22.08.2024
SL. 64+65
Court No. 551
Suvayan/
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C.R.R. 2928 of 2012

In Re: - An Appeal under Section 482 of the Cr.P.C, 1973.
And

In the matter of: **M/S M. B. Timber (P) Ltd. & Ors.**
...for the petitioners.

With

C.R.R. 2929 of 2012

In Re: - An Appeal under Section 482 of the Cr.P.C, 1973.
And

In the matter of: **G. B. Logs & Timber (P) Ltd. & Ors.**
...for the petitioners.

Mr. Kallol Basu
Mr. A. Chakraborty
...for the petitioners.

Ms. Avishek Sinha
...for the State.

1. By filing the instant two applications under Section 482 of the Code of Criminal Procedure (in short, Cr.P.C.), the petitioners have prayed for quashing of the G.R. Case No. 3063 of 2012 pending before the learned Chief Metropolitan Magistrate (now Chief Judicial Magistrate), Kolkata arises of Bowbazar P.S. Case Nos. 481 of 2012 dated 06.08.2012 and G.R. Case No.3064 of 2012 arises of Bowbazar P.S. Case No.482 of 2012 dated 06.08.2012 both under Sections 93(6)/93(7) of the West Bengal Value Added Tax Act (hereinafter referred to as the 'said Act') read with Sections 120B/420/403/467/468/471 of the Indian Penal Code (in short, IPC).

2. From the materials as placed before this Court, it reveals that the aforesaid P.S. cases were initiated on the basis of the two separate written complaints both dated 02.08.2012 by one Md.

Nijamul Islam, Sales Tax Officer, Bureau of Investigation, with the Deputy Commissioner, Enforcement Branch, Kolkata Police stating, *inter alia*, that two enquiries were initiated on account of the false claims for input tax credit by the accused persons (who are the petitioners before this Court in these two cases) by means of procuring fake tax invoices. It has been alleged in the said written complaint that on scrutiny of the seized documents and other materials it became evident that the present petitioners who are the accused before the trial court had fraudulently claimed input tax credit to the tune of Rs.46,71,845/- and to the tune of Rs. 82,96,483/-, respectively. On the basis of the aforesaid two written complaints, the aforementioned two P.S. cases were started. Investigations were taken up and two separate charge-sheets under Sections 96(6)/93(7) of the West Bengal Value Added Tax Act, 2003 read with Sections 120B/420/403/467/468/471 IPC were submitted against the accused persons which are sought to be quashed by invoking the provisions under Section 482 of the Cr.P.C.

3. Mr. Chakraborty, learned Advocate duly led by Mr. Basu, learned Advocate for the revisionists at the very outset submits before this Court that for effective adjudication of the instant two *lis*, he intends to file supplementary affidavits.

4. Such prayer is considered and is disallowed since these are the cases of 2012 and no leave has been obtained during the pendency of the instant two petitions for filing such supplementary affidavits.

5. In course of argument Mr. Chakraborty, learned Advocate for the petitioners at the very outset draws attention of this Court to the relevant pages of the petitions under consideration. Attention of this Court is also drawn to some other pages of the petitions. It is argued by Mr. Chakraborty that the present petitioners, being the dealers, cannot be implicated in the alleged fake transactions in view of the fact that transportation of goods are being undertaken by the purchasers and, therefore, the finding of the Sales Tax Officer, Bureau of Investigation, that wrong vehicle numbers have been put by the present petitioners in order to evade tax and in order to claim credit is not justified and on the basis of such finding, no final report ought to have been filed.

6. It is further submitted that in the event the G.R. Case Nos. 3063 of 2012 and 3064 of 2012 are permitted to be proceeded with, that would cause a serious miscarriage of justice. It is, thus, submitted by Mr. Chakraborty that an appropriate order may be passed for quashing of the proceedings, as prayed for.

7. Mr. Avishek Sinha, learned Advocate for the State at the very outset has handed over the photocopies of the relevant two Case Diaries. It is submitted by him that in course of investigations *prima facie* materials have been collected by the I.O. to consider the charges by the learned trial court favourably.

8. It is further submitted by Mr. Sinha that this Court, in exercise of its power under Section 482 Cr.P.C. ought not to appreciate the disputed question of facts and the same is expected to keep

open for the decision by the learned trial court.

9. On close scrutiny of the entire materials placed before this Court and after giving its due consideration and the submissions of the learned advocates for the contending parties, it appears to this Court that in course of investigation, the Investigating Officer has collected prima facie incriminating materials and thus submitted final reports to substantiate that the present petitioners, being the accused before the Trial Court, fraudulently sought for dealers input tax credit.

10. As rightly pointed out by Mr. Sinha that while disposing a petition under Section 482 of the Cr.P.C., this Court is not expected to go to the root of the factual aspects of the criminal case unless it has been shown that the case as made out against the accused is so highly improbable that in the event the same is allowed to be continued, that would cause serious miscarriage of justice.

11. At this juncture, this Court may safely place reliance upon the reported decision of ***Vijayender Kumar and Ors. Vs. State of Rajasthan*** reported in ***(2014) 1 C.Cr.L.R. (SC) 762*** wherein the Hon'ble Apex Court while dealing with the subject of quashing of proceeding under Section 482 Cr.P.C. expressed the following view:-

> *"The High Court would exercise its inherent jurisdiction only when one or the other propositions of Law, as laid down in* ***R. Kalyani Vs. Janak C. Mehta (2009) 1 SCC 516*** *is attracted , which are as under:-*
>
> *(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and,*

in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be ground to hold that the criminal proceedings should not be allowed to continue."

12. The same view has been taken in the reported decision of ***Dalip Kaur vs. Jagnar Singh and Ors.*** reported in ***(2009) 14 SCC 696***.

13. It appears to this Court that there are sufficient prima facie materials in the two case diaries for consideration by the learned Trial Court at the time of consideration of the charges. In view of such, this Court considers that miscarriage of justice would be caused if this Court exercises its power under Section 482 of the Cr.P.C. by allowing the instant two applications, as prayed for.

14. Accordingly, CRR 2928 of 2012 and CRR 2929 of 2012 as filed under Section 482 of the Cr.P.C. are hereby dismissed.

15. Before parting with, this Court must not be forgetful to record that by an order dated August 24, 2012, a coordinate Bench directed the present petitioners to deposit a sum of Rs.1 crore

provisionally with the Sales Tax Department by August 31, 2012.

16. Mr. Sinha, learned advocate for the State, confirms that such deposit has been made.

17. Such being the position, this Court directs both the petitioners to appear before the learned Trial Court within 30 working days from today and in the event the present petitioners appear before this Court and in the event the present petitioners remain present before the Trial Court in the aforementioned two trials in person subject to the provision of Section 317 of the Cr.P.C., learned Trial Court shall not issue warrant of arrest as against them.

18. It is, however, made clear that in the event such order is not complied with, liberty is given to the learned Trial Court to take appropriate steps in accordance with law for ensuring the presence of the present two petitioners during the trial of the aforementioned two G.R. cases.

19. It is further made clear that the deposit as made by the present petitioners as discussed (supra) is subject to the outcome of the aforementioned two trials.

20. Case Diaries be returned.

21. Criminal Section is directed to supply certified copy of this order, if applied for, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)