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(2015) 03 P&H CK 0149

In the Punjab And Haryana At Chandigarh

Case No : CRM-M-14539 of 2014 (O and M)

Sandeep Kumar and Others APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 319
Penal Code, 1860 (IPC) — Section 120-B, 186, 34, 420
Punjab Value Added Tax Act, 2005 — Section 19, 51, 51 (7) (a)

Citation : (2015) 03 P&H CK 0149

Hon'ble Judges : Rameshwar Singh Malik, J.

Bench : Single Bench

Advocate : Siddharth Gupta, for the Appellant; Anmol Grewal, AAG, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rameshwar Singh Malik, J.—Petitioners seek quashing of FIR No. 227 dated 12.10.2012 under Section 420 of the Indian Penal Code (''IPC'' for short), registered at Police Station Civil Lines, Bathinda.

2. Notice of motion was issued and pursuant thereto, reply by way of affidavit dated 4.12.2014 has been filed on behalf of the respondents.

3. Learned counsel for the petitioners submits that so far as financial liability of payment of tax was concerned, the same has been discharged by the petitioners by making payment of total amount found due against them. He places reliance on Annexure P- 2 in this regard and submits that this material fact has not been denied by the respondent authorities. He further places reliance on the judgment dated 5.3.2012 passed in Crl Misc. M-26116 of 2010 (Pritpal Singh Vs. State of Punjab and another), wherein a similar controversy fell for consideration before this Court and the matter was finally decided in favour of the petitioners therein, quashing the FIR alongwith subsequent proceedings arising therefrom. He concluded by submitting that let the present petition be disposed of in terms of

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the abovesaid order dated 5.3.2012 passed in Pritpal Singh''s case (supra).

4. On the other hand, learned counsel for the State submits that although the petitioners have deposited the amount on account of their financial liability qua the payment of tax, yet the impugned FIR was rightly lodged against them because at that point of time, petitioners have committed offence alleged against them. She further submits that only because the petitioners have discharged their civil liability by making payment of tax, they cannot be absolved from criminal liability and the judgment of this Court in Pritpal Singh''s case (supra), would be of no help to the petitioners. She prays for dismissal of the petition.

5. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that present case is squarely covered by the judgment of this Court in Pritpal Singh''s case (supra). It is so said, because the similar controversy fell for consideration before this Court in Pritpal Singh''s case (supra) and finally the matter was decided in favour of the petitioners therein, ordering quashing of FIR alongwith subsequent proceedings arising therefrom. In fact, this Court placed reliance on the judgment of Hon''ble Supreme Court in Dilawar Singh Vs. Parvinder Singh @ Iqbal Singh and Another, .

6. The relevant observations made by this Court in Pritpal Singh''s case (supra), which can be gainfully followed in the present case, read as under:-

"A perusal of sub Section (4) of Section 51 of the VAT Act makes out the provisions of penalty of 50% of the value of the goods involved if the driver has failed to deliver within forty eight hours the transit receipt to the Officer Incharge of the check post or information Collection Centre.

Section 51 (7) (a) and (b) of the Punjab Value Added Tax Act reads thus:-

(7) (a) The officer detaining the goods under sub section (6) shall record the statement, if any, given by the consignor or consignee of the goods or his representative or the driver or other person Incharge of the goods vehicle and shall require him to prove the genuineness of the transaction before him in his office within the period of seventy two hours of the detention. The said officer, shall, immediately thereafter, submit the proceedings along with the concerned records to the designated officer for conducting necessary inquiry in the matter.

(b) The designated officer shall, before conducting the inquiry, serve a notice on the consignor or consignee of the goods detained under clause (a) of sub section (6) and give him an opportunity of being heard and if, after the inquiry, such officer finds that there has been an attempt to avoid or evade the tax due or likely to be due under this Act, he shall, by order, impose on the consignor or consignee of the goods, a penalty, which shall be equal to thirty percent of the value of the goods. In case, he finds otherwise, he shall order release of the goods and the vehicle, if not already released, after recording reasons in writing

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and shall decide the matter finally within a period of fourteen days from the commencement of the inquiry proceedings.

A perusal of sub section (7) (a) of Section 51 of the VAT Act lays down the provisions for penalty of 50% of the value of the goods if the vehicle is going without any documents. Sub section (7) (b) of Section 51 of the VAT Act, makes out the provisions of penalty when the vehicle is going without any proper or genuine document to be 30% of the value of the goods.

Thus, there is no provision of registration of FIR in such like matters of evading the tax. The provisions provide for the mandatory penalty. It is well settled proposition of law that if a special provision has been made qua particular subject, the said subject is excluded from the general provisions.

Hon''ble the Supreme Court in the case of Dilawar Singh (supra) held that the Prevention of Corruption Act, 1988 was a special Act and, therefore, in the facts of the case it would apply, which means that co- accused cannot be summoned under Section 319 Cr.P. C. in the absence of sanction. Para 8 of the said judgment reads as under:-

8. The contention raised by learned counsel for the respondent that a Court takes cognizance of an offence and not of an offender holds good when a Magistrate takes cognizance of an offence under Section 190 Cr.P.C. The observations made by this Court in Raghubans Dubey v. State of Bihar (supra) were also made in that context. The Prevention of Corruption Act is a special statute and as the preamble shows this Act has been enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. Here, the principle expressed in the maxim Generalia specialibus non derogant would apply which means that if a special provision has been made on a certain matter, that matter is excluded from the general provisions. (See Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, , State of Bihar Vs. Dr. Yogendra Singh Col (Retired) and Others, and Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, . Therefore, the provisions of Section 19 of the Act will have an overriding effect over the general provisions contained in Section 190 or 319 Cr.P. C. A Special Judge while trying an offence under the Prevention of Corruption Act, 1988, cannot summon another person and proceed against him in the purported exercise of power under Section 319 Cr.P.C. if no sanction has been granted by the appropriate authority for prosecution of such a person as the existence of a sanction is sine qua non for taking cognizance of the offence qua that person."

Thus, the only allegation in the said FIR that the petitioner helped the main accused to evade the tax under no circumstances invite the offence of Section 420 of IPC, in case, the person is found guilty of evading the tax. The Punjab Value Added Tax Act provides for payment of penalty. The provisions of the said VAT Act are sufficient and equipped to deal with the matters where an attempt is

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made to evade the tax. Thus, the registration of the FIR in such like matters is totally an abuse of process of law. Once an FIR cannot be registered against a person who evaded the tax, no FIR can be registered against a person who is stated to have assisted and the person who has attempted to evade the tax. In view of the above discussion as well as facts, the present petition is allowed and FIR No. 74 dated 24.06.2010 (P1), under section 420, 120-B, 186, 34 of Indian Penal Code, Police Station Khuian SWR, District Ferozepur and subsequent proceedings arising out of the same are hereby quashed.

7. During the course of hearing, learned counsel for the State despite making her best efforts, could not distinguish the present case from Pritpal Singh''s case (supra) and rightly so, because on facts, present case cannot be said to be distinguishable from Pritpal Singh''s case (supra).

8. No other argument was raised.

9. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since present case is squarely covered by the judgment of this Court in Pritpal Singh''s case (supra), continuation of criminal proceedings against the petitioners would result into abuse of process of law and it will be an exercise in futility.

10. Accordingly, with a view to secure the ends of justice, present petition is allowed and FIR No. 227 dated 12.10.2012 under Section 420 IPC registered at Police Station Civil Lines Bathinda, alongwith subsequent proceedings arising therefrom, are ordered to be quashed, however, qua the petitioners only.

11. With the abovesaid observations made and directions issued, present petition stands allowed, however, with no order as to costs.

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