

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 338 of 2024

Reserved on: 27.05.2025

Date of Decision: 23rd June, 2025.

Gagandeep Singh and another. ...Petitioners

Versus

State of H.P. and another. ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes

For the Petitioners : Mr. Dinesh Singh Rawat and
Mr. Anil Chauhan, Advocates.

For the respondent/State : Mr. Prashant Sen, Deputy
Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for quashing of Complaint No. GST/01/2018 filed under Section 69 read with Section 132 of Himachal Pradesh Goods and Services Tax (HPGST)/Central Goods and Services Tax (CGST) Act read with Section 20 of Integrated Goods and Services Tax Act (IGST) pending before learned Additional Chief Judicial Magistrate (ACJM), Kasauli along with subsequent proceedings. (*Parties*

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

shall hereinafter be referred to in the same manner as they are arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present petition are that the complainant filed a complaint against the petitioners/accused for the commission of offences punishable under Section 69 read with Section 132 of HPGST/CGST Act, 2017, read with Section 20 of the IGST Act, 2017. It was asserted that M/s G.M. PowerTech is a registered taxable person consisting of a partnership firm of Gagan Deep Singh and Jatinder Mohan (the present petitioners/accused). Information was received from reliable sources that the petitioners indulged in large-scale evasion of tax by availing the fraudulent input tax credit during the years 2017-18 and 2018-19. They declared inward supplies (purchases) from Delhi and U.P.-based floating fictitious and non-existent firms, which were registered to pass on the fraudulent benefit of input tax credit on the strength of fake invoices. The matter was examined on the GST Portal, and it was verified that several consignments were delivered in two-wheelers, three-wheelers or cars. The registration numbers of many vehicles declared to have transported the goods from outside the State were found to be fake. The consignments were

also transported in cars, but it was not possible to transport such heavy goods in cars. Goods worth ₹ 2,89,26,299/- were declared to have been transported by a fake or non-existent vehicles. Input tax credit (ITC) of ₹ 61,69,147/- was claimed. The search warrant was issued to ASTEO-Rupinder Singh, and the business premises of the taxpayer were searched. Inquiry under Section 70 of the Act was initiated on 05.11.2018. The summons were issued to the suppliers M/s Om Metals, M/s Ridhi Alloys and M/s SD Enterprises; however, these were returned with the report of an unknown address. A team led by ASTEO-Rupinder Singh was deputed to physically verify the suppliers. ASTEO visited the premises and found that no such entities existed at the given address. They were asked to make inquiries about the residential address, but the addresses were found to be fake. G.M. Powertech claimed input tax credit fraudulently worth ₹ 9,21,30,291/- in respect of a non-existent supplier namely M/s SD Enterprises, M/s OM Metals and M/s Ridhi Alloys; hence, a complaint was filed before the Court for taking action as per the law.

3. Learned Trial Court found sufficient reasons to summon the accused and listed the matter for recording pre-charge evidence on 15.01.2024.

4. Being aggrieved from the filing of the complaint and the proceedings pending before the learned Trial Court, the petitioners have filed the present petition asserting that the provisions of HPGST/CGST and IGST Acts are silent regarding the arrest, investigation and filing of the complaint. HPGST Act has made the provisions of search and seizure provided under Cr.P.C. applicable to the HPGST Act. The Officers under the Act have been given unbridled powers. The provisions of Sections 69 and 132 are arbitrary and unreasonable. It is violative of Article 21 of the Constitution of India; hence, the present petition.

5. The petition is opposed by filing a reply taking preliminary objections regarding the petitioners being estopped by their act, deed and conduct to file the present petition and the petitioners having no *prima facie* case in their favour. It was asserted that the petitioners are the partners of M/s G.M. Powertech. They availed input tax credit of ₹ 15,86,49,362/- by conducting their business in violation of the CGST and HPGST

Act. The petitioners were liable to be arrested for the violation as per Sections 69 and 132 of the Act. The provisions of arrest are governed by the Cr. P.C. The provisions of Cr.P.C. will also apply to the investigation and filing of the complaint as per Section 4(2) read with Section 5 of the Cr. P.C. The premises of the petitioners were searched under the due authority as per Section 67 of CGST. The petitioners were summoned to provide the record or other information. They initially provided the record through their counsel, but thereafter, they failed to appear. The investigation regarding the validity of suppliers was carried out, and it was found that no such supplier existed at the given address; therefore, it was prayed that the present petition be dismissed.

6. I have heard Mr. Dinesh Singh Rawat and Mr. Anil Chauhan, learned counsel for the petitioners and Mr. Prashant Sen, learned Deputy Advocate General, for the respondent/State.

7. Mr. Dinesh Singh Rawat, learned counsel for the petitioners, submitted that the HPGST/CGST Act does not provide for investigation and filing of the complaint. The investigation was carried out by the officials of the department,

which materially prejudiced the petitioners. The continuation of the proceedings before the learned Trial Court amounts to an abuse of the process of the law. Learned Trial Court wrongly fixed the matter for pre-charge evidence; therefore, it was prayed that the present petition be allowed and the proceedings pending before the learned Trial Court be quashed. He relied upon the judgment of the Hon'ble Supreme Court in *Mukesh Singh versus State (Narcotic Branch of Delhi)*, AIR 2020 SC 4794, in support of his submission.

8. Mr. Prashant Sen, learned Deputy Advocate General, for the respondent/State submitted that the provisions of Cr.P.C. apply to the investigation and trial conducted under HPGST/CGST Act as per Section 4 (2) read with Section 5 of Cr. P.C. Therefore, the submission that unguided and unbridled powers have been conferred upon the authorities is not correct. The judgment in *Mukesh Singh* (supra) does not apply to the present case; therefore, he prayed that the present petition be dismissed.

9. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

10. The law relating to quashing of criminal cases was explained by the Hon'ble Supreme Court in *B.N. John v. State of U.P.*, 2025 SCC OnLine SC 7 as under: -

“7. As far as the quashing of criminal cases is concerned, it is now more or less well settled as regards the principles to be applied by the court. In this regard, one may refer to the decision of this Court in *State of Haryana v. Ch. Bhajan Lal*, 1992 Supp (1) SCC 335, wherein this Court has summarised some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.*

(2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a*

cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable based on which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and to spite him due to a private and personal grudge.” *(emphasis added)*

8. Of the aforesaid criteria, clause no. (1), (4) and (6) would be of relevance to us in this case.

In clause (1) it has been mentioned that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, then the FIR or the complaint can be quashed.

As per clause (4), where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed.

Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings are instituted, such proceedings can be quashed.”

11. This position was reiterated in *Ajay Malik v. State of Uttarakhand*, 2025 SCC OnLine SC 185, wherein it was observed:

“8. It is well established that a High Court, in exercising its extraordinary powers under Section 482 of the CrPC, may issue orders to prevent the abuse of court processes or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision. However, given the broad and profound nature of this authority, the High Court must exercise it sparingly. The conditions for invoking such powers are embedded within Section 482 of the CrPC itself, allowing the High Court to act only in cases of clear abuse of process or where intervention is essential to uphold the ends of justice.

9. It is in this backdrop that this Court, over the course of several decades, has laid down the principles and guidelines that High Courts must follow before quashing criminal proceedings at the threshold, thereby

pre-empting the Prosecution from building its case before the Trial Court. The grounds for quashing, *inter alia*, contemplate the following situations : (i) the criminal complaint has been filed with *mala fides*; (ii) the FIR represents an abuse of the legal process; (iii) no *prima facie* offence is made out; (iv) the dispute is civil in nature; (v.) the complaint contains vague and omnibus allegations; and (vi) the parties are willing to settle and compound the dispute amicably (*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335)

12. The present petition is to be decided as per the parameters laid down by the Hon'ble Supreme Court.

13. The applicability of the provisions of Cr.P.C to GST Act was considered by Hon'ble Supreme Court in *Radhika Agarwal v. Union of India*, (2025) 150 GSTR 121, and it was held that the provisions of Cr.P.C. apply to the proceedings conducted under GST Act if there is no provision to the contrary. It was observed:

“13. Section 4(1) stipulates that offences under the Penal Code, 1860, shall be investigated, inquired into, tried, and otherwise dealt with by the Code. For offences under any other local law, section 4(2) stipulates that they shall be investigated, inquired, tried, or otherwise dealt with by the Code, subject to any other enactment governing the manner or place of investigation, inquiry, trying or otherwise dealing. Section 5, the savings clause, clarifies that the Code shall not affect any special or local law, or any special jurisdiction or power conferred, or any special procedure prescribed, unless there is a specific provision to the contrary. Thus, the provisions of the Code would

apply to the extent that there is no contrary provision in the special act or any special provision excluding the jurisdiction and applicability of the Code. [See *paragraph 128 of the Directorate of Enforcement v. Deepak Mahajan*, (1995) 82 Comp Cas 103 (SC); (1994) 3 SCC 440; 1994 SCC (Cri) 785; 1994 SCC OnLine SC 17.] In *A.R. Antulay v. Ramdas Srinivas Nayak* [(1984) 2 SCC 500; 1984 SCC (Cri) 277; 1984 SCC OnLine SC 44], a Constitution Bench of this court has clarified this position while discussing the applicability of the Code to offences under the Prevention of Corruption Act, 1988. The relevant portion reads [Page 517 in SCC] :

“16... In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure. In other words, the Code of Criminal Procedure is the parent statute which provides for investigation, inquiry into and trial of cases by criminal courts of various designations.”

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50. To a large extent, our reasoning and the ratio on the applicability of the Code to the Customs Act would equally apply to the GST Acts in view of sections 4 and 5 of the Code. Sub-section (10) to section 67 of the GST Acts postulates that the provisions of the Code relating to search and seizure shall, as far as may be, apply to search and seizure under the GST Acts, subject to the modification that for the purpose of sub-section (5) to section 165 of the Code, the word “Magistrate” shall be substituted with the word “Commissioner”. Section 69, which deals with the power of arrest, a provision which we will refer to subsequently, also deals with the provisions of the Code when the person arrested for any offence under the GST Acts is produced before a Magistrate. It also deals with the power of the authorised

officers to release an arrested person on bail in case of a non-cognizable and bailable offence, having the same power and subject to the same provisions as applicable to an officer in charge of a police station. We would, therefore, agree with the contention that the GST Acts are not a complete code when it comes to the provisions of search and seizure, and arrest, for the provisions of the Code would equally apply when they are not expressly or impliedly excluded by provisions of the GST Acts.

14. Therefore, the submission that the provisions of Cr.P.C. do not apply to GST Act and the Act is silent regarding the procedure for investigation, inquiry, or trial is not correct.

15. It was submitted that the learned Trial Court erred in ordering that the pre-charge evidence be led. This submission is not acceptable. Section 132 provides for imprisonment, which may extend to five years or a fine. Section 2(X) of the Cr.P.C. defines a warrant case as a case relating to an offence punishable with imprisonment for a term exceeding two years. Since imprisonment provided is five years, which is more than two years, therefore, the case was to be tried as a warrant case, and there is no error in trying the case as a warrant case.

16. Chapter 19B of the Cr.P.C. deals with the trial of a warrant case by a Magistrate instituted otherwise than on a police report. Section 244 of the Cr.P.C. provides that when in a

warrant case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. Therefore, it is apparent that the Magistrate has to record the evidence of the prosecution after the appearance of the accused and the learned Trial Court was justified in ordering the production of the evidence.

17. It was submitted that the investigation was not properly conducted. The officials visited the addresses mentioned in the invoices and did not contact the GST Officials in Delhi to ascertain the proper names and addresses. This submission will not help the petitioners. When the officials went to the addresses mentioned in the invoices and found that no such entity existed, it was sufficient to infer that the invoices were fake, and the material shown to have been supplied as per the invoices could not have been supplied since no such person existed at the given address. The Court has to see a *prima facie* case while exercising inherent power and does not sift the evidence to determine its creditworthiness or value. This is for the learned Trial Court to see where the matter is pending;

hence, the complaint cannot be quashed simply because the investigation was not made with the GST authorities at Delhi.

18. In *Mukesh Singh* (supra), the Hon'ble Supreme Court held that the investigation is not vitiated simply because the informant is the investigator. The question of bias or prejudice would depend upon the facts and circumstances of the case; hence, the cited judgment does not show that the complaint is liable to be quashed because the investigation was made by the officials of the department.

19. No other point was urged.

20. In view of the above, the present petition fails and the same is dismissed.

21. The observation made herein before shall remain confined to the disposal of the petition and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

23rd June 2025
(Saurav Pathania)