

CRM-M-38352-2014

-1-

**(237) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-38352-2014

Date of decision : 29.11.2022

DEEPAK KUMAR

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. S.K. Jain, Advocate
for the petitioner.

Ms. Ramta Choudhary, DAG, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for the quashing of 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 and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that while the police party was on patrolling duty and *Nakabandi*, a secret informer gave information that an oil truck bearing Registration No.PB13U-9866 make TATA 3118 which was being driven by Narinder Singh son of Jarnail Singh, being hand in glove with his employers was bringing furnace oil made from tyres from Haryana and using secret/abandoned passages for the purposes of entry into Punjab in order to evade tax, was committing the offence of cheating and they had ties with one firm at Tibbi Hari Singh

who provided them the bills of his firm with the help of which these persons made further supplies. The name of the firm situated at Tibbi Hari Singh Wali was Jai Jagdambey Industry. Thus, by cheating the Government in evading tax, they were doing illegal acts. Along with these persons, there were others involved as well. The said Narinder Sintgh was going towards the side of Jalandhar with the tanker of furnace oil and if a *Nakabandi* was done, he could be caught along with the tanker loaded with oil without any barrier receipts.

Based on the said information, the present FIR came to be registered.

3. Pursuant to the registration of the FIR, Narinder Singh was arrested and the aforesaid oil tanker containing furnace oil was recovered. During the course of investigation Narinder Singh disclosed that he used to obtain bills etc. of the firm of the petitioner who was in connivance with them.

After completion of investigation, the report under Section 173 Cr.P.C. was presented before the concerned Court.

4. The learned counsel for the petitioner while praying for quashing of the aforesaid FIR and consequential proceedings contends that no offence under the IPC was made out. Secondly, even if the allegations as levelled in the FIR were taken to be true, no criminal offence could be said to be made out, since if anybody enters into the State of Punjab from any other State through an unauthorised passage to evade tax, then only penal provisions of penalty etc. are provided under the VAT Act and that too if the person was apprehended at the spot along with the goods. At best, it was a case of civil nature as was provided

under the Punjab VAT Act. Even otherwise, the petitioner was not arrested at the spot and the allegations against him are that he was in connivance with the arrested accused Narinder Singh. As per the provisions of the Act, a person without documents or with no genuine documents carrying the articles in the goods vehicle is liable to be punished with penalty of 30% of the value of the goods. Reliance is placed on various provisions of the VAT Act to substantiate his argument. He has further placed reliance on the judgments in **Pritpal Singh Versus State of Punjab & another, CRM-M No.26116 of 2010, decided on 05.03.2012, Rakesh Kumar Versus State of Punjab & another, CRM-M No.134 of 2013, decided on 10.04.2013** and **Subhash Chander @ Subhash Kumar Versus State of Punjab, CRM-M No.2916 of 2014, decided on 17.11.2014.**

5. A reply dated 18.03.2015 has been filed on behalf of the respondent-State by the learned State counsel by way of an affidavit of Rupinder Kumar Bharadwaj, DSP, SD, Mansa, which is already on record. He contends that an offence indeed is made out. The investigation stood completed and the report under Section 173 Cr.P.C. was filed as per which the accused were found cheating the Government by evading payment of tax.

6. I have heard the learned counsel for the parties at length.

7. This Court in the case of **Pritpal Singh Versus State of Punjab & another** (supra), held as under:-

“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 coaccused 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 *Venkateshwar Rao v. Govt. of Andhra Pradesh AIR 1966 SC 828, State of Bihar v. Yogendra Singh AIR 1982 SC 882 and Maharashtra State Board of Secondary Education v. Paritosh Bhupesh Kumar Sheth AIR 1984 SC 1543*). 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 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.

{emphasis supplied}

Similarly, in the case of **Rakesh Kumar Versus State of Punjab & another** (supra), it was held as under:-

“The present petition has been filed under Section 482 Cr.P.C. for quashing of F.I.R. No.101 dated 30.09.2012 registered under Sections 420, 120-B IPC at

Police Station Sadar Mansa and all other consequential proceedings arising therefrom.

The allegations in the FIR were that the petitioner was bringing goods in contravention of the Punjab Value Added Tax Act, 2005.

Learned counsel for the petitioner has argued that the petitioner has been penalized under the said Act and he has paid whatever penalty was imposed upon him and there is no provision for registration of FIR under this Act.

Learned Deputy Advocate General has not been able to deny this legal position.

Consequently, this petition is allowed and the F.I.R. No.101 dated 30.09.2012 along with all other consequent proceedings arising therefrom are quashed qua petitioner.”

{emphasis supplied}

In the case of **Subhash Chander @ Subhash Kumar Versus State of Punjab** (supra), it was held as under:-

“The FIR was registered for not paying the entry tax and for committing offence under Sections 420/120-B IPC and Section 4 of the Punjab Tax Entry of Goods into Local Areas Act, 2000 and a challan was presented therein. This fact has been so stated in the written statement dated 7.7.2014.

A reference at this stage can be made to Coordinate Bench Judgment of this Court in the case of Pritpal Singh vs State of Punjab and another decided on 5.3.2012, where this Court had held that violations under the VAT Act was civil in nature and as per the provisions of Punjab Vat Act, a person without the documents or with no genuine documents carrying the articles in the goods vehicle, is liable to be punished with penalty of 30% of the value of the goods. Reliance

was placed on the judgment rendered by the Apex Court in the case of Dilawar Singh vs Parvinder Singh @ Iqbal Singh and another reported as 2005(4) RCR (Criminal) 855, where the FIR registered for the above said offences was quashed.

Section 51(4) of the Punjab Value Added Tax Act reads as under:

(4) The owner or person Incharge of a goods vehicle entering the limits or leaving the limits of the State, shall stop at the nearest check posts or information collection centre as the case may be, and shall furnish in triplicate a declaration mentioned in sub section (2) along with the documents in respect the goods carried in such vehicle before the officer Incharge of the check post or information collection centre. The officer Incharge shall return a copy of the declaration duly verified by him to the owner or person Incharge of the goods vehicle to enable him to produce the same at the time of subsequent checking, if any.

Provided that where a goods vehicle bound for any place outside the State passes through the State, the owner or person Incharge of such vehicle shall furnish, in duplicate, to the officer Incharge of the check post or information collection centre, a declaration in respect of his entry into the State in the prescribed form and obtain from him a copy thereof duly verified. The owner or person Incharge of the goods vehicle, shall deliver within forty eight hours the aforesaid copy to the officer Incharge of the check post or information collection centre at the point of its exit from the State, failing, which he shall be liable to pay a penalty to be imposed by the Officer Incharge of the check post or information collection centre equal to fifty per cent of the value of the goods involved.

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 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. Under Section 51 (4) of the Act, there is a provision of imposition 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. 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 documents to be 30% of the value of the goods. Provisions under the VAT Act provide for mandatory penalty.

The provisions under Prevention of Corruption Act, 1988 came up for consideration before the Supreme Court in Dilawar Singh's case (Supra) and it was held that a co-accused cannot be summoned under Section 319 Cr.P.C as the Prevention of Corruption Act, 1988 was a special Act. 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 *Venkateshwar Rao v. Govt. of Andhra Pradesh AIR 1966 SC 828, State of Bihar v. Yogendra Singh AIR 1982 SC 882 and Maharashtra State Board of Secondary Education v. Paritosh Bhupesh Kumar Sheth AIR 1984 SC**

1543). 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.”

In the present case, allegations in the FIR is that petitioner had made an attempt by deleting data from pan driver to conceal the total weight in the vehicle so as to evade imposition of VAT Act. The provisions in the VAT Act are sufficient and equipped to deal with the matters where an attempt is made to evade the tax. Thus, the registration of the FIR in such like matters is totally an abuse of process of law.

In view of the above discussion as well as the facts, the present petition is allowed and FIR No.No. 122 dated 5.12.2013 registered at Police Station City II Mansa under Sections 420/120-B IPC and Section 4 of Punjab Tax on Entry of Goods into Local Areas Act, 2000 (Annexure P-1) and subsequent proceedings arising out of the same are hereby quashed qua the petitioners.”

{Emphasis supplied}

8. 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.

9. 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.

(JASJIT SINGH BEDI)
JUDGE

29.11.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No