

(2022) 05 SIK CK 0027

In the Sikkim High Court

Case No : Criminal Miscellaneous Case No. 08 Of 2021

Kaushik Saha

APPELLANT

Vs

State Of Sikkim & Ors

RESPONDENT

Date of Decision : 19-05-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 41A, 155(2), 156(1), 482
Indian Penal Code, 1860 — Section 5, 120B, 420
Sikkim Value Added Tax Act, 2005 — Section 51, 81, 81(4)
Constitution Of India, 1950 — Article 226

Citation : (2022) 05 SIK CK 0027

Hon'ble Judges : Bhaskar Raj Pradhan, J

Bench : Single Bench

Advocate : Rajdeep Mazumder, Moyukh Mukerjee, K.T. Tamang, Sudesh Joshi, Yadev Sharma

Final Decision : Disposed Of

Judgement

Bhaskar Raj Pradhan, J

1. Mr. Kaushik Saha, the petitioner herein has preferred the present petition invoking the inherent jurisdiction of this court under section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.). He seeks the quashing of the impugned proceedings of CID Police Station Case No. 10 of 2021 dated 08.09.2021 under section 420/120 B of the Indian Penal Code, 1860 (IPC).

2. Heard Mr. Rajdeep Majumdar, learned counsel for the petitioner as well as Mr. Sudesh Joshi, learned Public Prosecutor for the State.

3. The learned counsel relied upon the judgment of the Supreme Court in State of Haryana and others vs. Ch. Bhajan Lal and others AIR 1992 SC 604. The relevant paragraph reads as under:-

"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court

in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

4. It is the submission of the learned counsel for the petitioner that the present case falls squarely within paragraph 5 and 6 above.

5. This court has examined the FIR dated 08.09.2021 and finds that it is neither absurd nor inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against the accused.

6. The learned counsel for the petitioner submits that the present case relates to an allegation of evasion of tax under the Sikkim Value Added Tax Act, 2005 (the Act) and since the Act provides for adequate measures to deal with such evasion the registration of the criminal case under the IPC is wrong. He draws the attention of this court to section 51 of the Act which deals with assessment without prejudice to prosecution for any offence. He also draws our attention to section 81 of the Act which deals with offences and penalties. It is argued that in view of section 81(4), the registration of the FIR under the IPC is illegal.

7. Section 51 of the Act provides that any assessment of tax or determination of interest made under the Act shall be made without prejudice to any prosecution instituted for an offence under the Act. The learned counsel therefore submits that since the special Act provided that the assessment of tax or determination of interest made under the Act shall be without prejudice to any prosecution instituted for an offence under the Act the registration of the FIR under the provisions of IPC is illegal. The argument of the learned counsel is not in consonance with the provisions of section 51 of the Act and therefore not accepted.

8. Having examined section 81 of the Act, it is quite evident

that the section creates various offences. Section 81(4) which was relied upon by the learned counsel for the petitioner provides for punishment for the offences enumerated therein. The allegations in the FIR are of criminal conspiracy and cheating. There is nothing in section 51 or section 81 of the Act which prohibits the registration of FIR under the provisions of the IPC. It does not bar the registration and investigation of an offence under the IPC.

9. It is submitted that in view of section 5 of the IPC, there is an express legal bar against the registration of the FIR. Section 5 of the IPC reads as under:-

“5. Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the government of India or the provisions of any special or local law.”

10. The section clearly provides that the IPC shall not affect the provisions of any special or local law. It does not bar the registration of the FIR under the IPC or the institution and continuance of proceedings there under.

11. The record of proceedings filed by the petitioner reflects that the FIR was registered on 08.09.2021 against one Hasta Bir Rai and an unknown person. The complaint in the FIR records thus:-

“To,

The Superintendent of Police

CB-CID

Police Headquarter

Gangtok

Date: 03.09.2021

Sub.: Complaint against the proprietor of M/s Eastern Exports Safety Products Pvt. Ltd.

Sir,

The Commercial Tax Division, Finance Department Government of Sikkim in coordination with the Commissioner, Commercial Taxes West Bengal, has completed the process of conducting an inquiry into the suspicious business transaction of a VAT registered Firm bearing TIN11369197615, which was registered under two Trade Names namely 1. M/s Eastern Export Safety Product Pvt. Ltd. and M/s. Eastern Export Safety Products P.L. Whereas three numbers of C Forms was issued against M/s Eastern Export Safety Products Pvt. Ltd. amounting to a total of Rs.34.24 Crore. four numbers of C Forms was issued to M/s. Eastern Exports Safety Products P.L. amounting to Rs. 45.12 Crore. The above C Form details of which has been communicated by the West Bengal counterpart has been matched with the details that the firm has submitted in their quarterly returns in Sikkim.

It is to inform you that a gross mismatch of Rs.55.56 corers (sic) has been identified by the Commercial Tax Department which is the basis of this complaint. The reason for two firms having the same TIN No. 11369197615, being irregular has been sought to be clarified through a departmental inquiry and the concerned officer has certified that both the firms are under the single ownership. Whereas Shri Kaushik Sha is registered as a dealer under the trade name M/s Eastern Exports Safety Products P.L. Both the firms registered under the same TIN: 11369197615 efective (sic) from the same date i.e. 18th September, 2015. However, for the sake of this inquiry the name of Shri H.B. Rai has been taken as the owner of both the firms having same TIN No. 11369197615.

The modus operandi of the proprietor was to declare items of nil rate of law rate of VAT in his quarterly tax returns in Sikkim against the utilizations of firm (sic) C (rate of only two percent was to be paid by the importing dealers in their interstate purchases). The interstate movement of consignment carried through Way Bills (Generated online by the dealer) has been also endorsed by Checkpost Officials. Against the Form ?C? details submitted to Government of Sikkim the same Form ?C? details, submitted by the supplying firm i.e. ITC Pvt. Ltd. Calcutta was obtained from West Bengal and the same was compared and therein it was, found that mismatch of Rs.55.56 corers (sic) was evident.

The break-up of the amount by Shri H.B. Rai in Vat Returns in Sikkim is : exempted category 0% (Rs.53.45 Crore) 4.5% (0.98 Crore), 13.5% (1.94 Crore) and 35 % (20.59 Crore) whereas in West Bengal (to ITC Calcutta) he has declared exempted category 0% (1.22 crore), 4.5% (0.34 Crore) 13.5% (8.87

crore) and 35 % (69.28 crore). From these figures it is evident that Shri H.B. Rai has undertaken miss declaration of an amount of Rs.55.56 Crore.

Sir, the above fraud as well as the misuse of the C form with the sole intention to misleading the State Government and Tax Authorities, for the purpose of tax fraud and concealment of facts. The fraudulent/unlawful act on the part of the proprietor as well as all those who are directly and indirectly involved in the case have seriously affect the exchequer of the State of Sikkim, and caused disrupt to Sikkim in the eyes of the nation.

Therefore, it is submitted that the necessary legal actions may be immediately initiated against the Proprietor of the said firm as per CrPC Act.

Sd/-

Secretary cum Commissioner

Commercial Tax Division"

12. It is also seen that pursuant thereto the petitioner has been served with a notice under section 41 A Cr.P.C. dated 25.09.2021 alleging his involvement in tax evasion as mentioned in the FIR. The law with regard to interference by the constitutional courts in matters of investigation is well settled. The police has the statutory right as well as duty to investigate cognizable offences and courts would not come in the way of any such investigation. It is only in those cases where no cognizable offence is disclosed in the FIR that the courts would not permit investigation to go on. The court cannot embark upon an inquiry at this stage which is the sole prerogative of the investigating agency. Examining the present case and on hearing the learned counsel for the petitioner, evidently this is not a case where non-interference would result in miscarriage of justice. Therefore, conscious about the limitations to interfere in investigation into a cognizable offence, this court is of the view that the present petition under section 482 Cr.P.C. deserves to be rejected. It is accordingly so ordered. Needless to say during the process of investigation, the rights of the petitioner shall be respected.

13. Crl. M. C. Case No. 8 of 2021 stands disposed of accordingly.