(2023) 06 GAU CK 0103

In the Gauhati High Court

Case No : Criminal Revision Petition No. 145 Of 2023

Rajhansh Transport Service Pvt Ltd — APPELLANT

Vs

State Of Assam — RESPONDENT

Date of Decision : 28-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173(2), 397, 401
Indian Penal Code, 1860 — Section 120B, 420
Punjab Tax on Entry of Goods into Local Areas Act, 2000 — Section 4

Citation : (2023) 06 GAU CK 0103

Hon'ble Judges : Susmita Phukan Khaund, J

Bench : Single Bench

Advocate : S Chetia, P. Borthakur

Final Decision : Dismissed

Judgement

1. Heard Mr. S. Chetia, learned counsel for the petitioner and Mr. P. Borthakur, learned Addl. P.P. for the State of Assam.

2. The petitioner Rajhansh Transport Service Pvt. Ltd. represented by Attorney Holder Sri Mamraj Pareek has filed an application u/s 397 read with Section 401 of the Code of Criminal Procedure, 1973 (Cr.PC for short) challenging the legality and propriety of the order dated 10.03.2023 passed by the learned Sub-Divisional Judicial Magistrate (M), Bokajan Karbi Anglong in connection with Borpathar P.S. Case No. 43/2022 corresponding to G.R. No. 328/2022 registered u/s 120B/420/406/379/34 of the Indian Penal Code (IPC for short). Through the impugned order, the petition No. 85/2023 filed by the petitioner seeking zimma of Panmasala, Shikhar and Zarda lying inside the 10 wheeler truck bearing registration No. UP-16-HT-8952 was rejected by the learned court. On 01.03.2023 the petitioner filed this petition No. 85/2023 seeking zimma of the articles loaded on the 10 wheeler truck bearing registration No. UP-16-HT-8952, which was however rejected.

4. It is submitted that the Rajhansh Transport Service Pvt. Ltd. is an agency

engaged in the business of transportation of goods from one state to another. On 29.12.2022 at about 5 AM during a random checking exercise at Khakrajan, the police officials of Borpathar P.S. arrested the driver of the vehicle along with the handyman and seized the 10 wheeler truck mentioned above. Both the driver and handyman were forwarded to custody as they were unable to produce the proper documents relating to goods carried by them which led the police to speculate that the goods were stolen goods. An FIR was registered and numbered as Borpathar P.S. Case No. 43/2022 corresponding to G.R. Case No. 328/2022 u/s 120B/420/406/379/34 IPC wherein it was alleged that 290 bags of medium sized Shikhar, 58 bags of small sized Shikhar, 60 bags of Tulsi Jarda SSI and 10 bags of Tulsi Jarda SSI small size, were recovered. The goods were valued at Rs. 1.2 crores. On 01.03.2023, the accused-persons were enlarged on bail after the statutory period of 60 days was over, and on the failure of the Investigating Officer (IO for short) to submit charge-sheet. The petitioner being the Power of Attorney Holder of the owner i.e. Rajhansh Transport Service Pvt. Ltd. applied for zimma of the seized articles loaded in the afore-mentioned truck.

5. The order of rejection is impugned on the ground that the learned Magistrate considered the objection raised by the IO, and observing that the detention of the vehicle for a prolonged period of time may not be feasible, passed an order allowing zimma of the truck, but the zimma of the articles loaded on the truck was not allowed. The police authorities during search learnt that the goods inside the truck and the documentation relating to the goods are not in consonance but the police ignored the fact that it is a genuine mistake on the part of the transportation agency. It is submitted that huge consignment of goods are released in bulk from the factories and sometimes the truck drivers and handyman belonging to such transportation agencies defaulted in obtaining the necessary documentation from the parent place of pick-up. In the instant case the driver and the handyman committed a mistake and brought the invoice of other related papers relating to the consignment which led to the seizure of the truck. The relevant invoice and E-way bills are submitted along with the petition marked as Annexure-8 which will substantiate the fact that the goods were carried legally and they were genuine documents to support the transportation of the goods which are perishable goods. The denial of custody of the goods shall amount to loss of business to both the seller and buyer. The petitioner has relied on the decision of the High Court of Punjab and Haryana at Chandigarh dated 29.11.2022 in connection with CRM-M-38352-2014 in the case of Deepak Kumar v. State of Punjab.

6. The learned counsel for the petitioner has also relied on the decision of the Hon’ble Supreme Court in Sunderbhai Ambalal Desai and C.M. Mudaliar v. State of Gujarat, reported in 2002 (10) SCC wherein the concerned Magistrate was directed to take immediate action u/s 451 Cr.PC for releasing the seized property, so as to ensure that the same was not kept in police station for more than 15 days to 1 month at the stage of trial.

7. The learned Addl. P.P. has submitted that the petitioner is not entitled for custody of the goods as fake documents were submitted at the time of interception. It is submitted that now the petitioner has produced the relevant documents marked as Annexure-8 & 9 relating to the goods seized in connection with the afore-mentioned case. The conduct of the petitioner is doubtful as he failed to produce the same documents i.e. Tax Invoice and E-way Bill at the time of the interception. When the truck was intercepted for checking, some fake documents such as Challan of LPG Stove, Rice Cooker, Bowl set etc. were submitted instead of items like Pan Masala, Zarda or any such perishable goods. The respondent has prayed to dismiss the petition.

8. The learned counsel for the petitioner has relied on the decision of the High Court of judicature of Punjab and Haryana in Deepak Kumar's case (supra), wherein it has been observed that:-

"A perusal of the aforementioned judgments would show that there is no provision for registration of an FIR in such like matters of alleged evasion of tax. The provisions of the Act only provide for mandatory penalty. It is well-settled proposition of law that if a special provision has been made qua a particular subject (in the present case Value Added Tax), the said subject is excluded from the general provisions (in the present case Indian Penal Code). Since the provisions of the VAT Act do not provide for the registration of the FIR and the said Act is a Code in itself, the provisions of the IPC also cannot be invoked. Therefore, quite apparently an FIR could not have been registered against a person who was said to have evaded tax.

In view of the above discussion, the present petition is allowed and the FIR No. 123 dated 05.12.2013 registered under Sections 420/120- B IPC and Section 4 of Punjab Tax on Entry of Goods into Local Areas Act, 2000 at Police Station City-II Mansa, the report under Section 173(2) Cr.P.C. and all subsequent proceedings arising therefrom are hereby quashed."

9. On the contrary, the learned Addl. PP has submitted that this case is not similar to the case referred to by the petitioner. The owner and driver are not booked for evasion of taxes but the owner and driver are also booked u/s 379/34 IPC. At this juncture, at the stage of investigation it cannot be ascertained if the goods are stolen goods or if the vehicle was seized with allegation of evasion of taxes and 120B is added with allegation of criminal conspiracy.

10. The instant case was pending at the stage of investigation. The investigation may have progressed. As time has passed, since this instant petition was filed, it can be presumed that investigation has progressed to a considerable extent. It is also not clear if charge-sheet has been laid against the petitioner by now.

11. After considering the submissions at the bar with circumspection, I deem it proper to pass an order directing the petitioner to approach the proper forum. The petitioner is thus at liberty to apply for custody of the seized articles and an order may be passed for zimma of the articles to the owner of the goods after

considering the merits of the case as well as, all the relevant documents like E-Way Bills and Tax Invoices.

In terms of the above observation, petition is dismissed.

