(2019) 01 PAT CK 0040

In the Patna High Court

Case No : Criminal Miscellaneous No. 45145, 46314, 52131 Of 2014, Interlocutory Application No. 1238, 1239, 1321 Of 2018

Santosh Kumar Khetan APPELLANT

Vs

State Of Bihar RESPONDENT

Date of Decision : 30-01-2019

Acts Referred:
Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 120(B), 379, 411, 420, 461, 467, 468, 471

Citation : (2019) 1 PLJR 882

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : P.K. Shahi, Priya Gupta, Sushila Agrawal, Mohit Agrawal, Alok Kumar Agrawal, Jharkhandi Upadhyay, Parmanand Prasad

Judgement

Ahsanuddin Amanullah, J

1. Heard learned counsel for the petitioners and learned A.P.Ps. for the State.

2. In Cr. Misc. Nos. 45145 of 2014 and 46314 of 2014, the Deputy Commissioner of Commercial Taxes, In-charge Gaya Circle, Gaya has been made Opposite Party No. 2.

3. In all the three cases, Interlocutory Applications No. 1238 of 2018; 1239 of 2018 and 1321 of 2018 have been filed assailing the order by which charge has been framed against the petitioners during the pendency of the present applications.

4. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for quashing the order dated 25.07.2014 passed by the Chief Judicial Magistrate, Gaya in Gaya Civil Line P.S. Case No. 343 of 1991 dated 21.12.1991 (G.R. No. 3317 of 1991) by which cognizance has been taken against the petitioners and others under Sections 461, 379, 467, 468, 471, 420, 411 and 120(B) of the Indian Penal Code.

5. The genesis of the case is that some Forms-F from the Commercial Taxes Department office at Gaya were stolen in the year 1991 and later on, it was found that the same had also been used by various parties outside the State of Bihar for getting tax exemption from the authorities in those States. Initially, the F.I.R. was against unknown persons but later on, when it transpired that the forms had been used by persons in other States, they came within the ambit of enquiry and because of the forms being used in their name in those States, the dealers mentioned in those forms were also made accused. The petitioners are three such dealers. Upon chargesheet being submitted in the year 2010, cognizance was taken in the year 2014 and later on, charge has also been framed in the year 2016.

6. As the charge has been framed in continuation of the same F.I.R. and the petitioners having moved against the cognizance order itself, the Court finds the prayer fit to be allowed.

7. Accordingly, the challenge to the order framing charge, as far as it concerns the petitioners, shall form part of the relief sought for in the main applications.

8. Interlocutory Applications No.1238 of 2018; 1239 of 2018 and 1321 of 2018 stand disposed off.

9. Learned counsel for the petitioners submitted that surprisingly and without any basis, the petitioners have been made accused for the reason that they did not stand to gain anything from such utilization of Form-F, which grants relief only to the dealers of the other States, who send goods to any party in Bihar. It was submitted that registered dealers, who the petitioners are, only after they have placed their order and made payment and received the goods from outside the State, are required to send Form-F to such dealer, who has sent the goods and is outside the State of Bihar, for him to seek exemption from paying tax on the goods which they have sent to the dealer of Bihar on consignment basis, not showing it to be a sold in that State. Learned counsel submitted that the petitioners are entitled to apply for and get Form-F, and depending upon the goods bought by them from dealers outside the State of Bihar, upon receipt of the said goods, such forms were required to be sent to such dealers outside the State of Bihar. Learned counsel submitted that the benefit of Form-F does not accrue to the registered dealer in the State of Bihar, as in any view of the matter, they are required to pay tax on sale in the State of Bihar of the goods that they receive even from such dealer outside the State of Bihar and for which they send Form-F. Learned counsel submitted that when legally the petitioners, being registered dealers, are entitled to receive Form-F and no benefit of any tax saving accruing to them, it is absurd to even suggest that they would have any role in the theft followed by utilization of such Form-F. It was submitted that in the present case, it has emerged during investigation that some draft was prepared at Darbhanga in Bihar in the name of the dealers outside the State without the name or signature of any of the petitioners being mentioned and pursuant to that the dealers outside the State of Bihar have shown that they

have sent goods to the petitioners and have submitted Form-F showing the petitioners as the assignees, but the same was totally behind the back and outside the knowledge of the petitioners and further they have never received any consignment nor made any payment for such consignment. Learned counsel submitted that in support of such contention, the fact is that they had also not obtained any transit permit in Form-28 for permission to transport those goods from outside the State to their place in Bihar. It was further submitted that corroboration to their stand would be borne from the fact that even in the return submitted by the petitioners to the Department, they had not shown such consignment, either being asked for or received by them, much less sold by them in the State of Bihar. Learned counsel submitted that the Department right from 1991 till date has not found any irregularity in such returns and in fact, such returns were accepted at the relevant time and even till date, no dispute has been raised with regard to any infirmity in such returns.

10. Learned counsel submitted that in such view of the matter, there being an organized racket which benefited only the dealers outside the State of Bihar, as they got exemption on the goods which they show as having been sent to dealers of Bihar but there being no corresponding relief to the petitioners, who are registered dealers in the State of Bihar, from their liability to pay tax in Bihar, there cannot be any genuine or believable reason for them to be party to such theft/ utilization of stolen Form-F. Learned counsel submitted that all these facts have in fact been admitted in the counter affidavit filed by the Department in Cr. Misc. No. 46314 of 2014, where in categorical terms it has been accepted that the goods as disclosed by the dealers outside the State of Bihar in Form-F submitted by them has not been shown in the return filed by the petitioners. Learned counsel submitted that in similar circumstances, a dealer who was fastened with the liability of penalty for not having shown the goods which were alleged to have been sent to him by a dealer from outside the State through consignment and utilization of Form-F, had moved the authorities objecting that he had neither paid for the consignment nor received the consignment but still the Department and appellate authority had upheld the penalty, forcing him to move the High Court, which interfered on the ground that when there was nothing to show that the dealer had either paid for the consignment or had received the goods or sold the goods in the State of Bihar, such penalty could not be levied. For such contention, learned counsel drew the attention of the Court to the Division Bench order of this Court dated 12.01.2011 in C.W.J.C. No. 7207 of 2009 in the case of M/s Bhagwati Bhandar vs. The State of Bihar & Ors. Perusal of the order indicates that the Court, in absence of any independent material connecting the petitioner therein with the alleged transaction, the matter was not remanded to the Assessing Authority for fresh consideration and the assessment order and the consequential demand notice were quashed and set aside.

11. Learned A.P.Ps. representing the State as well as the Opposite Party No. 2, who has also filed counter affidavit in Cr. Misc. No. 46314 of 2014, submitted that the police have submitted chargesheet and cognizance also has been taken

as the names of the petitioners were mentioned in Form-F submitted by the dealers outside the State of Bihar showing such consignment to be sent to the petitioners and such forms having been stolen, the petitioners cannot plead innocence. However, on a direct query of the Court that in the background of there being admission that the petitioners had not shown such consignment in their returns and there being no objection raised by the Department and further, there being no material to connect such transaction with the petitioners, as also the fact that they stood nothing to gain, as in law they were entitled to get the forms legally, and in any view of the matter, no tax benefit accruing to them, how they could have been made accused or any liability fastened on them, much less any criminal liability, as has been done in the present case, they could not counter such proposition.

12. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. The stand of the petitioners, which has gone unrebutted, relating to there being no objection by the Department till date with regard to the returns filed by them not showing any consignment from dealers outside the State of Bihar, who may have used the stolen Form-F, coupled with the fact that no materials have been brought by the authorities to show that the petitioners had made any payment for such consignment or had received such consignment or had even applied for or got any transit permit in Form- 28, leads to the only conclusion that the petitioners were not even aware of their names being used by such dealers outside the State of Bihar, much less on any stolen Form-F. Moreover, under similar circumstances, the Division Bench, in absence of any independent material connecting the petitioners with the alleged transaction, quashed the notice and demand. In effect, any alleged liability on the petitioners, who are similarly situated to the petitioner before the Division Bench, much less on the criminal side can accrue or be fastened on them. Thus, taking a holistic view of the matter, to prevent abuse of the process of the Court and unnecessary harassment of the petitioners and for securing the ends of justice, the Court in exercise of its inherent power under Section 482 of the Code is persuaded to allow the applications.

13. Accordingly, the entire criminal proceedings emanating from Gaya Civil Lines P.S. Case No. 343 of 1991 (G.R. No. 3317 of 1991), including the order taking cognizance dated 25.07.2014 as well as the order dated 19.09.2016 by which charges have been framed, as far as they relate to the petitioners, stand quashed.

14. Let the Lower Court records be returned forthwith.