2023:PHHC:072730

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-23662-2016
Date of decision: 16.05.2023

Ashwani Kumar .....Petitioner

Versus

State of Punjab .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Manoj Kumar Pundir, Advocate
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

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MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking quashing of FIR No.21 dated 30.01.2014 under Sections 177/201/420/465/467/468/471/120-B of the IPC registered at Police Station Division No.5 Civil Line, Ludhiana City along with all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner has *inter alia* contended that the FIR in question is nothing but an abuse of the process of law as even from its bare reading prima facie no offence is made out against the petitioner. The petitioner was issued Value Added Tax (in short, 'VAT') registration bearing TIN 03882098358 and in all his business transactions the aforesaid TIN stands reflected. He has further submitted that the gist of the allegations levelled against the petitioner in the FIR in question are of evading VAT, however, since the Punjab VAT Act, 2005 (for short, 'the Act') is a complete code in itself and operates in exclusion to the general law including the Indian Penal Code, 1860 (fort short, 'the IPC'), no FIR could have been registered

against the petitioner. It has been further submitted that in case of any contravention of the provisions of the Act, a detailed procedure already stands prescribed under the Act. However, the State has tried to give a criminal complexion to the alleged Tax evasion, to bring the same within the ambit of the IPC. It has been argued that the petitioner allegedly issuing bogus invoices and misused the VAT registration (TIN) number assigned to him and thus committed forgery and fraud, however, at best it being a case of evasion of VAT would fall within the purview of Section 57 of the Act, and still further for alleged misuse of VAT registration number or using false VAT registration number, he could be proceeded against only under Section 58 of the Act. He has thus asserted that in the circumstances, even assuming for the sake of arguments, though not conceded, that some offences had indeed been committed by the petitioner under the Act, the FIR in question could not have been registered and rather the only course of action would have been to proceed under the Act for imposition of penalty.

3. Learned counsel for the petitioner has further also invited the attention of this Court to the assessment order dated 27.03.2014 (Annexure P-3) by arguing that the assessment order already stood served upon the petitioner whereby he had been directed to pay tax to the tune of ₹72,27,824/- which order had already been impugned and the appeal qua the same was pending. It has been thus vehemently asserted that continuation of proceedings in the FIR in question would amount to double jeopardy moreso, as already submitted earlier, penalty already stood imposed upon the petitioner under the Act.

4. Learned counsel, in support, has placed reliance upon ***Dilawar Singh Vs. Parvinder Singh @ Iqbal Singh and another : 2005(4) RCR (Criminal) 855; CRM-M-16957-2013 titled as 'Naresh Kumar Vs. State of Punjab and others' decided on 19.09.2014; CRM-M-34295-2012 titled as 'Pawan Kumar and others Vs. State of Punjab and another' decided on 22.08.2014; CRM-M-17413-2013 titled as 'Jaswant Singh and others Vs. State of Punjab' decided on 12.01.2015; CRM-M-14539-2014 titled as 'Sandeep Kumar and another Vs. State of Punjab' decided on 12.03.2015; CRM-M-30817-2013 titled as 'Yogesh Kumar Sharma Vs. State of Punjab and another' decided on 08.12.2014; CRM-M-39270-2013 titled as 'Munish Kumar and another Vs. State of Punjab' decided on 08.09.2015; CRM-M-24853-2012 titled as 'Ishwar Singh @ Billa Vs. State of Punjab and another' decided on 30.04.2013*** and ***CRM-M-26116-2010 titled as 'Pritpal Singh Vs. State of Punjab and another' decided on 05.03.2012***.

5. Per contra, learned State counsel while opposing the submissions and prayer made by the counsel opposite, has submitted that the FIR in question had not been registered under the Act but under the provisions of the IPC and there is nothing which precluded the police to investigate into a crime under the IPC. He has further submitted that the fraud played by the petitioner was writ large as he had evaded VAT by claiming Input Tax Credit (for short, 'ITC') wrongly on the basis of bogus purchases. He has further submitted that the petitioner was granted registration certificate for resale of only nuts and bolts and HR sheets but instead the petitioner had purchased goods

for which he did not have the requisite TIN. Learned State counsel has argued that the petitioner had been declined permission to trade in iron and steel, however, by forging invoices and misusing the TIN, the petitioner had been illegally dealing in the trade of iron and steel. The petitioner had made bogus purchases as a result of which the State exchequer had incurred losses to the tune of ₹2,44,73,487/-. A prayer was, thus, made for dismissal of the instant petition as a prima facie case against the petitioner was made out.

6. I have heard learned counsel for the parties and perused the relevant material on record.

7. Admittedly, the allegations levelled in the FIR qua the commission of the offences in question, emanate entirely from the alleged evasion of VAT by the petitioner. The gist of the allegations against the petitioner is that he forged and fabricated invoices against bogus purchases to credit bogus ITC and further the petitioner was granted registration certificate only for resale of nuts and bolts and HR sheets, however, he was also found to be illegally trading in iron and steel.

8. It would be apposite to reproduce Sections 57 and 58 of the Act which read as under:-

> *"**57. Penalty for failure to issue invoice and use of false invoice-**(1) A person, who fails to issue invoice for any sale transaction as required under section 45, shall be liable to pay a penalty of rupees two thousand or double the amount of tax involved in the transaction, which-ever is higher.*
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> *(2) A person, who issues a false invoice or receives and uses an invoice knowing such invoice to be false, shall be liable, to pay a penalty of rupees five thousand or double the amount of tax involved in the false invoice, whichever is higher.*

> ***58. Penalty for misuse of registration number-****A person, who knowingly uses a false VAT registration number or TOT registration number, or uses a registration number of another person with a view to evade payment of due tax, he shall be liable to pay, in addition to the due tax, penalty equal to the amount of tax evaded on this account."*

9. Section 57 of the Act provides for imposition of penalty for issuance of false invoice. Section 58 of the Act provides for imposition of penalty for using a false registration number. A perusal of both the above provisions leaves no manner of doubt that the allegations levelled in the FIR in question are squarely covered and fall under the exclusive purview of the Act.

10. It would be pertinent to note here that the Act is a complete Code in itself and there is no provision provided in the Act for the registration of an FIR. The Act only provides for imposition of penalty in case there is any contravention of its provisions. Since the Act is a special law, principle of *generalia specialibus non derogant* would apply, meaning thereby, it would operate in exclusion to the general law i.e. the IPC.

11. A Coordinate Bench of this Court in ***Pritpal Singh Vs. State of Punjab***, while relying upon a judgment of Hon'ble Supreme Court in ***Dilawar Singh's case (supra)*** held that the provision of the Act are sufficient and equipped to deal with the matter where an attempt is made to evade the Tax and the registration of FIR in such like matter is totally an abuse of the process of law.

12. Furthermore, it is a matter of record that an assessment order 27.03.2014 already stands passed by Excise & Taxation Officer-

cum-Designated Officer, Ludhiana II, wherein the petitioner has already been ordered to pay tax to the tune of ₹72,27,824/- for offences committed under the Act.

13. As a sequel to the above, this Court has no hesitation to hold that continuation of criminal proceedings arising out of the FIR would be nothing but an abuse of process of the process of law. Accordingly, the instant petition is allowed and the FIR in question along with all consequential proceedings arising therefrom is quashed.

16.05.2023 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No