IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-50659-2019
Date of decision : 22.09.2023

Dharam Pal Goyal and others ....Petitioners

Versus

State of Punjab ....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Jaiveer Singh, Advocate
for the petitioners.

Mr. Amit Shukla, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J.

Petitioners are before this Court seeking quashing of FIR No.132 dated 26th of March, 2011 registered for the offences punishable under Sections 420, 465, 468, 471 and 120-B of the Indian Penal Code, at Police Station Sadar Patiala, District Patiala and charge sheet/order framing charge dated 4th of May, 2019 (Annexures P-3 and P-4) as well as order dated 16th of November, 2019 (Annexure P-7) passed by the Revisional Court dismissing the revision preferred by the petitioner against the order dated 4th of May, 2019.

2. On the complaint made by DSP (Excise) Patiala, the impugned FIR was registered against the petitioners with the following allegations :

"..a secret informer had informed that DP, Goel is running agency of Hyundai Cars in the name of Goel Automobiles at Rajpura Road, Patiala. Bhupinder Singh is it's Manager, Varinder Kumar is a Mechanic, Amrik Singh is salesman and Parveen Kumar is a driver. All above mentioned in connivance with each other bring car from Chandigarh, Hissar, Dabwali and other agencies by loading the same in Trallas. In these trallas 2/3 cars belonging to Goel Automobiels also brought. These cars are unloaded at Nadda Sahib, Jind, Manji Sahib or Dabwali (Haryana) and subsequently parveen Kumar driver son of Shri Jai Ram r/o Sekhpura Near Punjabi University, Patiala, Mechanic, Varinder Kumar and Amrik Singh Salesman bring these Vehicle from secret routes instead of Barriers established by Punjab Governments- on the basis of fake papers prepared by owner D.P. Goel and Manager Bhupinder Singh. They do so with the intention to deceive Punjab Government by entering state of Punjab and take the vehicle to Goel Automobiles Patiala. In this way they misappropriate crores of rupees payable to exchequer of State. Today also Parveen Kumar above mentioned will enter Punjab Punjab with Verna car bearing Number PB 11TC-0559 (T). The papers regarding said car have been prepared by D.P. Goel and Bhupinder Singh, these papers include challan, insurancer and photocopy of Insurance. I, alongwith HC Sukhwinder Singha 1143, HC Avtar Singh 770 PTA, HC Jagdeep Kumar 441/PTA, C- Mohinder Pal 11697 and ETO C.L. Sharma alongwith others staff held naka towards Ghanaur side, one Kilometer from Bahadurgarh We started checking the vehicle. At about 8.15 PM a Verna car came from the side of Ghanaur It was signaled to stop with the help of torch, after stopping the car, further proceedings were handed over to Shri C.L. Sharma ETO who started scrutinizing the papers of the vehicle. After scrutinizing the papers and recording the statements of driver the ETO handed over report to me consisting of two pages, As per verification report the papers of car have been found to be fake. Copy of verification report is

> enclosed. From verification report, offences U/s 420, 465, 467, 468, 471, 120-B IPC are made out against Verna Car driver Parveen Kumar, owner of DP Goel, Goel Automobiles, Manager Bhupinder Singh, Varinder Kumar Mechanic, Amrik Sigh salesman and other persons involved in it for causing huge loss to State exchequers by preparing fake papers. After registration of FIR investigation is required to be conducted."

3. After investigation report under Section 173 Cr.P.C. was filed and the petitioners have been charged for offences punishable under Sections 420, 465, 467, 468, 471 r/w Section 120-B IPC. The application filed by the petitioners seeking discharge stands dismissed vide order dated 4th of May, 2019 passed by ACJM, Patiala. The petitioners preferred revision before this Court. CRR No.1752 of 2019 preferred by the petitioners was withdrawn with liberty to avail alternate remedies in accordance with law before the Court of Sessions. The liberty as prayed for was granted vide order dated 25th of July, 2019. Revision preferred by the petitioners also stands dismissed vide order dated 16th of November, 2019 passed by Sessions Judge, Patiala.

4. Counsel for the petitioners has relied upon the order dated 29th of August, 2016 passed by Value Added Tax Tribunal, Punjab, Chandigarh in the appeal preferred by M/s Goyal Automobiles against the order dated 30th of March, 2011 passed by Assistant Excise and

Taxation Commissioner, Patiala imposing penalty to the tune of Rs.4,34,454/- under Section 51(7)(c) of the Punjab Value Added Tax Act, 2005. Counsel for the petitioners while referring to the order submits that it has been observed in the order passed by the Tribunal itself that on the basis of the same transaction present FIR came into being whereby the petitioners have been alleged of evading tax. He submits that the appeal preferred by the petitioners stands allowed and accepted and the Adjudicating Authority has found as under :

> "As a matter of fact, the department has based its whole case on the statement of Parveen Kumar recorded on 25.3.2011 at about 8.15 PM on Ghanaur, Bahadurgarh Road. In this regard, for the clarity of the facts, it would be essential to note a few facts; firstly, the place where the driver was checked is near to the place of business of the appellant as has been disclosed by him in his address, therefore, at the face of it and in the circumstances as referred to above, it can't be said that vehicle was coming from Ambala to Patiala and it was not accompanied by valid documents. Since the documents as proved by the appellant were prepared prior to the time of apprehension of the vehicle and the payment was made through the banking channels and the temporary registration was issued by a special registering authority on 25.3.2011, therefore, by no stretch of imagination, it could be said that vehicle was not accompanied by valid documents. Since, the valid documents were in operation. No question of forged documents could arise. As a matter of fact, a big question mark has been put over the genuineness two alleged statements made by Parveen Kumar on the same day i.e. 25.3.2011. Though statements were recorded by Sh. C.L. Sharma, Excise and Taxation Officer, it is not known as to why he recorded two statements of the same person at the same time.

It may further be observed that both the statements are in two different inks and apparently appear to be in different hand writing. Therefore, a serious doubt shadows the alleged two statements and it is difficult to conclude that these two statements were recorded on the same day. First statement was allegedly recorded at 8.00 PM on 25.3.2011 when he was apprehended. Thereafter, second statement was recorded. It has not been explained as to what pròmpted C.L.Sharma, Excise and Taxation Officer to record the second statement. Actually, he did not record the alleged two statements on the same day as the first statement is bearing signature of Parveen Kumar at the end of the statement whereas, the second statement bears the signatures of the Parveen Kumar on both the pages. The statement of Parveen Kumar recorded under the pressure of the team consisting of the checking officer during the dread of night can not said to be a statement made by him of his very will and consent. The cover note which is alleged to have been recovered from him does not pertain to the vehicle in question and is not in the name of the appellant, but it is in the name of Varinder Singh therefore, it can't be observed on the basis of the said cover note that the vehicle was not covered by the proper and genuine documents. The challan No.342, dated 21.3.2011 even if issued in advance in name of the owner himself, is not in any way termed to be a good document for establishing the intention of appellant to evade tax. Since the vehicle was not apprehended on 24.3.2011 at the ICC or nearby the check post or by the officers posted at ICC. Rather it was apprehended one day after it was received by the dealer at his showroom and the documents relating to the vehicle do not in any way indicate that the appellant had any intention to evade the tax. Rather the challan dated 21.3.2011 also establishes that the invoice amount inclusive of Value Added Tax Act has been paid by the appellant.

In such circumstances, non giving of information becomes in significant. The relevant documents which the department wanted, have been produced. Still, the counsel has

> even now placed on record a paper book consisting of complete statement of account. No finger has been raised over the validity of those account books. As such, it would be concluded that the vehicle In question, when apprehended, was covered by proper and genuine documents and the appellant had no intention to evade the tax. Having perused the impugned order passed by the authorities below. The same is based on the manipulated statements of Parveen Kumar alone. The department has not tried to go deep in order to probe the issues which required to be proved in case of detention of the goods U/s 51 of the Punjab Value Added Tax Act, 2005, therefore, both the orders being illegal, are liable to be quashed."

5. Counsel for the petitioners has submitted that the gravamen of the complaint against the petitioners is of having evaded VAT. VAT in itself is a complete Code. There is no provision under the VAT Act which provides for registration of FIR and thus the authorities erred in invoking the petitioners for offences punishable under the Indian Penal code which ought not have been invoked. Reliance is being placed upon the order dated 29th of November, 2022 passed by a Co-ordinate Bench of this Court in case titled as **Deepak Kumar vs. State of Punjab**.

6. Reliance is being placed upon law laid down by Apex Court in the case of '**Radheyshyam Kejriwal vs. State of West Bengal' (2011) 3 SCC 581,** '**M/s. Videocon Industries Ltd. and another vs. State of Maharashtra and others', (2016) 12 SCC 315** wherein the law laid down in the case of *Radheyshyam Kejriwal*

(supra) stands reiterated and in the case of '**<u>Ashoo Surendranath Tewari vs. The Deputy Superintendent of Police, EOW, CBI & Another', (2020) 9 SCC 636</u>** to contend that criminal prosecution cannot be allowed to continue after adjudicatory Tribunal found that no case of evasion is made out.

7. Reply by way of affidavit of Gurdev Singh Dhaliwal, P.P.S., Deputy Superintendent of Police (Rural), Patiala has been filed on behalf of the respondent wherein the allegations levelled in the FIR have been reiterated. It has been claimed that the accused persons played fraud upon State Government and evaded to pay tax on the new cars causing loss to the State Exchequer and thus are required to be prosecuted.

8. Ld. State Counsel has argued on the lines of the written statement claiming that the penalty was imposed by the Excise Department against the Firm for evading payment of tax due on the new vehicles whereas the petitioners have been booked for playing fraud upon the State Government and both the issues though based upon the same set of allegations are different and the same cannot be held to have bearing on each other.

9. I have heard counsel for the parties and have carefully gone through records of the case.

10. The question that would arise before this Court is '*whether*

in the given circumstances when the Adjudicating Authorities have found that the allegations against the petitioners of having contravened the provisions of the VAT Act with an intent to evade tax cannot be sustained, can criminal proceedings on the same set of allegations be allowed to continue?'

11. It is not disputed that the proceedings under the VAT Act which have been adjudicated vide order passed by the Tribunal in appeal vide Annexure P-8 are result of the same transaction *qua* which the petitioners have been booked in the impugned FIR. The allegation in the FIR against the petitioners is of having brought the new vehicles from secret routes to avoid the barriers established by the Punjab Govt. on the basis of fake papers with an intent to evade tax. The petitioners are accused of having prepared forged and fabricated documents to facilitate the aforesaid evasion. The Firm was slapped with the penalty to the tune of Rs.4,34,454/- vide order dated 30th of March, 2011 passed by Assistant Excise and Taxation Officer, Patiala under Section 51(7)(c) of the Punjab Value Added Tax Act, 2005. The Firm filed appeal in which the Appellate Tribunal came to the conclusion that the case of the department that a new vehicle was being brought by the driver from Ambala to Patiala through an escape route has no legs to stand. Resultantly, the Tribunal quashed the order of penalty passed against the Firm accepting its appeal.

12. Counsel for the State does not dispute that the aforesaid order passed by the Tribunal (Annexure P-8) has attained finality and the Department has accepted the said order. Once the Adjudicatory Authority has come to the conclusion that there was no evasion of tax and the Firm was not liable to be saddled with the penalty it would not be in the interest of justice to allow the present criminal proceedings to continue. Principle of law has been enunciated by Apex Court in the case of *Radheyshyam Kejriwal* (supra) :

> 17. It is trite that standard of proof required in criminal proceedings is higher than that required before adjudicating authority and in case accused is exonerated before the adjudicating authority whether his prosecution on same set of facts can be allowed or not is the precise question which falls for determination in this case. There are authorities of this Court in relation to the Income-tax Act in this regard. The first in the series is the judgment of this Court in the case of ***Uttam Chand and others v. Income Tax Officer, Central Circle, Amritsar, (1982)2 SCC 543*** in which registration of firm was cancelled on the ground that it was not genuine and prosecution initiated for filing false return. However, in appeal, the Income Tax Appellate Tribunal reversed the finding and held the firm to be genuine. Relying on that, this court quashed the prosecution inter alia observing as follows :
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> > "1. Heard counsel, special leave granted In view of the finding recorded by the Income Tax Appellate Tribunal that it was clear on the appraisal of the entire material on the record and Shrimati Janak Rani was a partner of the assessee firm and that the firm was a genuine firm, we do not see how the assessee can be prosecuted for filing false returns. We, accordingly, allow this appeal and quash the

prosecution.

2. There will be no order as to costs."

In the case of ***G.L. Didwania and Another v. Income Tax Officer and Another 1995 Supp (2) SCC 724***, on setting aside the order of the assessing authority which led to the prosecution of the assessee by the Income-Tax Appellate Tribunal, this Court held the prosecution not permissible and while doing so observed as follows :

"4. In the instant case, the crux of the matter is attracted and whether the prosecution can be sustained in view of the order passed by the tribunal. As noted above, the assessing authority held that the appellant- assessee made a false statement in respect of income of M/s. Young India and Transport Company and that finding has been set aside by the Income Tax Appellate Tribunal. If that is the position then we are unable to see as to how criminal proceedings can be sustained."

Similar view has been taken by this Court in the case of ***K.C. Builders and Another v. Assistant Commissioner of Income Tax (2004) 2 SCC 731***, in which it has been held as follows :

"26. In our view, once the finding of concealment and subsequent levy of penalties under Section 271(1)(c) of the Act has been struck down by the Tribunal, the assessing officer has no other alternative except to correct his order under Section 154 of the Act as per the directions of the Tribunal. As already noticed, the subject-matter of the complaint before this Court is concealment of income arrived at on the basis of the finding of the assessing officer. If the Tribunal has set aside the order of concealment and penalties, there is no concealment in the eye of the law and, therefore, the prosecution cannot be proceeded with by the complainant and further proceedings will be illegal and without jurisdiction. The

> Assistant Commissioner of Income Tax cannot proceed with the prosecution even after the order of concealment has been set aside by the Tribunal. When the Tribunal has set aside the levy of penalty, the criminal proceedings against the appellants cannot survive for further consideration. In our view, the High Court has taken the view that the charges have been framed and the matter is in the stage of further crossexamination and, therefore, the prosecution may proceed with the trial. In our opinion, the view taken by the learned Magistrate and the High Court is fallacious. In our view, if the trial is allowed to proceed further after the order of the Tribunal and the consequent cancellation of penalty, it will be an idle and empty formality to require the appellants to have the order of the Tribunal exhibited as a defence document inasmuch as the passing of the order as aforementioned is unsustainable and unquestionable."

18. Mr. Sharan contends that aforesaid principle shall apply with equal force in the prosecution under the Act as the basic principle which these judgments take note of to quash the prosecution is the higher standard of proof required in a criminal case than the adjudication proceeding and no reference at all has been made to the provisions of the Income-tax Act to come to that conclusion. The decisions referred to above pertain to prosecution under the Income-tax Act and obviously had not adverted to any of the provisions of the Act, particularly Sections 50, 51 and 56 of the Act points out Mr. P.P. Malhotra, the Additional Solicitor General and therefore these decisions in his submission shall have no bearing on the facts of the present case.

19. We find substance in the submission of Mr. Sharan. There may appear to be some conflict between the views in the case of Standard Charted Bank (supra) and L.R. Melwani (supra) holding that adjudication proceeding and criminal proceeding are two independent proceedings and both can go on simultaneously and finding in the adjudication proceeding is not binding on the criminal proceeding and the judgments of this Court in the case of

Uttam Chand (supra), G.L. Didwania (supra) and K.C. Builders (supra) wherein this Court had taken a view that when there is categorical finding in the adjudication proceeding exonerating the person which is binding and conclusive, the prosecution cannot be allowed to stand. Judgments of this Court are not to be read as statute and when viewed from that angle there does not seem any conflict between the two sets of decisions. It will not make any difference on principle that latter judgments pertain to cases under the Income Tax Act. The ratio which can be culled out from these decisions can broadly be stated as follows :-

(i) Adjudication proceeding and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceeding is not necessary before initiating criminal prosecution;

(iii) Adjudication proceeding and criminal proceeding are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceeding by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20 (2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceeding is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of facts and circumstances can not be allowed to continue underlying principle being the higher standard of proof in criminal cases.

In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well

> as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court.

20. xxxxx
21. xxxxx

22. A learned Single Judge of the Bombay High Court had the occasion to consider this question in a case under the Foreign Exchange Regulation Act in ***Criminal Application No. 1070 of 1999 (Hemendra M. Kothari v. Shri W.S. Vaigankar, Assistant Director, Enforcement Directorate (FERA), Govt. of India and State of Maharashtra), decided on 25.04.2007*** and on a review of large number of decisions of this Court and other courts it came to the following conclusion :-

> "21. It may be noted that in the present case the applicant was exonerated by the Dy. Director of Enforcement, who was adjudicating authority, in the adjudication proceedings. Admittedly that order was not challenged in appeal by the respondent and thus that order has become final. I have already noted the facts and findings of the adjudicating authority in detail. The adjudicating authority had clearly come to the conclusion that there was no material to hold the present applicant guilty for contravention of the provisions of FERA and he was completely exonerated. When in the departmental proceedings before the adjudicating authority, the department could not establish the charges, it is difficult to imagine how the department could prove the same charges before the criminal Court when the standard of proof may be much higher and stringent than the standard of proof required in departmental proceedings."

The Delhi High Court also considered this question arising out of a case under Foreign Exchange Regulation Act, in detail in the case of ***Sunil Gulati & Anr. V. R.K. Vohra 145 (2007) DLT 612***, and held as follows :-

> "In case of converse situation namely where the accused persons are exonerated by the competent authorities/Tribunal in adjudication proceedings, one will have to see the reasons for such exoneration to determine whether these criminal proceedings should still continue. If the exoneration in departmental adjudication is on technical ground or by giving benefit of doubt and not on merits or the adjudication proceedings were on different facts, it would have no bearing on criminal proceedings. If, on the other hand, the exoneration in the adjudication proceedings is on merits and the concerned person(s) is/are innocent, and the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution cannot be allowed to continue. The reason is obvious criminal complaint is filed by the departmental authorities alleging violation/ contravention of the provisions of the Act on the part of the accused persons. However, if the departmental authorities themselves, in adjudication proceedings, record a categorical and unambiguous finding that there is no such contravention of the provisions of the Act, it would be unjust for such departmental authorities to continue with the criminal complaint and say that there is sufficient evidence to foist the accused persons with criminal liability when it is stated in the departmental proceedings that ex facie there is no such violation. The yardstick would, therefore, be to see as to whether charges in the departmental proceedings as well as criminal complaint are identical and the exoneration of the concerned person in the departmental proceedings is on merits holding that there is no contravention of the provisions of any Act."

We respectfully endorse the view taken by the Bombay High Court in the case of Hemendra M. Kothari (supra) and Delhi High Court in Sunil Gulati (supra).

23. Bearing in mind the principles aforesaid we proceed to consider the case of the appellant. In the adjudication proceeding on merit the adjudicating authority has categorically held that "the charges against Shri Radheshyam Kejriwal for contravening the provisions of Section 9(1)(f)(i) and Section 8(2) read with Section 64(2) of the Foreign Exchange Regulation Act, 1973 cannot be sustained". In the face of the aforesaid finding by the Enforcement Directorate in adjudication proceeding that there is no contravention of any of the provisions of the Act, it would be unjust and an abuse of the process of the court to permit the Enforcement Directorate to continue with the criminal prosecution."

13. The aforesaid principle was followed by the Apex Court in the case of *M/s Videocon Industries Limited* (supra) wherein the petitioners challenged their prosecution under the provisions of FERA Act, 1973 on similar grounds of having given clean chit by the Adjudicating Tribunal dislodging the finding of the Adjudicating Authority holding as under :

"18. In the ultimate eventuate, the following principles were culled out from the decisions referred to in the judgment. The majority has put it thus:-

"The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not neces- sary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the pro- ceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitu- tion or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher stan- dard of proof in criminal cases".

19. Clarifying the position, the majority observed that the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court. On the basis of the aforesaid principles, the majority proceeded to analyse the factual matrix and analysed the finding recorded by the adjudicating authority and opined when there is a finding by the Enforcement Directorate in the adjudication proceeding that there is no contravention of any of the provisions of the Act, it would be unjust and an abuse of the process of the court to permit the Enforcement Directorate to

> continue with the criminal prosecution.
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> 20. We respectfully concur with the said view and do not perceive any reason to disagree with the same and refer the pronouncement in *Radheshyam Kejriwal* (supra) for reconsideration by the larger Bench."

14. The view taken by the Apex Court in *Radheyshyam Kejriwal's case* (supra) was again reiterated in *Ashoo Surendranath Tewari's case* (supra). Thus, in view of the ratio of law laid down in *Radheyshyam Kejriwal's* case (supra) this Court is of the view that the twin test prescribed for determining the effect of the orders passed by Adjudicating Authority/Tribunal on the criminal proceedings is :

(i) Whether the allegations in the adjudication proceedings as well as the proceedings for prosecution are identical ? and

(ii) Whether the exoneration of the person concerned in the adjudication proceedings is on merits ?

15. The afore-prescribed twin test when applied to the present case, this Court finds that the case of the petitioners is fully covered by the ratio of law laid down in *Radheyshyam Kejriwal's* case (supra) and thus merits acceptance.

16. In view of above and keeping in view the fact that the Tribunal has already quashed the penalty against the Firm and has found that there was no case of tax evasion as being alleged by the

Revenue, this Court finds that the FIR on the same set of allegations cannot be allowed to continue.

17. Consequently, the present petition is allowed. FIR No.132 dated 26th of March, 2011 registered for the offences punishable under Sections 420, 465, 468, 471 and 120-B of the Indian Penal Code, at Police Station Sadar Patiala, District Patiala (Annexure P-1) and all proceedings subsequent thereto including charge sheet/order framing charge dated 4th of May, 2019 (Annexure P-3 and P-4) as well as order dated 16th of November, 2019 (Annexure P-7) are hereby quashed.

September 22, 2023 **(PANKAJ JAIN)**
Dpr **JUDGE**

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