

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (Cr.) No. 141 of 2022

Anupam Kumar Pathak

... **Petitioner**

-Versus-

1. The State of Jharkhand

2. Niraj Kumar, State Tax Officer, Ramgarh

... **Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Prabhat Kumar Sinha, Advocate

Ms. Kumari Ranjana Singh, Advocate

For the State

: Mr. Devesh Krishna, S.C. (Mines)-III

08/04.07.2023 Heard Mr. Prabhat Kumar Sinha, learned counsel for the petitioner and Mr. Devesh Krishna, learned counsel for the State.

2. This petition has been filed for quashing of the First Information Report as well as entire criminal proceeding in connection with Patratu (Bhurkunda) P.S. Case No.45/2021, corresponding to Commercial P.S. Case No.3/2021, registered for the offences under Sections 120B/406/420/471 of the Indian Penal Code and under Sections 132(1)(b), 132(1)(c), 132(1)(e) and 132(1)(f) of the Jharkhand Goods and Services Tax Act, 2017 (hereinafter to be referred to as 'JGST Act, 2017'), pending in the court of the learned Sub-Judge-II-cum-Special Judge, Economic Offences, Dhanbad.

3. The FIR was lodged alleging therein that the petitioner, who is proprietor of M/S Maa Mahamaya Enterprises, has caused loss to the State Revenue amounting to Rs.1,33,03,569.00 by using e-way bill, G.S.T return etc. by committing fraud.

It was further alleged that the enterprise of the petitioner was registered under JGST Act 2017 from 01.07.2017, earlier the said enterprise was registered under JVAT Act. The registration date under JVAT Act was 31.08.2010 and the TIN No. was 20151906753, as such the enterprise had

migrated from JVAT Act 2005 to JGST Act 2017. The informant has given details of the documents submitted by the petitioner at the time of registration of his firm. The firm of the petitioner was registered to trade in coal (HSN Code-2701), Coal; briquettes, ovoids and similar solid fuels manufactured from coal; other (HSN Code- 2706) tar distilled from coal, from lignite and pit and other mineral tars.

It was also alleged that as per the receipt from the Commercial Tax Headquarters, Ranchi, the petitioner in the year 2018-19 (October 2018, November 2018 and January 2019) period, made purchase from non-existing tax payers, M/S Janki Coal Trading GSTIN- 20GHLPS7289K2ZH, with respect to purchase materials informant received instruction to reverse the ITC availed on the said purchase. On that basis a proceeding has been initiated for reversal of ITC and the petitioner was directed to produce the books of accounts and evidence with respect to payment and Transport Bill etc. However, trader did not produce any of the document within time, as such as per the provisions of Section 73(9) and 50(2) of J.GST Act 2017, DRC-07 was issued with respect to tax, interest, penalty and treating the activity of the trader suspicious a proceeding has been initiated for cancellation of his GST registration and finally vide order dated 20.03.2020 GST registration being GSTIN- 20AOLPP2899H1ZL has been cancelled.

Thereafter as per direction inspection was conducted by the officials of the Vigilance Investigation Bureau of Hazaribagh Sub-Division, Ramgarh Circle jointly on 06.08.2020 wherein petitioner could not appear, though the brother of the petitioner namely Deepak Pathak remained present and assisted in the investigation. Investigating team found several irregularities,

such as at the work place no hoarding with respect to name of the enterprise and GSTIN No. no accounts with respect to inward and outward supply such as invoice, transport bill, payment details etc. were produced.

It was further alleged that despite grant of sufficient time to the petitioner, though he appeared before the authority but failed to produce books of accounts as such a proceeding under section 74(1) of JGST Act 2017 has been started. Entire business done by the petitioner's enterprise was declare fraud operation in the E-Mail notice sent to the petitioner. Thereafter despite sufficient opportunity being given, petitioner failed to plead his case and produce books of accounts, as such entire ITC claim of the petitioner under JGST Act 2017 has been rejected u/s 16(2) and for the period 2017-18, 2018-19, 2019-20 demand of tax, interest and penalty has been made in DRC-07 form. Besides CGST Ramgarh was also requested to cancel the registration of GSTIN-20AOLPP2899H1ZL of M/S Bhurkunda Coal Depot, which petitioner obtained after cancellation of his previous GSTIN. It has further been alleged that with the intention to commit fraud the trader has misused his GST registration and caused revenue loss by generating fake invoice and in this way the trader has passed on ITC to Purchaser-Trader. As such the bank account of the petitioner linked with the GST registration maintained in Punjab National Bank has been freeze. Request has been made to provide I.P. address of the computer by which e- way bill was being generated after registration. Accordingly, a request has been made for institution of a criminal case under sections 120B/406/420/471 of the Indian Penal Code, and other relevant provisions as also under sections 132 (1)(b), 132(1) (c), 132 (1) (e), 132 (1) (f) of J.G.S.T Act, 2017.

4. Mr. Prabhat Kumar Sinha, learned counsel for the petitioner submits that the petitioner is proprietor of M/s Maa Mahamaya Enterprises, which was earlier registered under Jharkhand Value Added Tax (JVAT) Act. The registration date under JVAT Act was 31.08.2010 and TIN No. was 20151906753, as such the enterprise had migrated from JVAT Act, 2005 to JGST Act, 2017 w.e.f. 01.07.2017 having GST No. as GSTIN-20AOLPP2899H1ZL.

He further submits that the petitioner has been made an escape goat and he has been unnecessarily implicated in the present case because he had made purchase from M/s Janki Coal Trading having GSTIN-20GHLPS7289K2ZH during 2018-19 which is now being termed as non-existing taxpayer.

He also submits that the report annexed with the FIR suggests that no attempt was made to find out the said non-existing tax payer and the said M/s Janki Coal Trading has not been made accused.

He further submits that the said M/s Janki Coal Trading had deposited the tax and filed return under JGST Act. He submits that Section 132 of the JGST Act prescribed for punishment. He submits that when the punishment is prescribed in the Code itself, it is well-settled that IPC sections are not attracted when Special Law is there. To buttress this argument, he relied upon the judgment passed by a Coordinate Bench of this Court in **Ramesh Chandra Jain & another v. State of Jharkhand** in **Cr.M.P. No.609/2005**, judgment dated 29.08.2012.

On these grounds, he submits that the entire criminal proceeding may kindly be quashed.

5. On the other hand, Mr. Devesh Krishna, learned counsel for the State submits that the petitioner was involved in manufacture of fake invoices and bills with respect of the coal and apart from that forged documents, coal had not been found from the premises of the petitioner and there was no movement of coal between any of the parties.

He further submits that when criminality is made out, Special Law as well as IPC sections are attracted and to buttress this argument, he relied upon paragraphs 7 and 8 of the judgment passed by the Hon'ble Supreme Court in ***The State of Maharashtra & another v. Sayyed Hassan Sayyed Subhan & others*** in ***Criminal Appeal No.1195 of 2018***, dated 20.09.2018.

6. Paragraphs 7 and 8 of the said judgment are quoted hereinbelow:

"7. There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence. The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time, an offence under any other law. The High Court ought to have taken note of Section 26 of the General Clauses Act, 1897 which reads as follows:

"Provisions as to offences punishable under two or more enactments – Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

8. In Hat Singh's case this Court discussed the doctrine of double jeopardy and Section 26 of the General Clauses Act to observe that prosecution under two different Acts is permissible if the ingredients of the provisions are satisfied on the same facts. While considering a dispute about the prosecution of the Respondent therein for offences under the Mines and Minerals (Development and Regulation) Act 1957 and Indian Penal Code, this Court in **State (NCT of Delhi) v. Sanjay** held that there is no bar in prosecuting persons under

the Penal Code where the offences committed by persons are penal and cognizable offences. A perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties. We, therefore, set aside the finding of the High Court on the first point."

7. Learned counsel for the State further submits that so far as M/s Janki Coal Trading is concerned, a separate FIR is registered being Jharia P.S. Case No.202/2019, dated 08.08.2019.

He further submits that only the FIR is under challenge in this petition and considering the allegations against the petitioner, at this stage, the Court may not quash the entire criminal proceeding.

8. In view of the above submissions of the learned counsel appearing for the parties, the Court has gone through the contents of the FIR and finds that admittedly the case has been registered under Sections 120B/406/420/471 of the Indian Penal Code and under Sections 132(1)(b), 132(1)(c), 132(1)(e) and 132(1)(f) of the JGST Act, 2017.

9. There is no doubt that the GST is complete Code in itself. Section 132 of the JGST Act, 2017 speaks that any person who commits any of the offence prescribed from Sub-section 1(a) to 1(l), shall be liable to be punished.

10. Section 134 of the said Act, 2017 speaks that no court shall take cognizance of any offence punishable under this Act except with the previous sanction of the Commissioner.

11. In the FIR, sanction by the competent authority is annexed and he has granted sanction and, thereafter, the FIR has been registered.

12. So far as the judgment relied by Mr. Prabhat Kumar Sinha, learned counsel for the petitioner with regard to Special Law is concerned, that is

not in dispute. The dispute in the case in hand of forging of invoice and bill without any transaction of coal and the Court finds that if such a dispute is there, it has been set at rest by reasoned judgment of the Hon'ble Supreme Court in **Jayant and others v. State of Madhya Pradesh with one analogous case; [(2021) 2 SCC 670]** wherein at paragraph 21, directions have been issued by the Hon'ble Supreme Court. Paragraph 21 of the said judgment is quoted hereinbelow:

"21. After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis-à-vis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

***21.1.** That the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the In-charge/SHO of the police station concerned to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted.*

***21.2.** The bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and the Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and the Rules made thereunder.*

***21.3.** For commission of the offence under IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and the Rules made thereunder.*

***21.4.** That in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the Incharge/SHO of the police station concerned to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and the Rules made thereunder and thereafter after investigation the In-charge of the police station/investigating officer concerned submits a report, the same can be sent to the Magistrate concerned as well as to the authorised officer concerned as mentioned in Section 22 of the MMDR Act and thereafter the authorised officer concerned may file the complaint before the learned Magistrate along with the report submitted by the investigating officer concerned and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and the*

Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.”

21.5. *In a case where the violator is permitted to compound the offences on payment of penalty as per sub-section (1) of Section 23- A, considering sub-section (2) of Section 23-A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any Rules made thereunder so compounded. However, the bar under sub-section (2) of Section 23-A shall not affect any proceedings for the offences under IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further.”*

13. In view of the above directions issued by the Hon'ble Supreme Court and considering that identical was the situation there, the Court finds that directions under paragraphs 21.4 and 21.5 of the said judgment, are sufficient to dispose of this petition.

14. Accordingly, the respondent-State shall act in terms of paragraphs 21.4 and 21.5 of the said directions of the Hon'ble Supreme Court and in view of the above facts, reasons and analysis, as stated hereinabove, the prayer made in this petition is rejected.

15. Accordingly, this petition is dismissed.

16. Interim order, if any granted by this Court, stands vacated.

Ajay/



(Sanjay Kumar Dwivedi, J.)