

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-28701-2023 (O&M)

Decided on 24.09.2024

Sushil Kumar Singla

... Petitioner

VS.

State of UT Chandigarh

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Hemant Bassi, Advocate for the petitioner

Ms. Vasundhara Dalal Anand, APP, UT Chandigarh

Sandeep Moudgil, J.

(1). The petitioner has filed the instant petition under Section 482 CrPC for quashing of the FIR No.385 dated 13.12.2019 under Section 420/471/468/471IPC (Sections 201 & 120-B IPC added later on), registered at Police Station Section 17, Chandigarh and report under Section 173 CrPC dated 14.02.2023 (Annexure P3) and order dated 13.04.2023 (Annexure P4) as well as consequential proceedings arising therefrom.

(2). Present case was registered on the complaint of Sh. Sanjeev Madaan, Excise & Taxation Officer reporting therein that Anuradha D/o Avinash being Proprietor of M/s A.K Trading Company in connivance with her other associates obtained a registration under U.T GST Act 2017, CGST 2017 and IGST Act 2017. As per registration application applied on the GST portal, the main business of the firm was "supply of all kind of scrap". The Excise and Taxation Inspector submitted his reports on 14.02.19 and 25.01.19 that there was no business activity from the business premises i.e. Plot No. 160, Vill. Khuda Jassu, UT, Chandigarh in respect of above said company. During the period of registration, tax payer made the transaction of payable taxable

supplies of goods to the tune of Rs. 21,68,92,963/- and was liable to deposit the due tax in Govt. Treasury. During enquiry, alleged person Anuradha joined the enquiry in which she stated that her mother Smt. Veena Sharma had expired on 11.08.2010 supported by death certificate.

(3). During further verification, it also came on record that the Rent Agreement at the time of obtaining registration was executed on 08.06.2018 between Smt. Veena Sharma as landlady and Ms. Anuradha as tenant is a fake document which was submitted for obtaining GSTIN Number. Besides, one Ishwar Chand Garg joined the enquiry in which he stated that he was working as a manager with M/S A K Trading Company at Sarangpur, Chandigarh and was looking after all the sale and purchase of all types of scrap metals. Further Anuradha is the real owner of M/S AK Trading Company who is well known to Ishwar Chand. After enquiry, case was registered against Anuradha proprietor of M/S A K Trading Company & others.

(4). Learned counsel for the petitioner has contended that he is practicing as Chartered Accountant for more than two decades and the allegations in the present FIR pertains to alleged evasion of tax by Ms. Anuradha and same was registered way back in the year 2019 and for a period of more than three years, no person was arrested and though the petitioner joined and fully cooperated in the investigation, however, on 07.12.2022, he was illegally arrested. It is submitted the petitioner is neither the owner of A.K. Trading company nor he has any dealing with the same and had never associated in professional capacity with the said concern.

(5). He argued that as per the FIR itself, the respondent has initiated steps for recovery of tax and penalty as prescribed under the UTGST Act and

CGST Act and therefore, the action of registration of FIR is bad in law since the Act itself provides for a mechanism of penalty and appeal. It is then urged that since UTGST Act and CGST Act are the special legislations which would prevail upon the general provisions of the IPC inasmuch as the both the above-cited special legislations duly incorporate in it in-house mechanism and provisions including penal provisions for dealing with such illegal tax evasion.

(6). Mr. Bassi, vehemently contended that Section 132 of the CGST Act would show that all the offences are non-cognisable and bailable except the offences referred to in sub-Section (5) of Section 132 of the said Act and that apart, no prior sanction under Section 132(6) of the Act has been obtained before launching criminal prosecution against the accused persons. Further, it is averred that Section 4& 5 of the Code of Criminal Procedure stipulates that the provisions of the Special law like the CGST and UTGST Act and the procedure prescribed thereunder would prevail over and above the general provisions of Indian Penal Code. In this regard, reliance has been placed on **State of Bihar vs. Murad Ali Khan & Ors. AIR 1989 SC 1** and **Narcotics Control Bureau vs. Kishan Lal & Ors. AIR 1991 SC 558.**

(7). On the other hand learned APP, UT Chandigarh submits that in such like matters of GST swindling and siphoning off Government money by generating fake e-way bills, the accused including the present petitioner would not allow the legal/white money trail to be traced back to them and such transactions would be done in cash and the only evidence, regarding the dealings of the co-accused *inter se* can be derived from the digital data of the co-accused Vinay Jain @ Vicky, the FSL report regarding the same is still awaited.

(8). Ms. Vasundhara, learned APP UT Chandigarh further argued that the petitioner is the one who conceptualized the idea of forming the fake and non-existent M/s AK Trading and all its activities of making fake e-way bills were carried out under the overall supervision of the petitioner and the said company was shown to be procuring bogus purchase invoices from other firms of co-accused Vicky Jain amongst others. She further averred the prosecution has gathered sufficient documentary evidence during preliminary inquiry to infer that the modus operandi of the petitioner was that he along with other co-accused in collusion with their fake firms had been obtaining bogus invoices of sale and purchase of goods and then claiming false Input Tax Credit from the Taxation Department and that there was no physical movement of the goods rather only purchase tax invoices were obtained with the mala fide intention to claim ITC.

(9). Another argument raised by learned APP is that further investigation regarding dealings of M/s AK Trading with approximately 113 other retail companies is still underway and the petitioner is also accused in FIR No.100 dated 02.07.2021 under Sections 420/467/468/471/120-B IPC registered at Police Station Sector 17, Chandigarh. She then submitted even the Directorate of Enforcement is also investigating the matter regarding M/s AK Trading through its proprietor dealing with other alleged shell companies under the PMLA, 2002.

(10). As regards the petitioner's contention that the provisions of IPC would not apply, reliance has been placed on Allahabad High Court judgment in **Govind Enterprises vs. State of UP & Ors. Crl. Misc. Writ Petition No.7303 of 2019** decided on 30.05.2019 wherein it was held that there is no bar under

the GST laws which would prevent to initiate prosecution under the IPC since the provisions of CGST and UTGST Acts do not in any manner override the provisions of the Penal Code or prohibit the applicability of its provisions in the respect of offences punishable under the Code. Reliance has also been placed on Apex Court decision in *Nimmagadda Prasad vs. CBI, AIR 2013 SC 2821*, to support her contention that in economic offences the view point is to be taken differently with different approach as it affects the economy of the country.

(11). Heard learned counsel for the parties and gone through the record.

(12). Admittedly, in the report under Section 173 CrPC the investigating agency has not been able to bring on record any evidence against the petitioner and the only evidence which can be derived from the petitioner is from digital data which is the stand taken by the respondent in their reply. The FSL report is still awaited. Moreover, the respondent has not been able to connect the petitioner with the alleged allegation.

(13). It is not understandable as to how the respondent assert that the idea of forming a fake firm has been conceptualized by the petitioner moreso when there is no evidence referred to in this regard by the respondent in their reply. Only because the co-accused made a confessional statement in the police custody admitting the involvement of the petitioner cannot be the sole ground to proceed against the accused lest such confessions are supported and corroborated by cogent evidence which may prima facie point towards involvement of the petitioner

(14). Another aspect which cannot be lost sight of is of invocation of provisions of law. The case cynosures evasion of tax which led to registration

of FIR against Anuradha d/o Abhinash, proprietor of M/s AK Trading Co. by obtaining fake registration under UT GST Act, CGST Act and IGST Act by means of fraud and suppression of facts.

(15). A number of chapters/sections of the CGST Act, 2017 require compliances by the registered taxable persons and in some cases even by persons not registered under this Act. Non-compliance with the provisions of these sections may lead to imposition of penalties/fines and prosecution under this act. Chapter III involving Sections 7 to 11 of CGST Act provide for levy and collection of tax; Chapter V provides for provisions relating to availing of input tax credit; Chapter VI obliges the taxable person(s) to get themselves registered under the GST laws; Chapter VII provides for rules relating to issue of tax invoices, debit notes and credit notes; Chapter VIII obliges the registered taxable person(s) to maintain books of accounts; Chapter IX obliges the registered taxable person(s) to file certain periodical returns; Chapter X obligates the registered taxable person(s) to pay tax and also provides for obligations to deduct/collect tax at source and deposit the same with government. Non-compliance with the provisions of any of these chapters or the rules made thereunder, may lead to levy of interest, imposition of fine/penalty and prosecution of the defaulting taxable persons.

(16). Chapter XIX (Sections 122-138) of the CGST Act, 2017, along with Rule 162 of the CGST Rules, outlines various offenses and corresponding penalties. These provisions also apply to state/UT goods and service laws and the Integrated Goods and Service Tax Act, 2017. Chapter XIX of the CGST Act, 2017, categorizes offenses into four broad categories - (1) Issuance of fake or incorrect invoices; (2) Tax evasion or non-payment; (3) Fraudulent supply of

goods or services; (4) Miscellaneous provisions. Section 122 lists 21 specific offenses liable to penalty including Penalty for supply of goods/service for non/short payment of tax etc. as provided under Section 122(2); Penalty for aiding or abetting of offences under Section 122(3) and various other General penalty i.e. offences for which no other penalty is provided under this Act, the punishment/penalty of which has been prescribed under Section 125 of the CGST Act.

(17). The question thus arise that whether the FIR can be allowed to sustain, for the provisions of GST legislations have overriding effect over and above the provisions under the Indian Penal Code?

(18). In **State (NCT of Delhi) v Sanjay, (2014) 9 SCC 772** the question before the Apex court was whether the provisions contained in Section 21, 22 and other sections of Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) operate as bar against prosecution of a person who has been charged with allegation under Section 379 of IPC? The Apex court after reading the act in a minute manner has held that if an offence which is mentioned in MMDR Act is executed by the accused, then such offence can be tried only under such act by the procedure laid under the said act. However, if an act or offence which constitutes an offence under IPC, then the provisions of MMDR Act shall not stand in a way to stop the applicability of IPC and such offence can be prosecuted under IPC without waiting or following the procedure under the MMDR Act.

(19). In the case of **Institute of Chartered Accountants of India vs. Vimal Kumar Surana and another, (2011) 1 SCC 534**, the Apex Court has elaborately dealt with the provision under the Chartered Accountants Act,

1949. In that case, the respondent, who passed the Chartered Accountant examination but was not a member of the appellant's Institute of Chartered Accounts, allegedly represented before the Income Tax Department and the authorities constituted under the Madhya Pradesh Trade Tax Act on the basis of power of attorney or as legal representative and submitted documents such as audit reports and certificates required to be issued by the Chartered Accountants by preparing forged seals and thereby impersonated himself as Chartered Accountant. He was accordingly prosecuted and charge was framed against him under Sections 419, 468, 471 and 472, IPC. The respondent challenged the order by filing revision under Section 397 CrPC. The Additional Sessions Judge set aside the order of the Magistrate and remanded the case to the trial court with a direction to decide whether there are sufficient grounds for framing charges under Sections 419, 468, 471 and 473, IPC read with Sections 24 and 26 of the C.A. Act. After remand, the trial court passed an order holding that there was no basis for framing any charge against respondent under the IPC. The Magistrate further held that cognizance of offences under Sections 24 and 26 of the C.A. Act cannot be taken because no complaint had been filed by or under the order of the Council before the Magistrate. The High Court while referring to Sections 2, 4, 5 and Section 195(1), Cr.P.C. held that in the absence of a complaint the Magistrate was not competent to frame charges against the respondent and in view of the special mechanism contained in the C.A. Act for prosecution of a person violating Sections 24, 24A and 26 of the Act, he cannot be prosecuted under the IPC. When the matter finally came to the Supreme Court, wherein after considering a catena of judgments, it was held as under:-

“24. Such an unintended consequence can be and deserves to be avoided in interpreting Sections 24-A, 25 and 26 keeping in view the settled law that if there are two possible constructions of a statute, then the one which leads to anomaly or absurdity and makes the statute vulnerable to the attack of unconstitutionality should be avoided in preference to the other which makes it rational and immune from the charge of unconstitutionality. That apart, the court cannot interpret the provisions of the Act in a manner which will deprive the victim of the offences defined in Sections 416, 463, 464, 468 and 471 of his right to prosecute the wrongdoer by filing the first information report or complaint under the relevant provisions of CrPC.” xxxxxxxxxxxxx

42. The submission of Shri Gupta that the respondent cannot be prosecuted for the offences defined under IPC because no complaint had been filed against him by the court concerned or authority as per the requirement of Section 195(1)(b)(ii) CrPC sounds attractive but lacks merit. The prohibition contained in Section 195 CrPC against taking of cognizance by the court except on a complaint in writing made by the court concerned before which the document is produced or given in a proceeding is not attracted in the case like the present one because the officers of the Income Tax Department and the authorities constituted under the Madhya Pradesh Trade Tax Act, 1995 before whom the respondent is alleged to have acted on the basis of power of attorney or as legal representative or produced audit report do not fall within the ambit of the term “court” as defined in Section 195(3) CrPC. Such officer/authorities were neither discharging the functions of a civil, revenue or criminal court nor could they be treated as tribunal constituted by or under the Central or State Act, which is declared to be a court for the purpose of Section 195.”

(20). In case of *Sharat Babu Digumarti vs. Govt. Of NCT of Delhi* *AIR 2017 SC 150*, the facts were different. It is the case in which the Magistrate had taken cognizance against the Director of a company for offences punishable under Sections 292 and 294 of IPC and Section 67 of IT Act. It was in such background, the Supreme Court was of the view that Section 67 read with Section 67A and 67B of the IT Act were a complete code and for the same set of allegations, the provisions of Section 292 of IPC cannot be invoked.

(21). A close reading of the above cited case laws would lead to only one conclusion that the offence alleged against the petitioner is one punishable under the UTGST Act/CGST Act, which are the special statutes and are a complete code in itself and in view of the special mechanism contained in Chapter XIX of the CGST Act which clearly provides for offences and penalties, for prosecution of a person violating 122 & 132 of the Act, the petitioner cannot be prosecuted under the general provisions of IPC especially in view of the facts that in the FIR itself it has been stated that the resort has already been taken for recovery of the tax by assessing tax and imposing interest and penalty thereon. Since as per the mechanism under the GST legislations has been pressed into aid, continuation of the proceedings under the general penal provisions of IPC and subject the petitioner to face trial thereunder would amount to double jeopardy under Article 20(2) of the Constitution of India. Furthermore, there is non-compliance of mandatory provision of Section 132(6) of the CGST Act as no previous sanction of the Commissioner has been taken.

(22). In view of the above discussion, this petition is allowed and the FIR No.385 dated 13.12.2019 under Section 420/467/468/471 IPC (Sections 201 & 120-B IPC added later on), registered at Police Station Section 17, Chandigarh and report under Section 173 CrPC dated 14.02.2023 (Annexure P3) and order dated 13.04.2023 (Annexure P4) as well as consequential proceedings arising therefrom qua the petitioner.

24.09.2024 V.Vishal	(Sandeep Moudgil) Judge
1. <i>Whether speaking/reasoned?</i>	<i>Yes/No</i>
2. <i>Whether reportable?</i>	<i>Yes/No</i>