information Report i.e. Darbhanga Nagar P.S.Case No. 225/2012, registered leveling offences under sections 420, 409 read with section 120B/34 of the Indian Penal Code, for the allegations made in the said F.I.R. is incompetent and unauthorized being barred by law. The petitioners seek quashing of the very First Information Report.

3. Petitioner no.1 is the Proprietor of Bokaro Carrying Corporation and petitioner no.2 is its Branch Manager posted at

Darbhanga Branch. It is alleged against the petitioners that despite repeated instructions for the maintenance of register of outgoing and incoming builty of goods and making entry of token number, they acted in breach of such directions and they indulged in inter State transpiration without making entry in declaratory statutory Form D-IX, in order to evade tax. It has further been alleged that at the time of inspection of the godown of the petitoiner on 8.10.2012, no documents were produced in support of valid transportation of goods. Accordingly, all goods available in the godown were seized and the First information Report came to be instituted.

4. It is the specific case of the petitioners that on the very same day i.e. 8.10.2012 a case was instituted in the office of the Sales Tax Joint Commissioner, Darbhanga Circle, Darbhanga bearing No. 6/2012-13 for the alleged violations, on the basis of search conducted on 8.10.2012. Finally, by an order dated 15.10.2012, the said case was disposed of, imposing penalty, three times the original prescribed amount. The penalty amount was found to be Rs.40,622.70 paise. After the said order, the Deputy Commissioner, Commercial Taxes, Darbhanga Circle, Darbhanga issued demand notice under section 25 and section 39 of the Act for depositing the said amount of Rs.40,623/- by 31st October,

2012. As per the said demand notice, the petitioners deposited the amount on 31.10.2012.

5. These facts are not in dispute.

6. Section 81 of the Bihar Value Added Tax, 2005 deals with offences and penalties under the Act. Section 81(5) of the Act is a non- obstante clause and lays down that notwithstanding anything contained in sub-sections (1) to (4) of section 81, no person shall be proceeded against under these sub-sections for the commission of the offences referred therein <u>if the total amount of tax, interest or penalties evaded or attempted to be evaded is less than fifty thousand rupees</u>. (emphasis added)

7. It is the case of the petitioners that the allegations made in the F.I.R. constitute breach of the provisions under Bihar Value Added Tax Act, 2005 and Bihar Value Added Tax Rules, 2005, for which penalties are prescribed under the Act and the Rules. It is their case that in view of clear provision under section 81(5) of the Act, lodging of the First Information Report is an abuse of process of law, particularly when the amount of tax/ penalties have been assessed, which has been found to be less than fifty thousand rupees, which the petitioners have already paid.

8. Learned counsel, appearing on behalf of the petitioners, has submitted that non-production of documents at the time of

inspection can be said to be in breach of the provisions as contained in Section 56(4)(a) and Section 59(2) of the Act, which read thus:

> *"56(4)(a) Any authority referred to in sub-sections (1) and (2) shall have the powers to seize any goods not properly accounted for in the books, accounts, registers and other documents of the dealer or the dalal as defined in clause (a) of the Explanation to section 59, or the owner of the warehouse, or the clearing, booking or forwarding agent, or the person engaged in the business of transporting goods in the manner prescribed.*
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> *59(2) Every agent or person referred to in sub-section (1), shall maintain true and complete accounts, registers and documents, as may be prescribed, in respect of the goods handled by him and the documents of title relating thereto and shall produce the said accounts, registers and documents before the prescribed authority as and when required by him."*
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> (Emphasis supplied)

9. Failure to maintain complete accounts, registers and documents as prescribed under section 59(2) is an offence under section 81(1)(c) of the Act. Certainly, therefore, any breach of requirement under section 59 shall be controlled by the non-obstante clause i.e. sub-section (5) of Section 81 of the Act. Bihar Value Added Tax Rules, 2005 have been framed in exercise of Rule making power under section 93 of the Act, Rule 41 of which provides for certain restriction on movement. Rule 41(1)(b) is relevant for the present purpose and is being extracted

hereinbelow:

> *"41. Restriction on movement.- (1) No person shal transport any consignment of goods referred to under sub-section (1) of section 61, exceeding such quantity or value, as may be specified in the notification, except in accordance with the following conditions, namely:-*
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> *(a) ... ...*
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> *(b) In case of goods being imported from any other State, by or on behalf a dealer who is in possession of a valid certificate of registration, the person transporting the goods or the dealer, as the case may be, shall carry a declaration in Form D-IX supported by a bill or cash memo in case the movement is as a result of sale or a challan in case the movement is otherwise than as a result of sale in respect of goods which is being transported or is otherwise in transit or in transit storage and produce such bill or cash memo or challan, as the case may be, along with the aforesaid Form of declaration on demand before the authority specified in rule 62."*

10. It is the contention on behalf of the petitioners that Rule 65 of the said Rules prescribed punishment for breach of rules, which is as follows:

> *"65. Punishment for breach of rules.- Any person contravening any provision of these rules shall be punishable with a penalty, which may be imposed by an authority appointed under sub-section (1) of section 10 after allowing the person concerned an opportunity of being heard, not exceeding five thousand rupees and where the contravention is a continuing one with a daily penalty of a sum not exceeding one hundred rupees during the continuance of the contravention."*

11. On bare perusal of the First Information Report and the provisions as contained in Section 56(4)(a) read with section 59(2) of the Act, I have hesitation in coming to a conclusion that the breach, which has been alleged against the petitioners, is entirely covered by the said provisions under the Act. The alleged failure on the part of the petitioners in maintaining required documents, registers and their production at the time of inspection can be said to be breach of the provisions under section 59(2) of the Act. Such breach constitutes an offence under section 81(c) of the Act.

12. That being so, sub-section (5) of section 81 of the Act shall apply with full force. It is not being disputed that for the breach alleged, penalty of a sum of Rs. 40, 623/- has been imposed upon the petitioners, which they have already deposited. In such circumstance, in my considered view, the petitioners could not have been proceeded against in a criminal case. The well accepted law that the special provisions will override general provisions, need not be reiterated. The Bihar Value Added Tax Act, 2005 specifically deals with breaches as alleged against the petitioners and it provides for penalties also.

13. Further no offence under section 420 or 409 of the Indian Penal Code is made out on the basis of what has been

alleged in the First Information Report, though the allegations made therein constitute breach of various provisions under the Bihar Value Added Tax Act, 2005. In such circumstance, the petitioners can be proceeded against in accordance with the provisions contained therein and not otherwise.

14. Learned counsel for the petitioners is right in his submission that the allegation of importing goods from the other States without required declaration in statutory Form D-IX is punishable under Rule 65 of the Rules. For such breach of the Rules, he can be punished as provided under the Rules and not otherwise and certainly not by instituting an F.I.R.

15. Considering the above, the First Information Report of Darbhanga Nagar P.S.Case No. 225/2012 deserves to be quashed on the ground that the allegations made in the F.I.R. constitute breach of various provisions under the Bihar Value Added Tax Act, 2005, which itself prescribes for punishment. There being categorical provision that no person shall be proceeded against under sub-sections 81(1) to (4), if the total amount of tax, interest or penalties evaded or attempted to be evaded is less than fifty thousand rupees, the proceeding arising out of the F.I.R. in question cannot be sustained, this being an admitted fact that the total amount of tax/ interest/ penalties has been found to be

Rs.40,623/-.

16. This application is, accordingly, allowed.

(Chakradhari Sharan Singh, J)

Surendra/-

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