IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

277 CRM-M-46133-2023 (O&M)
Date of Decision: 24.09.2024

SUSHIL KUMAR SINGLA
…..PETITIONER

VERSUS

STATE OF UT CHANDIGARH
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Hemant Bassi, Advocate
for the petitioner.
Mr. Rajeev Anand, Addl. PP, UT, Chandigarh.

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SANDEEP MOUDGIL, J

CRM-20102-2024

This is an application under Section 482 Cr.P.C. for placing on record rejoinder to the reply filed by the Respondent. For the reasons mentioned in the application, the same is allowed. Rejoinder to the reply filed by the respondent is taken on record.

CRM stands disposed of.

CRM-M-46133-2023

1. The jurisdiction of this court has been invoked under section 482 Cr.P.C for quashing of the impugned FIR No.100 dated 02.07.2021,(Annexure P-3) under Section 420/467/468/471 and 120-B of the Indian Penal Code, registered at Police Station Sector 17, Chandigarh, and also the final report under Section 173 Cr.P.C.,(Annexure P-5) and the order dated 13.04.2023, (Annexure P-6) and all subsequent proceedings arising therefrom, qua the present petitioner.

2. Factual matrix of the case unfolds that the petitioner is Chartered Accountant by profession and has been practicing as such for the last ore than two decades in Delhi NCR wherein the Excise and Taxation Officer-cum-Proprotor Office (Ward-1) U.T. Chandigarh has lodged a complaint dated 26.08.2019 which has contemplated into registration of FIR No.385 dated 13.12.2019 with Police Station Sector 17, Chandigarh and the same has been got lodged against one Ms.Anuradha d/o Abhinash being proprietor of M/s A.K.Trading Company, village Khuda Jassu, U.T., Chandigarh by alleging in the FIR that said Ms. Anuradha obtained registration under the U.T. GST Act, 2017, CGST, Act 2017, IGST Act 2017 by means of fraud and willful mistreatment and by suppression of facts. Thereafter, as alleged in the FIR, the GSTIN was cancelled with effect from 08.06.2018, vide order dated 25.01.2019.

3. Thereafter, the petitioner was called from Delhi by the police to assist in the matter of FIR No.385 but as the police remained unable to link any one with the said FIR and proceed against any one and a period of three years had lapsed and no person was ever arrested in relation to the said FIR. Besides joining Ms.Anuradha in the investigation, the Investigating Officer, also joined few other persons, namely Yashpal Jindal, Ishwar, Vicky Jain in investigation and as one of the above named persons was related to the petitioner, so petitioner was called from Delhi to join the investigation, as a professional, as such the petitioner fully cooperated in the investigation. However, there being no evidence against any person even after lapse of long period of 3 years from the registration of FIR, the officials of Excise Department in order to cover up their own lapses started to mount pressure on the police and as a result, Ishwar was arrested on 03.12.2022 and Yashpal was arrested on account of fabrication of mala fide documents on 05.12.2022 whereas Vicky Jain was shown to be

arrested on 06.12.2022, by the Investigating Agency. Meanwhile, a notice dated 04.12.2022 was issued to the petitioner to join the investigation again on 05.12.2022 by the Sub-Inspector of Economic Offence Wing and accordingly, petitioner appeared on 05.12.2022 at 11.30 AM to join the investigation but was sent back without any reason and joining the investigation.

4. However, on 07.12.2022, the petitioner was arrested in the case illegally and without any there being any involvement of the petitioner in the case. It is further contended by learned counsel for the petitioner that the petitioner applied and granted bail by the learned CJM, Chandigarh, vide order dated 09.01.2023. Surprisingly, after being granted bail, the Investigating Agency in order to circumvent the order of bail, sought production warrant of the petitioner in another FIR being FIR No.100 dated 02.07.2021 under Section 420, 467, 468, 471 and 120-B IPC of Police Station Sector 17, Chandigarh, wherein the petitioner is shown to be arrested after being picked up from judicial custody and FIR No.100 came to be registered on the complaint of Excise & Taxation-cum-Proprotor Office, Ward No.1, Chandigarh, against one Ramdiya son of Chandi Ram being proprietor of M/s R.D.Trading Company, Burail, U.T., Chandigarh and one Ishwar Chander son of Chander Bhan, for allegedly obtaining fraudulent registration under the U.T. GST Act, 2017, CGST Act 2017, IGST Act 2017.

5. Counsel for the petitioner contends that the petitioner has nothing to do with this FIR also because M/s R.D.Trading Company is located at Chandigarh and its proprietor is Ramdiya wherein the allegation in the FIR is that the tax was collected by the dealer but not paid. As such, the case at the most will be for non-payment of tax liability but no criminal liability will exist because it was a bogus transaction or that the dealer was bogus. No offence of

cheating and fraud will be constituted. Perusal of the UT GST Act and CGST Act, both the legislations are special legislations and as such the provisions of said Acts would prevail upon the general provisions of IPC and that UT GST Act and CGST Act have a full mechanism for dealing with all the situations arising out and under the provisions of the Act including penal provisions as such the FIR has been registered while ignoring the provisions of these Special Acts.

6. Learned Counsel for the State of Union Territory, Chandigarh, while referring to the reply filed by the Deputy Superintendent of Police, Economic Offences Wing, U.T., Chandigarh, has submitted that initially the case was registered against Ramdiya and Ishwar Chander on the complaint of one Yogeshwar Sharma (Excise and Taxation Officer, U.T., Chandigarh). On being contacted telephonically, the proprietor of the firm was unable to answer any queries and neither the Proprietor (Ramdiya) nor any authorized representative ever appeared before the Excise Department and the firm was subsequently cancelled on 27.02.2019 from the very beginning i.e. 17.07.2017.

7. He further contends that it is during the investigation of the case, the accused Ishwar Chand made a disclosure statement to the effect that the petitioner is involved in the case and confessed in his disclosure statement that he, in connivance with his relative Yashpal Jindal, Sushil Singla and another accused namely Vinay Jain @ Vicky Jain started doing the business of fake bills and shared the cheated amount in a decided percentage. He has further submitted that on the basis of evidence so collected against the petitioner during investigation, final report under section 173 Cr.P.C. was presented against the petitioner wherein the active role of the petitioner has been shown in the present case because it is the petitioner, who conceptualized the idea of forming the fake

and non-existent M/s R.D.Trading Company and all its activities of making fake e-way bills were carried out under the overall supervision of the petitioner.

8. He vehemently argues that the non-involvement of the petitioner, as is claimed, in the complete sequence of events, is an act of eye-wash with a motive to get away from the liability of penalty as well as any punitive action under penal laws whereas the company in question was shown to be procuring bogus purchase invoices from other firms. Since, there is clear cut involvement of the petitioner in the present case as such the present petition is liable to be dismissed.

9. While referring to the rejoinder, it is argued on behalf of the petitioner that petitioner has denied the accusation and contents of the reply to be incorrect and reiterated the contents of the petition. It is further argued that he is alleged to have introduced Yashpal Jindal, Ishwar Chand to Vinay Jain @ Vicky Jain, as per the investigation, however, in the report under Section 173 Cr.P.C., the investigating agency has not been able to bring on record even an iota of evidence against the petitioner in this regard nor is there any such material or evidence being placed on record to corroborate the said accusation and that there is absolutely no evidence against the petitioner to connect him with the allegations against him and that he is absolutely not having any connection with the firm named R.D.Trading Company in any capacity much less even as Chartered Accountant etc. and that there is no evidence to show that the petitioner conceptualized the idea of forming a fake firm or that the petitioner shared any profit.

10. In fact, there is no judicial confession made by the petitioner, as claimed and that even confession made before the police is inadmissible in evidence under Section 25 of the Evidence Act and that SI Krishan Kumar, who

is the investigating officer, is facing accusation in a case registered by CBI for allegedly seeking ratification in a matter being investigated by the Chandigarh Police itself. Thus, the credibility of the investigation carried out by the said police official is at stake and the petitioner's fake implication by the same police official is apparent.

11. Heard learned counsel for the respective parties and meticulously perused the case file.

12. It is very strange that the petitioner, who is practicing as Chartered Accountant in Delhi, has been connected with FIR No.385 which has been lodged in Chandigarh without there being named in the said FIR. The story put-forth by the prosecution is that his involvement was disclosed by the co-accused. When the petitioner was released on regular bail on 09.01.2023, the very next day i.e. 10.01.2023, SI Krishan Kumar filed an application for issuance of production warrant of the petitioner in FIR No.100, which goes to show that till the date of release of the petitioner on bail in FIR No.385, police had no knowledge about the involvement of petitioner in FIR No.100. Meaning thereby, the police, for some unknown reasons, wanted to keep the petitioner behind bars because no application was filed by either SI Krishan Kumar or any other officer/official to seek issuance of production warrant of the petitioner until petitioner was behind bars in FIR No.385 and had the petitioner been actually involved in FIR No.100, the police would not have taken its good time to wait for the petitioner to be released on bail in another FIR.

13. Further, the credibility of SI Krishan Kumar is doubtful for his being facing criminal proceedings in an FIR lodged at the hands of CBI and moving an application to seek issuance of production warrant of petitioner is one such example/attempt to keep the petitioner behind the bars indefinitely for

some extraneous reasons or for the reasons best known to SI Krishan Kumar, who moved the application the very next day of release of the petitioner in the case pertaining FIR No.385.

14. However, in the reply/affidavit filed by the Deputy Superintendent of Police, Economic Offences Wing, U.T., Chandigarh, there is no denial to the assertion of the petitioner that an FIR under the general provisions of IPC was lodged ignoring the provisions of the Special Act i.e. the Act in gross violation of Section 5 of Code of Criminal Procedure. It is settled proposition of law that a special law shall prevail upon the provisions of the general and prior laws. This amounts to clear cut admission on the part of the prosecution that the lodging of FIR is in gross violation of Code of Criminal Procedure as the provisions of Special Act are prevailing upon the provisions of IPC/Cr.P.C.

15. Thus, this Court deems it appropriate to interfere in the matter wherein the only allegation against the petitioner is that he introduced accused with each other but no averment to this effect as to how and where and under what circumstances the petitioner made them to introduce with each other in the reply filed on behalf of the State. Further, there is no reference to the call details, if any, in the reply and moreso, there is no whisper even to the effect that the present petitioner was in any manner connected with either of the fake transactions of M/s R.D.Trading Company, Burail added with the fact that the petitioner is resident of Delhi and also practicing there as Chartered Accountant and there is no reference in the reply to the effect that the petitioner was frequent visitor of Chandigarh from Delhi.

16. Therefore, the prosecution has in no manner been able to connect the petitioner with the case pertaining to FIR No.100.

17. Furthermore, the stand of the prosecution in the reply is that the petitioner suffered disclosure statement during investigation whereas it is the specific and categoric stand of the petitioner in the rejoinder that he did not suffer any disclosure statement. There is no denial to this contention of the petitioner from the prosecution side, which also goes to show that the reply filed on behalf of the State is based on wrong assertions and, thus, cannot be looked into. Hence, such a wrong assertion is not only misleading but also is fatal to the prosecution story/case.

18. Resultantly, in view of the above discussions, the present petition stands allowed and the impugned FIR No.100 dated 02.07.2021, Annexure P-3, under Section 420/467/468/471 and 120-B of the Indian Penal Code, registered at Police Station Sector 17, Chandigarh, with all subsequent proceedings arising therefrom including the final report under Section 173 Cr.P.C.,(Annexure P-5) and the order dated 13.04.2023,(Annexure P-6) is hereby quashed, qua the present petitioner.

(SANDEEP MOUDGIL)
JUDGE

24.09.2024
anuradha

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