

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

W.P.NO.18628 OF 2019

O R D E R

Petitioner claims to be one of the three directors of M/s Aaria Project Limited and he is alleged to have committed offence punishable under Section 132 of the Central Goods and Services Act, 2017 (for short 'the Act'). Based on the remand application filed by the 2nd respondent - Senior Intelligence Officer under Section 167 of Cr.P.C. in connection with proceedings in F.No.INV/DGGI/HZU/GST/50/2019-20/Legal (P.F.), petitioner was sent to judicial remand. Aggrieved by the same, the present writ petition is filed.

2. Si A.Sudarshan Reddy, learned Senior Counsel, appearing for the petitioner, submits that summons under Section 70(1) of the Act were issued to the petitioner on 23.08.2019 to appear on the very same day before the 2nd respondent to give his statement, but whereas, the petitioner was arrested on 22.08.2018 and his statement was shown to have been recorded on 22.08.2019. He submits that there are no reasons for the competent authority to believe that the petitioner has committed the offence specified under Section 132 of the Act, and hence his arrest under Section 69 of the Act, is illegal and arbitrary.

3. Learned Senior Counsel further submits that for prosecuting the petitioner prior sanction of the Commissioner is mandatory as per

Section 132(6) of the Act, but in the present case, even without prior sanction of the Commissioner, petitioner is being prosecuted and hence the same amounts to violation of statutory provisions.

4. Learned Senior Counsel, drew the attention of this court to the remand report filed in the material papers to the writ petition, to show that statement of the petitioner stated to have been recorded on 22.08.2019, is in fact not existing.

5. Relying on the judgment of a Division Bench of this Court in *P.V.RAMANA REDDY vs. UNION OF INDIA AND OTHERS*¹, learned Senior Counsel submits that as the petitioner was arrested and remanded to judicial custody in violation of statutory provisions, writ petition is maintainable for grant of protection, and the petitioner need not necessarily be relegated to avail alternative remedy.

6. On the other hand Si B.Narasimha Sarma, learned Standing Counsel appearing for the respondents submit that the petitioner is seeking to quash the criminal proceedings initiated against him for the alleged offence under Section 132 of the Act. For the said purpose, the petitioner has to invoke the jurisdiction of this court under Section 482 of Cr.P.C., but he cannot maintain a writ petition under Article 226 of the Constitution of India. In view of availability of alternative remedy, learned Standing Counsel submits that, writ petition may not be entertained.

¹ W.P.No.4764, 4769, 4892, 5074, 5130, 5329, 6952 and 7583 of 2019 dated 18.04.2019

7. Learned Standing Counsel further submits that the deponent to the affidavit, who claims to be the business partner of the petitioner, and the other person by name Ms. Jyothi Gupta, have invoked the jurisdiction of this court under Section 482 of Cr.P.C., and the petitioner has already moved the trial court for bail. Hence, the petitioner may also be left open to invoke the jurisdiction of this court under the above said provision of Cr.P.C., and also to pursue his bail application before the trial court in accordance with law.

8. With regard to maintainability, learned Standing Counsel submits that no doubt this court has jurisdiction to entertain writ petition for prior protection as per the judgment of the Division Bench of this court referred to supra, but such discretionary jurisdiction has to be exercised sparingly in exceptional circumstances, with great care and caution. He submits that such exceptional circumstances are not available in the present case, and moreover the petitioner has already moved bail application.

9. With the above submissions, learned Standing Counsel seeks to dismiss the writ petition.

10. The petitioner in this writ petition, in a way, is seeking to quash the criminal proceedings initiated against him. As per the submissions noted above, the deponent of the writ affidavit, who claims to be the business partner of the petitioner and one Ms. Jyothi Gupta, who is also

stated to be connected with the present affairs of the company, have already invoked the jurisdiction of this court under Section 482 of Cr.P.C. by filing CrI.P.(SR).No.22965 of 2019, and hence entertaining the present writ petition to examine whether the remand of the petitioner is proper, may not arise.

11. As per the judgment of the Division Bench relied on by the learned Senior Counsel for the petitioner (1 supra), no doubt, writ petition is maintainable under Article 226 of the Constitution of India for pre-arrest protection, but as held by the Constitutional Bench of Apex Court in *KARTAR SINGH v. STATE OF PUNJAB*², such power has to be exercised sparingly and in exceptional circumstances. In the case on hand, except referring to remand report and discrepancy of dates with regard to recording of statement of the petitioner, no such exceptional circumstances have been pointed out, to exercise the jurisdiction of this court under Article 226 of the Constitution of India.

12. Moreover, the petitioner himself filed arrest authorization dated 23.08.2019 given by the competent authority to the 2nd respondent under Section 69 of the Act. The said authorization shows that the competent authority – Additional Director General, Directorate General of GST Intelligence, Hyderabad Zonal Unit, has referred to allegations and recorded that he has reason to believe that the petitioner who is person-

² (1994)3 SCC 453

in-charge of the affairs of the company, has committed the offences punishable under Section 132 of the Act, and thus authorized his arrest in terms of Section 69 of the Act.

13. Further as already noted above, the other two persons connected with the affairs of the company, have invoked the jurisdiction of this court under Section 482 of Cr.P.C. and the bail application moved by the petitioner is stated to be pending before the trial court.

14. As far as non-obtaining of prior permission from Commissioner under Section 132(6) of the Act is concerned, it is a matter of record and the case is at the threshold, and if there is any breach in complying with the statutory requirement, it is always open to the petitioner to make use of the same at the stage of trial, and moreover remand report is already part of the record.

15. Having regard to the facts and circumstances of the case, this court is not inclined to entertain the writ petition and scuttle the investigation. Hence, the writ petition is dismissed, leaving it open to the petitioner to avail the alternative remedy available under law.

16. Since it is stated that the bail application of the petitioner is pending, the trial court is directed to dispose the said application in accordance with law, as expeditiously as possible, uninfluenced by any observation made in this order.

17. Interlocutory applications pending, if any, shall stand closed.

No order as to costs.

A.RAJASHEKER REDDY,J

DATE:28—09—2019

Note: C.C. by tomorrow.
B/O
(AVS)

