IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-559-2020 (O&M)
Date of decision: 20.12.2021

Valjender Singh @ Baljender Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Sanjay Vashisth, Advocate and
Mr. Akash Vashisth, Advocate for the petitioner.

Mr. Ashok Singh Chaudhary, Addl. A.G., Haryana and
Mr. Surender Singh, AAG Haryana.

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HARNARESH SINGH GILL, J. (ORAL)

Challenge in the present petition is to the order dated 18.12.2019 passed by the Additional Sessions Judge, Faridabad, whereby while observing that a prima-facie case under Sections 420, 467, 468 and 417 IPC is made out against the petitioner, the case was remanded to the Chief Judicial Magistrate, Faridabad with a direction to proceed in accordance with law.

On 07.12.2021, it was argued by the learned counsel for the petitioner that the Deputy Excise and Taxation Commissioner (X), Faridabad, while submitting a detailed final report to the Excise and Taxation Commissioner, Haryana, Panchkula, vide communication dated 06.04.2018, had intimated that recoverable amount along with interest, on account of mismatch, has been recovered from the licensee-petitioner and there was no revenue loss to the department. It was, thus, argued that while passing the impugned order, the learned Additional Sessions Judge, Faridabad, has totally brushed aside the said material fact.

The learned State Counsel, had, therefore, sought time to call the Officer concerned in the Court. On the subsequent date i.e. 15.12.2021, learned State Counsel had sought time to file affidavit of the officer concerned, who was present with him during the virtual proceedings.

Today, affidavit dated 16.12.2021 of the Deputy Excise and Taxation Commissioner(X), Faridabad, filed by the learned State counsel in the Court, is taken on record as Mark-'X'.

A perusal of the said affidavit would reveal that the deponent has deposed that all the mismatch amounts stands recovered and there is no loss of the State revenue.

This being the situation, learned counsel for the petitioner would submit that the factum of there being no loss to the State exchequer, ought to be considered by the Court, while proceeding any further in the matter and for this reason, the finding recorded by the learned Additional Sessions Judge, Faridabad, is bad in law. In support of his contention, he relies upon the judgment of the Hon'ble Apex Court in Sanjay Kumar Rai Vs. State of Uttar Pradesh and another, 2021(2) RCR (Criminal) 813.

On the other hand, while echoing the contents of the affidavit submitted by the officer concerned today in Court, learned State Counsel submits that the fact remains that the petitioner along with other co-accused had forged and fabricated various documents and therefore, it cannot be said that mere recovery of the mismatch amount(s), would be a ground to absolve them of their criminal culpability.

I have heard the learned counsel for the parties.

Be that as it may, the fact remains that the learned Additional Sessions Judge, Faridabad, vide the impugned order, had only formed a prima-facie opinion. The matter has been remanded to the learned Chief Judicial Magistrate to proceed in accordance with law. However, as the State has filed the affidavit (Mark-X) of the concerned Officer, it is observed that the trial Court, while framing the charge and/considering the matter further, would take into consideration the said document and shall proceed in the matter, including the framing of the charges, in accordance with law.

Accordingly, the impugned order dated 18.12.2019 passed by the learned Additional Sessions Judge, Faridabad, is set aside to the extent of forming a prima-facie opinion, whereas the same is upheld as regards remand of the case to the Chief Judicial Magistrate.

Disposed of.

(HARNARESH SINGH GILL)
JUDGE

20.12.2021
Mangal Singh

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No