IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10260 of 2014

Arising Out of PS.Case No. -52 Year- 2013 Thana -RAJAULI District- NAWADA

Vijay Kumar S/o Late Lakshmi Sao, Resident of Takua Tand Rajauli, P.S-Rajauli, District-Nawada.

.... Petitioner/s

Versus

The State of Bihar .

.... Opposite Party/s

Appearance :
For the Petitioner/s : Mr. Manoj Kumar Pandey, Adv.
For the Opposite Party/s : Mr. Sanjay Kr.Sharma (APP)

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

7 11-07-2017 Supplementary counter affidavit has been filed on behalf of opposite party no. 2, which is on record.

Perused the supplementary counter affidavit. There is no mention that sanction has been granted by the appropriate authority for taking cognizance in the matter under section 82 (2) of the Bihar Value Added Tax Act, 2005. Section 82 sub clause-II of the Bihar Value Added Tax Act, 2005 reads as follows:

> *"No court shall take cognizance of any offence under this Act except with the previous sanction of the Commissioner or any officer specially empowered in this behalf and no court inferior to that of a Magistrate of the first class shall try any such offence."*

On behalf of the petitioner by filing supplementary affidavit it has been submitted that from perusal of the FIR and the case diary available with the petitioner it appears that necessary sanction for prosecution under section 82 (2) of the Bihar Value Added Tax Act, 2005 has not been obtained from the competent authority before taking cognizance, hence cognizance under the aforesaid Act is bad, illegal and fit to be quashed.

The learned counsel representing opposite party nos. 1 and 2 submits that FIR was instituted against the petitioner on the basis of telephonic direction given by the Joint Commissioner of Commercial Taxes (Adm), Magadh Division, Gaya who is empowered to take such action against any offence which falls under the purview of section 81 of the Bihar Value Added Tax Act, 2005. The telephonic direction was recorded in the order sheet maintained in the case which is reflected in the order sheet vide letter no. 185 dated 5.3.2013 in the order sheet.

The learned APP does not point out that appropriate sanction was obtained in this case by the competent authority.

In the result, the impugned order dated 10.12.2013 whereby and whereunder cognizance has been taken against the petitioner for the offences punishable under sections 420, 424, 467, 468 of the Indian Penal Code and 81 (1) b/81 (1) (d)/81 (2) (b)/81 (4) of the Bihar Value Added Tax Act, 2005 in Rajauli P.S.

Case No. 52 of 2013 is hereby quashed and this criminal miscellaneous application stands allowed.

(Jitendra Mohan Sharma, J)

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