

(2024) 10 JH CK 0059
In the Jharkhand High Court
Case No : Writ Petition (Crl) No. 192 Of 2023

ACE Logistics

APPELLANT

Vs

State Of Jharkhand through its Secretary

RESPONDENT

Date of Decision : 16-10-2024

Acts Referred:

Motor Vehicle Act, 1988 — Section 200

Citation : (2024) 10 JH CK 0059

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Indrajit Sinha, Rishav Kumar, Deepankar

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard counsel appearing for the petitioner and learned counsel appearing for the respondent State.

2. The prayer in the writ petition is made for quashing of the Confiscation Notice being Notice Memo No. SO2/2022 – 216/2022 dated 16.11.2022 to the extent the respondent No.2 has imposed a penalty of Rs.12,99,650/- under the provisions of Motor Vehicles Act, 1988 in the form of compounding amount.

3. Learned counsel appearing for the petitioner submits that the trailer bearing Registration No. NL 01AB 2179 belonging to the petitioner firm, loaded with HR Coil was plying under a National Permit from Jamshedpur, Jharkhand to Sambalpur, Odisha for the purpose of fulfilling a consignment which the petitioner firm was entrusted with by M/s Tata Steel Limited vide Consignment Note No.SP1375574085 dated 04.11.2022 for delivering the said goods contained in Annexure – 1 Series. He further submits that the said trailer was intercepted on 04.11.2022 by respondent No.2 while the vehicle was plying through the area falling under the jurisdiction of Saika Police Station located at Khunti, Jharkhand and thereafter the said vehicle was seized for alleged violation

of the provisions of Jharkhand Motor Vehicle Taxation Act, 2001 and provisions of Motor Vehicles Act, 1988. It was further informed by the respondent No.2 that the Road Tax for the State of Jharkhand with respect to the said vehicle was not paid. He then submits that aggrieved by the order of seizure of the vehicle and imposition of tax, the petitioner had preferred a writ being WPC No.6180 of 2022 before this Court. Pursuant to the notice, counter affidavit has been filed on behalf of respondent No.2 on the said civil writ petition disclosing about the compoundable amount and pursuant to that the said writ petition was disposed of with observation that the separate cause of action is there and in view of that the separate writ petition is required to be filed pursuant to that the present writ petition has been filed. He submits that the said compounding was made unilaterally by the respondent No.2 and the petitioner has not given any consent and in absence of any consent the said notice is without jurisdiction. He submits that if the petitioner has not consented for the compounding that cannot be made and the petitioner is willing to face the trial, if a prosecution complaint is filed by the respondent State. To buttress his argument, he relied in the judgment of Hon'ble Supreme Court in the case of P. Ratnakar Rao and Others versus Government of A.P. and Others reported in (1996) 5 SCC 359 and he refers to paragraph No.4 of the said judgment which is as under:-

4. The contention raised before the High Court and repeated before us by Shri Rajeev Dhavan, the learned Senior Counsel for the petitioners is that the discretion given in Section 200(1) of the Act is unguided, uncanalised and arbitrary. Until an accused is convicted under Section 194, the right to levy penalty thereunder would not arise. When discretion is given to the court for compounding of the offence for the amount mentioned under Section 200, it cannot be stratified by specified amount. It would, therefore, be clear that the exercise of power to prescribe maximum rates for compounding the offence is illegal, arbitrary and violative of Article 14 of the Constitution. We find no force in the contention. For violation of Sections 113 to 115, Section 194 accords penal sanction and on conviction for violation thereof, the section sanctions punishment with fine as has been enumerated hereinbefore. The section would give guidance to the State Government as a delegate under the statute to specify the amount for compounding the offences enumerated under sub-section (1) of Section 200. It is not mandatory that the authorised officer would always compound the offence. It is conditional upon the willingness of the accused to have the offences compounded. It may also be done before the institution of the prosecution case. In the event of the petitioner's willing to have the offence compounded, the authorised officer gets jurisdiction and authority to compound the offence and call upon the accused to pay the same. On compliance thereof, the proceedings, if already instituted, would be closed or no further proceedings shall be initiated. It is a matter of volition or willingness on the part of the accused either to accept compounding of the offence or to face the prosecution in the appropriate court. As regards canalisation and prescription of the amount of fine for the offences committed, Section 194, the penal and charging section prescribes the maximum

outer limit within which the compounding fee would be prescribed. The discretion exercised by the delegated legislation, i.e., the executive is controlled by the specification in the Act. It is not necessary that Section 200 itself should contain the details in that behalf. So long as the compounding fee does not exceed the fine prescribed by the penal section, the same cannot be declared to be either exorbitant or irrational or bereft of guidance.

4. Relying on the above judgment and by way of referring Section 200 of the Motor Vehicle Act he submits that it is not mandatory that the authorized officer will forcefully compound the amount and it is conditional upon the willingness to have the offence compounding can be made. On this ground, he submits that the part of the notice with regard to the amount of Rs.12,99,650/-may kindly be quashed.

5. On query made by the Court by the learned counsel appearing for the State with regard to any alternative remedy for the said prayer, learned counsel appearing for the respondent State fairly submits that there is no alternative remedy. He further submits that the counter affidavit has been filed wherein it is disclosed that the said trailer was seized because goods was being transported in the State of Jharkhand in absence of payment of tax. He submits that if the petitioner is not accepting the said compounding, he is required to face the prosecution.

6. In view of the above and considering Section 200 of the Motor Vehicle Act with regard to the compounding of the offence under the said Act and that can be done only with the willingness of the accused as has been held by Hon'ble Supreme Court in the case of P. Ratnakar Rao and Others (supra). It was pointed out that the petitioner has not exceeded for the said compounding in spite of that the order has been passed for compounding of offence by way of paying the fine amount of Rs.12,99,650/-. It was further pointed out that the petitioner is ready to face the prosecution and in view of that the part of the notice dated 16.11.2022 so far penalty of Rs.12,99,650/- under the provisions of Motor Vehicles Act, 1988 which has been calculated in light of Section 200 of Motor Vehicles Act is hereby quashed.

7. So far the Jharkhand Motor Vehicle Taxation Rules 2001, the penalty with regard to the said Rule is there which is the subject matter of the said notice also this Court has not interfered with that.

8. It is open to the State to take recourse in light of judgment of Hon'ble Supreme Court in the case of P. Ratnakar Rao and Others (supra).

9. This petition is allowed in above terms and disposed of.