(2003) 05 AHC CK 0044

In the Allahabad High Court

Case No : Criminal M.W.P. No. 2761 of 2003

Om Prakash Agarwal APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 27-05-2003

Acts Referred:

Citation : (2004) 2 ACR 1141

Hon'ble Judges : S.U. Khan, J;M. Katju, J

Bench : Division Bench

Advocate : Viresh Misra, Amit Misra and Sudhir Agarwal, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju and S.U. Khan, JJ.—Heard learned Counsel for the Petitioner and learned Government counsel.

2. The Petitioner has prayed for quashing the impugned F.I.R. copy of which is Annexure-12 to the writ petition which relates to Crime No. 234 of 2002 at police station Kotwali City, Mirzapur.

3. The facts are that the Indian Railway has appointed city booking agents in cities for the purpose of sale of railway tickets as well as booking/delivery of goods booked through the railways. The Petitioner is one of such agents who was appointed in Mirzapur.

4. In the impugned F.I.R., broadly the allegation is that the Petitioner is running a racket by which a huge amount of Sales Tax has been evaded. In fact such rackets are being run all over the State and several writ petitions have come up before us regarding such city booking agents who are indulging in such malpractice of evasion of huge amount of tax and are hand in glove with the other businessmen, and officials.

5. The methodology adopted in such cases has apparently been followed in this

case also. A perusal of the F.I.R. shows that the allegation against the Petitioner is that the Petitioner noted the false names and addresses of the persons who booked their goods at the Petitioner''s booking agency. This was apparently done to show that these goods are being sent out of the State of U. P. and hence, it is shown as an inter-State or export sale and not an intra-State sale. In this way trade tax is evaded.

6. Under the constitutional scheme, the State Legislature can impose sales tax only on intra-State sales but not on inter-State sales or export sales. Hence, the attempt was to show intra-State sales of huge amounts as inter-State or export sales, so that the State Legislature cannot levy sales tax (now known as trade tax).

7. In the impugned F.I.R. it is stated that the Petitioner and his partner has obtained a city booking agency at Mirzapur Northern Railway Station. This agency is situate in a crowded locality where there are many businessmen. The Petitioner does the booking for transport of brassware from Mirzapur Railway station. The booking should be done in accordance with the Indian Railway Commercial Manual.

8. It is alleged in the F.I.R. that the Petitioner in collusion with many businessmen and officials and others agents has been booking goods ostensibly for transport outside the State. The Petitioner and his associates have mentioned false names and addresses of the consignors of the goods in the forwarding notes and railway receipts. In one financial year alone 20,000 quintals of goods worth about Rs. 20 crores has been transported causing heavy loss to the State. The object of the Petitioner and his associates was to evade sales tax (known as Trade Tax in U. P.). The modus operandi which they adopted is that they wrote false names and addresses of the consignors, although in the Railway Commercial Manual the correct name has to be mentioned. The consignor has to sign his name and put his address in the forwarding notes and other documents. The purpose of this is that false names and address of the consignor should not be written, but what has actually been happening is that the Petitioner and his associates have themselves been signing on the forwarding notes, instead of getting the signature of the consignors. In this way fake and fraudulent forwarding notes and railway receipts have been prepared. Some of the papers from January, 2003 to April, 2003 have been noted, from which it appears that by fraudulent means in all the railway receipts the goods have been shown to have been exported outside the State e.g. to Satna, Reewa, Aara, Ranchi, Bokaro, Daltonganj etc. The address mentioned is simply ''Chowk'', ''Station Road'', ''Main Road'', ''Bartan Dukan'' etc., which is deliberately vague. Every month hundreds of such forwarding notes and railway receipts have been prepared but in none of them house number, and other details have been mentioned. The names of the consignor is also vague. There are a large number of discrepancies and irregularities in the documents, which show that they are fake.

9. It is well known that in the State of U. P. a large number of such city booking agents of the railway are indulging in such malpractice which results in huge losses of revenue to the State. The allegations in the F.I.R. have clearly made out a prima facie offence against the Petitioner and hence we cannot interfere. The petition is dismissed.