

14.12.2022
Court No.35
Item No. 5
pk

CRR 3327 of 2015

Shri Sushanta Karati
Vs.
The State of West Bengal

Mr. Sayan Chattopadhyay,
Mr. Rokon Ali,
Mr. Kaustav Sen,
Mr. S. Chakraborty

... For the petitioner.

Mr. Sudip Ghosh,
Mrs. Debjni Sahu

... for the State.

Allegation against the petitioner is of concealing the sales figures of his business pertaining to the year from 2009-2010 to 2013-2014(up to 03.12.2013) and by doing the same evading tax upon sales of his product. A criminal case was initiated being Chatterjeehat Police Station Police Case No. 250 of 2015 dated 08.08.2015 under Sections 175/176/177/465/467/477/477A of the IPC. The petitioner has challenged the proceedings thereunder. The connected G. R. Case No. 5854 of 2015 is now pending in the trial court.

The grounds of the petitioner's challenge as to the said particular proceedings against him can be summarised as follows:

Firstly that the initiation a criminal proceeding is only illegal, mala fide and malicious against him. Mr. Chatterjee, learned advocate for the petitioner has referred to the two notices dated 8.4.2015 and 6.5.2015 respectively, to show that for the self same period the quantification of the alleged evaded tax was made

differently by the Department, that is, @ Rs.13 crores and odd in the notice dated 8.4.2015 whereas an amount of Rs.3 crores and odd by dint of Department's notice dated 6.5.2015.

It has further been urged on the basis of the documents annexed with the supplementary affidavit that the Commissioner has already been directed by the Tribunal vide its order dated 22.09.2015 to initiate a proceeding against the petitioner to enquire into the alleged evasion of tax for the self same period. The Tribunal directed for opportunity to be granted to the petitioner to submit objection as well as for consideration thereof.

It is further submitted that in view of such order of the Tribunal, proceeding under Section 76 of the West Bengal Sales Tax Act, 1992 has been started and the same is pending. According to Mr. Chatterjee, it is only motivated and malicious against his client to initiate the instant criminal proceeding by dint of FIR filed on 8.8.2015 alleging evasion of tax by his client during the self same period regarding which the notice, as mentioned earlier, was served upon him. By referring to the certified copy of the FIR it has also pointed out that the alleged amount of defalcation is similar to that as has been mentioned in the notice aforestated.

Accordingly Mr. Chatterjee submits that his client has been subjected to double jeopardy, to face enquiry as well as investigation on the self-same cause of action, which according to him is not tenable in the eye of law. Therefore, the petitioner has come up by filing this revision case for an order of this Court quashing the entire criminal proceedings against him as mentioned earlier.

It has further been submitted by Mr. Chatterjee that there is no sanction of the Commissioner before filing of the criminal case against his client, as enumerated in Section 88(12) of the said Act. It has further been submitted that during the pendency of proceedings against his client, a criminal proceeding shall also contravene the provisions made under Section 88(13) of the West Bengal Sales Tax Act, 1994.

Mr. Sudip Ghosh, learned advocate for the State/opposite party has raised vehement objection as to the contentions and prayer of the petitioner. His primary ground of protest is that in this case there shall be no necessity for a sanction in a prescribed form, which, as a matter of fact, has not been prescribed yet. As the criminal proceeding has been initiated and the FIR has been filed pursuant to the desire and instructions of the Commissioner of Sales Tax, according to him this was tantamount to be 'sanction' as envisaged under Section 88(12) of the said Act.

Then he submits that the petitioner has been a habitual evader of tax. He has endeavoured to take shelter behind the legal recourses taken in this Court as well as in the taxation tribunal and also in the proceedings against him, on various false pretexts, though failed. According to him this revision case by the petitioner is filed only with the mala fide intention to frustrate the statutory exercises against him as a law evader.

It has further been submitted on the basis of the case diary that sufficient material would be available against the petitioner to show firstly his involvement in the alleged offence and also prima facie material in the FIR and those collected during investigation, to

constitute an offence under the aforestated provisions of law against the petitioner. According to him this will be sufficient for a revision court to deny the petitioner's prayer on the ground that strong prima facie materials are available against the petitioner for which the FIR should not be quashed. He submits that there should not be a "mini trial" as to the genuinely of the charges, by this revision court.

Mr. Ghosh submits that the notice served upon the petitioner dated 6.5.2015 is only curative in nature and that should not be considered to be a repeat action of the department on the self same ground, liable to be set aside. He has taken this Court to the text of the said letter dated 06.05.2015 to submit that the notice as above along with the previous notice dated 8.4.2015 have been the notices for quantification of the turn over of the petitioner and should not be considered to be the assessment of penalty.

It has also been submitted that provisions under Section 88(13) of the West Bengal Sales Tax Act, 1994 shall also not be applicable as no penalty has been imposed upon the petitioner as yet. According to the state/opposite party there shall be no application of the provision under Section 88 (12) of the said Act, 1994, in this case as the stage for the court to take cognizance of any offence in this case is still not reached and this is a premature stage. Ld. Advocate urges that petitioner's case may be dismissed. Case dairy is submitted in court.

Petitioner is the owner and dealer of the business namely M/s. Zaika Bar-cum-Restaurant holding registration under the West Bengal Sales Tax Act, 1994. Allegedly for the period from 2009-

2010 to 2013-14 (up to 03.12.2013) he has concealed his actual sales figures and thus evaded tax there upon. He has been notified firstly by dint of letter dated 08.04.2015 of a total amount of evaded tax to be thirteen crores and odd. Thereafter, vide letter dated 06.05.2016 he has again been notified that the amount of evaded tax by him would be three crores and odd, instead of thirteen crores and odd and that the amount mentioned in the earlier letter dated 08.04.2015 was erroneous. Petitioner was called upon to submit his reply to contradict allegations made in the said letter.

On 22.09.2015 the Taxation Tribunal directs the Commissioner to start proceedings to enquire into the alleged defalcation of tax by the present petitioner.

During pendency of such a proceeding, the present criminal case was filed on 08.08.2015. FIR reveals that the period of defalcation as mentioned therein would tally with that as has been mentioned in the Department's letters dated 08.04.2015 and 06.05.2015. The alleged amount of evaded tax is also the same.

Section 76 of the West Bengal Sales Tax Act, 1994, has provided for the civil consequences in case evasion of tax is detected, by imposition of penalty upon the dealer. Law has provided for affording adequate and reasonable opportunity to the alleged defaulter, before imposing any penalty amount upon him under this section.

The Act of 1994 has also provided for initiation of criminal proceedings against contravention of the provisions of the Act. Section 88 Sub-section (12) and (13) may be resorted to, in this regard:-

“88.(12) No court shall take cognizance of any offence under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate shall try such offence.

(13) No prosecution for any offence enumerated hereinbefore in this section shall be instituted in respect of the same facts for which a penalty has been imposed under sub-section (1) of the section 77 or sub-section (1) of section 78 and no such penalty shall be imposed vice versa.”

Petitioner’s contention is that since he would be facing the proceedings commenced under Section 76 of the present Act, any subsequent criminal action against him, that too before the proceedings under Section 76 of the Act having been determined finally, shall be prejudicial for him, as the same would subject him to double jeopardy. Following the chronology of facts in this case, it can clearly be understood that the criminal case as above was lodged against the petitioner during pendency of the proceeding against him under Section 76 of the Act. As Section 76 has provided for a provision of imposition of penalty in case of finding the dealer to have intentionally evaded tax, unless the said proceeding has reached its finality or any penalty is determined, any prosecution against the petitioner on the same ground would be a bar under Section 88 (13) of the said Act. Otherwise the entire provision would amount to be redundant and not in conformity with the principles of rule of law and natural justice. The argument on behalf of the state that since no penalty has yet been assessed as against the petitioner the said provision shall have no manner of application in his case, is not acceptable. On the contrary a proceeding which has already commenced and may culminate into

imposition of penalty should be a deterrent factor for any prosecution to be initiated against the petitioner under Section 88 (13) of the Act or else the petitioner shall have to face both the proceedings under Section 76 of the Act and the criminal proceeding as well on the self same cause of action, for the self same alleged offence, to jeopardize his interests doubly.

It is further noted that there is no sanction issued by the Commissioner before initiation of the criminal case against the petitioner. The submission made in this regard on behalf of the state is also not acceptable in so far as the specific provision of Act contained in Section 88 (12) would required a definite and specific action on part on the authorized officer, more than only desiring initiation of a criminal proceeding against a tax payer, which is bound to have serious consequences upon him. Admittedly, in this case there is no specific 'sanction' by the commissioner for prosecuting against the petitioner and thus this court does not hesitate to find that provisions under Section 88 (12) has not be complied with in this case.

The argument advanced on behalf of the state that according to law this revision court is not to conduct any "mini trial" but only to ascertain if prima facie material against the petitioner is available on record to allow him to be prosecuted. This is a trite law and cannot be ignored. However, a criminal proceeding which is inherently unsustainable due to non-compliance of the specific and mandatory preconditional statutory provision, can always be a subject matter of consideration for a revision court, as to whether it is to be allowed to continue or not. The revision court is bestowed

with the responsibilities and power to see if the process of the court is being abused or not. In doing so, the proceedings, if are found to be inherently lacking the mandates of law with which it was supposed to be initiated, the court shall not be powerless to interfere with a such proceeding.

This is what has exactly happened in this case. The petitioner is now facing proceedings with civil consequences like imposition of penalty upon him. With the self same cause of action he has also been subjected to criminal proceedings as above. The criminal proceeding has been initiated without a 'sanction' order from the Commissioner, as envisaged in law to be mandatory precondition for initiation thereof. All these facts unfailingly point out to the inherent illegality and nullity of the proceedings initiated against the petitioner. There should not be any hesitation to hold that in case the said proceeding is allowed to be continued against the petitioner, the same would amount to be abuse of the process of court.

Hence, on the discussion made as above it is found that the alleged criminal proceedings pursuant to Chatterjeehat Police Station Police Case No. 250 of 2015 dated 08.08.2015 under Sections 175/176/177/465/467/477/477A of the IPC, (connected G.R. case no. 5854 of 2015) against the petitioner should not continue. The said proceeding is quashed and set aside. However, it is made clear that the concerned Department shall take every possible endeavour to complete the proceedings initiated at the Department against the petitioner, as expeditiously as possible. Case diary be returned.

With these directions this revision case being CRR 3327 of 2015 is allowed.

Certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay, J.)