

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.1072 of 2017

Date of decision:23.01.2017

Vishal Jain

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gurmohan Singh Bedi, Advocate
for the petitioner.

AMIT RAWAL J.

Notice of motion.

On asking of the Court, Mr.Yatinder Sharma, learned
Additional Advocate General, Punjab accepts notice on behalf of the
respondents-State.

The petitioner has invoked the jurisdiction of Court under
Article 226 of the Constitution of India seeking declaration that action of
respondents in depriving him of cash of ₹30,00,000/-; un-conditional
release of amount to him; with a further prayer to permit him to have his
Advocate present at visible but not audible distance during his interrogation
and recording of the statement in connection with the said seizure of amount
in the instant case or any proceedings consequential thereto, much less
seeking refrain of any coercive action against him alleging to the aforesaid
dispute; with a liberty to avail the remedy under the "Pradhan Mantri Garib

Kalyan Yojana, 2016” (hereinafter referred to “PMGKY Deposit Scheme”) by depositing the aforesaid amount, tax, surcharge and penalty.

Mr. Gurmohan Singh Bedi, learned counsel appearing on behalf of the petitioner submits that while travelling in a cab from Delhi he was stopped by the police officials in the jurisdiction of the Lalru Police Station in State of Punjab. He was carrying ₹30,000,00/-. As a result thereof, the police officials took him to Lalru Police Station and on the spot, the Income Tax Officials were called. The explanation given to the officers of Lalru Police Station, as well as the Income Tax Department that the cash amount seized from him was sale proceeds of old jewellery belonging to him, his wife and mother, which was in possession and was recently sold by him after demonetization to one Shri Raj Kumar, who is a broker and received new currency notes of denomination of ₹2,000/-.

He further submits that the petitioner did not give any incorrect information or projected the un-disclosed income as any unlawful income. The cash in his custody be treated as undisclosed income w.e.f.13.12.2016, for, Chapter IX-A has been inserted in the Finance Act, 2016 providing for the “Taxation and Investment regime for Pradhan Mantri Graib Kalyan Yojna, 2016”, whereas on 16.12.2016, the Department of Economics Affairs, Ministry of Finance, notified the scheme that same is said to be in force from 17.12.2016 till 31.03.2017. Copies of the Taxation Laws (second amendment) Act 2016 and aforementioned notification have been attached as Annexures P-3 and P-4, respectively.

He further submits that on the same date, i.e., 16.12.2016, the

Department of Revenue, Ministry of Finance also came out for the format of declaration for a person seeking to avail the benefit of Scheme. A copy of the same is annexed as Annexure P-5.

On 27.12.2016, the Central Board of Director Taxes, TPL Division, vide circular no.43 of 2016 issued explanatory notes regarding the said Scheme. Paragraphs 4, 5 and 8 of the same have been referred to which are reproduced herein below:-

“4. The person making a declaration under the Scheme would be liable to pay tax at the rate of thirty per cent of the undisclosed income as increased by surcharge to be called the Pradhan Mantri Garib Kalyan Cess calculated at the rate of thirty-three per cent of such tax. In addition, penalty at the rate of ten per cent of the undisclosed income shall be payable.

The declarant shall also be required to deposit an amount not less than twenty-five percent of the undisclosed income in the PMGKY Deposit Scheme. The deposit shall bear no interest and the amount deposited shall have a lock-in period of four years.

Time limits for declaration and making payment

5. A declaration under the Scheme can be made anytime on or after 17th December, 2016 but on or before 31st March, 2017. The tax, surcharge and penalty payable under the Scheme and deposit to be made in the Deposit Scheme, shall be paid/made before filing of declaration under the Scheme. The declaration shall be accompanied with proof of payment

made in respect of tax, surcharge and penalty payable under the Scheme and proof of deposit made in the PMGKY Deposit Scheme.

Declaration not eligible in certain cases

8. *The provisions of this Scheme shall not apply-*

(a) *in relation to any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 subject to the conditions specified under the Scheme.*

(b) *in relation to prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Prevention of Corruption Act, 1988, the Prohibition of Benami Property Transactions Act, 1988 and the Prevention of Money Laundering Act, 2002;*

© *to any person notified under Section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992;*

(d) *in relation to any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.”*

He also submits that by virtue of the aforementioned

explanatory notes, only persons who are being prosecuted for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention), Act, 1967, the Prevention of Corruption Act, 1988, the Prohibition of Benami Property Transactions Act, 1988 and the Prevention of Money Laundering Act, 2002 are not entitled to avail the benefit of this Scheme. The aforementioned explanatory notes have been attached as Annexure P-6.

As per the averments made in the petition, it has also been stated that the petitioner does not come within any of the mentioned categories of persons whose declaration is not eligible for the Scheme, as contemplated by para 8 of the explanatory notes and therefore, he would be entitled to avail the remedy as no prosecution for any offence punishable under aforementioned provisions of the Act, has been instituted against him till date, much less, no charge sheet or complaint has been filed for prosecution in any Court of law, but has been deprived of remedy of declaration despite his willingness.

This Court called upon the State Counsel to apprise whether any FIR or any other case has been registered against the petitioner in view of the aforementioned seizure of ₹30 lacs, the answer given by Mr. Yatinder Sharma, learned Additional Advocate General, Punjab on instructions from the concerned SHO, Police Station is, that no FIR has been registered and amount so seized has been handed over to Income Tax Department, as evident from the summons (Annexure P-2) which had already been issued

by Income Tax Officer, Ward 6(5), Mohali.

I have heard learned counsel for the parties and appraised the paper book.

It is not disputed that immediately after seizure of cash aforementioned, the police officials called upon the Income Tax Officials for conducting enquiry. The amount of ₹30 lacs was retained but thereafter, on calling of the Income Tax Officer, the police officials handed over the aforementioned amount. Hence, the police officials rightly conducted further enquiry and as well as handed over detained amount to tax officials.

No doubt, possession of the un-disclosed income in cash is not as per any of the offences under Indian Penal Code, therefore, the seizure of same cannot be said to be by the police officials. Not disclosing the correct income is undisputed and the offence, if any, is under Income Tax Act. The Income Tax Authorities are within their domain but the police officials cannot exercise the power under the Income Tax Act. Once the petitioner has candidly admitted the factum of having not been tried in any of the provisions of law, i.e., the offence under Section 3 of the Prevention of Money Laundering Act, 2002 etc., *ibid*. The police officials have rightly not involved the enforcement department and handed over the amount to the Income Tax Department for further enquiry. In such circumstances, this Court finds that action of the respondents-police officials cannot be faulted.

The question to be seen is that for possessing un-disclosed income, for cognizable and un-cognizable offence under Indian Penal Code has been registered by the respondents, thus, in my view, action of the

respondent-police officials in stopping the petitioner for enquiry, retaining the cash and forwarding to the Income Tax Department cannot be faulted. Thus, the contention of the petitioner of having retained the amount by the police officials on the basis of the statement made by Mr. Yatinder Sharma, is hereby rejected.

The next contention of Mr. Gurmohan, Advocate is that case of the petitioner has to be examined as per the aforementioned Scheme, in view of the amendment Act, notification and circular, vide Annexures P-3, P-4 and P-6. Though he is eligible yet cannot be deprived of the statutory entitlement to declare and deposit his un-disclosed income or pay tax, surcharge and penalty. The aforementioned scheme has been promulgated for a limited period w.e.f.17.12.2016 to 31.03.2017. The relevant provisions have already been extracted above.

From the aforementioned provisions, it is evident that a person can avail the remedy of declaration. Last date for submitting the Form 1 as prescribed in the Rules may be made at anytime on or before 31.03.2017. The explanation is in tune of Section 199 (o) of the Finance Act as the petitioner has made a categorical statement that he is not involved in any of the offences as referred above.

I am of the view that the use of the words “in relation of prosecution of any offence” instead of “in relation to investigating for any of the offence” clearly shows legislative intent of provisions would apply only if the charge sheet or complaint is filed for prosecuting any person under any of the aforementioned provisions of Act and not merely when

investigations are going on.

In the instant case, as per the petitioner's claim, no complaint or charge sheet is pending against him. The alleged un-disclosed seized income of the petitioner, as per the statement of Mr. Yatinder Sharma, has been handed over to Income Tax Department and summons (Annexure P-2), has already been served upon the petitioner. The contents of same read as under:-

“Whereas your attendance is required in connection with the proceedings under the Income Tax, 1961 in your case/in the case of __. Your are hereby required personally to attend by camp office in Police Station Lalru, SAS Nagar, on today at 8.00 p.m. there to give evidence and/or produce either personally or through an authorised representative the books of account or other documents specified below, and not to depart until you received my permission to do so. Without prejudice to the provision of any other law for the time being in force, if you intentionally omit to so attend and give evidence or produce he books of account or documents, a fine upto 10,000/- may be imposed upon you under Section 272A(1)(c) of the Income Tax Act, 1961.”

The petitioner is not, thus, trying to falsify to project undisclosed income as duly accounted for availing the remedy. Since the petitioner is not amongst the persons mentioned in paragraph 8 of the circular, being not eligible for availing the PMGKY Deposit Scheme,

therefore, the Income Tax Officer cannot deny the petitioner adjustment from his cash account seized by the department, tax, charge and penalty.

I cannot remain oblivious of the fact that economic offences are very serious and have a wider ramification. The statutory investing scheme appears to be positive process for not only enhancing the revenue collection but at the same time, it is an opportunity for reforming those who had earlier failed to make true and correct disclosure of income in normal course by taking into consideration the provisions of the aforementioned Scheme.

The prayer of the petitioner of taking any coercive steps appears to be genuine. I am of the view that writ petition can be disposed of with a direction to respondents not to take any coercive action against the petitioner and he may be granted a permission to take the assistance of a lawyer to be present at visible but not audible distance during his interrogation and recording of statement in connection with said seizure in the instant case or any proceedings consequential thereto. However, prayer of the petitioner for directing unconditional return of the seize amount is hereby rejected. In case, the petitioner submits any application to the Income Tax Department, the authorities can look into matter for the purpose of declaration of undisclosed income by availing the remedy under the PMGKY Scheme. They shall consider the same and pass an appropriate order thereon as it enables the Government to earn straightway 50% of the amount, 25% for depositing of the bonds and 25% to be deposited in the account which shall be released only after 04 years. While releasing the amount after 04 years, the Income Tax Authorities can release the same only

when there is no outstanding amount due towards them from the petitioner.

In view of the aforementioned fact, it is clarified that no coercive action shall be taken against the petitioner as noticed above. The providing of assistance of Advocate as indicated above has already been held genuine one in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Writ Petition (Crl.) No.29 of 2012 titled as Vijay Sajnani and another vs. Union of India and another, decided on 25.04.2012.**

The writ petition stands disposed of with the aforementioned directions.

(AMIT RAWAL)
JUDGE

January 23, 2017

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No

सत्यमेव जयते

