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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-684-2018 (O&M)

Date of Decision : March 06, 2019

Mandeep Dhiman

.... Petitioner

Versus

Deputy Director, Directorate General of GST Intelligence
and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. N.S.Shekhawat, Advocate,
for the petitioner.

Mr. Chetan Mittal, Senior Advocate
with Mr. Sunish Bindish, Advocate,
for respondents No.1 and 2.

Mr. Ajay Pal Singh Gill, DAG, Punjab

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure for issuance of writ of Habeas Corpus commanding the respondents to produce detainee – Sammy Dhiman before the Court as he is in illegal detention of the respondents.

2. Present petition has been filed on the grounds

- i). that detainee – Sammy Dhiman was issued certain notices under the provisions of the Central Goods and Services Tax Act, 2017 (for short, “the CGST Act”), to

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which he had duly responded. He filed Civil Writ Petition No. 13107 of 2018 before this Court for quashing of notice dated 18.05.2018 and the same was withdrawn on 31.05.2018 with liberty to take recourse to the remedies as may be available to him.

- ii). On 3.7.2018, the detinue was illegally arrested by respondent No. 2 without following the mandatory provisions of the CGST Act and Integrated Goods and Services Tax Act, 2017 and no proper procedure was followed by respondent no. 2. On 3.7.2018, signatures of the detinue were obtained on several blank and printed papers without even explaining the contents thereof. Even formal procedure for arrest was completely overlooked.
- iii). On 4.7.2018, the detinue was produced for judicial remand before learned Chief Judicial Magistrate, Ludhiana and alongwith application for remand, no formal orders were attached. Learned Chief Judicial Magistrate overlooked the fact that respondent No.2 has not followed the mandatory provisions of law.
- iv). On 11.7.2018, the detinue moved application for bail before learned Chief Judicial Magistrate, Ludhiana and all the pleas regarding illegality of the proceedings were taken, but learned Magistrate dismissed the bail application on 17.7.2018 while overlooking all the provisions of law.

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- v). Vide order dated 18.7.2018, learned Chief Judicial Magistrate, Ludhiana observed that order passed by Additional Director General (Commissioner) to the Intelligence Officer, respondent No.2 were not produced during the course of hearing and it was claimed that the same were confidential report, but nothing was placed on the file of the Court.
- vi). The detainee moved application for bail before learned Sessions Judge, Ludhiana and in the meanwhile, respondent No.1 had also moved a revision petition against the order dated 18.7.2018 (Annexure P/11) before learned Sessions Judge, Ludhiana which was not maintainable and the said revision petition was dismissed on 27.7.2018 by learned Additional Sessions Judge, Ludhiana. However, at that time, learned Additional Sessions Judge, Ludhiana failed to appreciate that even till the disposal of bail application, respondents No.1 and 2 had not placed on record any such order as required by law despite specific directions issued by learned Chief Judicial Magistrate to that effect.
- Vii). However, on 2.8.2018, respondent No.1 supplied copy of alleged noting/orders passed by Additional Director General (Commissioner). The said order was not signed by the Commissioner and rather the same was counter-signed by respondent No.1.

3. On the above grounds, the petitioner filed the present petition

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for issuance of writ especially in the nature of Habeas Corpus commanding the respondents to produce the detenue as he is in the illegal detention of the respondents and has been detailed illegally without following the mandatory provisions of law.

4. At the time of arguments, learned counsel for the petitioner contended that as per provisions of Section 69 of the CGST Act, if the Commissioner is satisfied, passing of reasoned order by Commissioner is mandatory. Section 69 of the CGST Act is being extracted hereunder:-

(1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorize any officer of central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under subsection (5) of section 132, the officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973,—

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.”

5. Learned counsel for the petitioner further contended that the

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writ of Habeas Corpus would be maintainable if the detention is illegal. On this point, reliance was placed upon judgment from Hon`ble Apex Court in **Madhu Limaye and others Vs. State of Bihar, 1969 AIR (SC) 1014,** wherein such a view was taken. On the same point, reliance was also placed upon judgment of this Court in **Madhu Limaya Vs. The State, 1959 AIR (Punjab) 506,** Hon`ble Bombay High Court in **Vinod Hinigorani Vs. Securities and Exchange Board of Indian, Mumbai, 2015 (25) R.C.R. (Criminal) 583,**

6. While arguing on this point, learned senior counsel representing respondents No.1 and 2 contended that the present writ petition is not maintainable because the petitioner is in custody as per judicial orders passed by the Court of competent jurisdiction and no writ is maintainable on this issue. On this point, reliance was placed upon the judgment from Hon`ble Apex Court in **State of Maharashtra & Ors. Vs. Tasneem Rizwan Siddiquee, 2018 (5) R.C.R. (Criminal) 767** and **Kanu Sanyal Vs. District Magistrate, AIR 1974 SC 510.**

7. Learned senior counsel representing respondents No.1 and 2 also contended that reasoned order had already been passed by the Commissioner and there is absolutely no illegality in the proceedings and as such, the present writ petition is liable to be dismissed.

8. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case, this Court is of the considered view that as per view taken by Larger Bench of Hon`ble Apex Court in **Tasneem Rizwan Siddiquee's case (supra),** writ of Habeas Corpus under Article 226 of the Constitution of India shall not be

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maintainable when a person is in custody on the basis of orders passed by a Court of competent jurisdiction. In the said case, Hon`ble Apex Court observed as under:-

“9. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in the case of **Saurabh Kumar through his father v. Jailor, Koneila Jail and Anr.**, 2014 (3) R.C.R. (Criminal) 856 and **Manubhai Ratilal Patel v. State of Gujarat and Ors.** 2012 (4) R.C.R. (Criminal) 655 : (2013) 1 SCC 314. It is no more res integra. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18th /19th March, 2018 and decided by the High Court on 21st March, 2018 her husband Rizwan Alam Siddique was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No.I-31 vide order dated 17th March, 2018 and which police remand was to enure till 23rd March, 2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued.”

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“11. Suffice it to observe that since no writ of habeas corpus could be issued in the fact situation of the present case, the High Court should have been loath to enter upon the merits of the arrest in absence of any challenge to the judicial order passed by the Magistrate ..”

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9. As regard to passing of reasoned order under Section 69 of the CGST Act, copy of the order has been placed on the file and the said order was passed by the competent authority in this case and on that ground, the present writ petition is not maintainable.
10. In view of the above, the present writ petition stands dismissed being not maintainable.

(SHEKHER DHAWAN)
JUDGE

March 06, 2019
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes