

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 2454 of 2019

Satyendra Singh Kushwah

... **Petitioner**

-Versus-

1. The State of Jharkhand
2. Manish Vijay, Deputy Commissioner, Central Goods and Service Tax and Central Excise, Central Revenue Building, Ranchi

... **Opposite Parties**

With

Cr.M.P. No. 2449 of 2019

M/s. SSK Devcon Private Limited, Ranchi, through its authorizes Secretary namely Ajit Singh

... **Petitioner**

-Versus-

1. The State of Jharkhand
2. Manish Vijay, Deputy Commissioner, Central Goods and Service Tax and Central Excise, Central Revenue Building, Ranchi

... **Opposite Parties**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners	: Mrs. Shilpi Sandil Gadodia, Advocate
For the State	: None
For O.P. No.2	: Mr. P.A.S. Pati, Advocate

11/05.10.2023 Both the petitions are identical and both are on the board today and in view of that, both the petitions have been heard together with consent of the parties.

2. Heard Mrs. Shilpi Sandil Gadodia, learned counsel for the petitioners and Mr. P.A.S. Pati, learned counsel for opposite party no.2. Nobody appears on behalf of the State.

3. In Cr.M.P. No.2454 of 2019, the Director of M/s. SSK Devcon Private Limited, namely, Satyendra Singh Kushwah is the petitioner and in Cr.M.P. No.2449 of 2019, the said company is the petitioner.

4. In both the petitions, the prayer is made for quashing the entire criminal proceedings arising out of Complaint Case No.1880 of 2019, dated 15.04.2019 including the order taking cognizance dated 19.06.2019,

whereby, the learned Court has been pleased to take cognizance under Section 174 of the Indian Penal Code, pending in the court of the learned Judicial Magistrate, 1st Class, Ranchi.

5. The complaint case was filed alleging therein that the accused had taken G.S.T. Registration on 14.12.2017 and has been providing various Taxable Services to various Service recipients since December, 2017, but has not made payment of GST from January, 2018 to November, 2018 before initiation of the investigation. It was further alleged that the accused deliberately ignored the summons issued by the Central Goods and Service Tax Department under Section 70 of the Central Goods and Service Tax Act, 2017 (hereinafter to be referred to as 'the CGST Act, 2017') and did not appear at any date against four summons issued to the accused. It was also alleged that the accused has violated the provisions of Section 70 of the CGST Act and since the accused did not appear against the summons, proceeding under Section 174 of the Indian Penal Code is initiated against the accused person.

6. Mrs. Shilpi Sandil Gadodia, learned counsel appearing for the petitioners submits that pursuant to the complaint case, the learned court has been pleased to take cognizance vide order dated 19.06.2019 under Section 174 of the Indian Penal Code against the said company and its Director. She further submits that although in the complaint, the allegations are made that four summons have been issued against the petitioner-company, but the details of the said summons have not been mentioned in the complaint petition. She submits that the petitioner-company is engaged in providing services for transportation of coal and with the advent of the

GST regime, the petitioner obtained registration in respect of its business carried out in the State of Jharkhand. She also submits that for the services provided by the petitioner-company, it raised bills for payment to its clients and the said clients being service recipients were delaying in releasing payment to the petitioner-company. She submits that the GST amount to the tune of Rs.5,60,52,391/- has been paid in three installments. She submits that the GST is a complete Code in itself and there are provisions of penalty and in view of that, Section 174 of the Indian Penal Code is not attracted. She draws attention of the Court to Section 70 of the CGST Act, 2017 and submits that power to summon persons to give evidence and produce documents is prescribed under Section 70 of the said Act. She further draws attention of the Court to Section 125 of the CGST Act, 2017 and submits that general penalty is prescribed therein to the tune of maximum Rs.25,000/- only. She further submits that Section 132 of the CGST Act, 2017 is the provision meant for punishment for certain offences, which are prescribed in the said Section. She also draws attention of the Court to the summons, which are annexed in Cr.M.P. No.2449 of 2019 particularly at Annexure-3, which is dated 29.12.2018 issued by the company through its Director and submits that a sum of Rs.1,56,50,520/- was paid on 05.12.2018 and by the said letter, further 45 days' time was requested for further depositing the GST amount. By way of referring Annexure-4, she submits that the letter dated 14.01.2019 was issued by the GST authority, whereby, direction was issued to make full payment of GST amount. She further submits that thereafter total sum of Rs.1.5 Crore was paid on 14.01.2019 and 16.01.2019 and finally total amount of

Rs.5,60,52,391/- was paid on 08.02.2019. She submits that in view of that, summon has already been replied and there was no occasion on the authority concerned to file complaint case under Section 174 of the Indian Penal Code. She also submits that even the Director, namely, Satyendra Singh Kushwah of the said company has been made accused by way of filing amendment petition before the learned court which was allowed and there is no averment with regard to the involvement of Satyendra Singh Kushwah, who happened to be the Director of the said company. She further submits that the statute is not providing any vicarious liability that cannot be imposed. She submits that the deposition of the GST amount is accepted by the authority concerned. On these grounds, she submits that the cognizance under Section 174 of the Indian Penal Code is bad in law.

7. On the other hand, Mr. P.A.S. Pati, learned counsel for opposite party no.2 submits that the petitioner has failed to comply with summons without lawful excuse and intentionally omit to give evidence or to make statement and to produce the documents and the things mentioned in the schedule. He further submits that the authorized representative of the company has not appeared and that is why the complaint case was filed under Section 174 of the Indian Penal Code, which is meant for non-compliance of the direction of the public authority and GST authority is the public authority in view of Section 156 of the CGST Act, 2017. He also submits that the petitioner-company is a private limited company and in view of that, Section 89 of the CGST Act is applicable and there is no requirement of giving such statement and in view of that provision, every person who was looking day-to-day affairs of the company is liable. He submits that the said ground was

also taken in the amendment, which was allowed on 13.05.2019 and, thereafter, cognizance was taken on 19.06.2019 and, therefore, the amendment was at pre-cognizance stage and the same is permissible. He relied upon paragraph 20 of the judgment passed by the Hon'ble Supreme Court in the case of **S.R. Sukumar v. S. Sunaad Raghuram**, reported in **(2015) 9 SCC 609**.

8. Paragraph 20 of the said judgment is quoted hereinbelow:

"20. In the instant case, the amendment application was filed on 24-5-2007 to carry out the amendment by adding Paras 11(a) and 11(b). Though, the proposed amendment was not a formal amendment, but a substantial one, the Magistrate allowed the amendment application mainly on the ground that no cognizance was taken of the complaint before the disposal of amendment application. Firstly, the Magistrate was yet to apply the judicial mind to the contents of the complaint and had not taken cognizance of the matter. Secondly, since summons was yet to be ordered to be issued to the accused, no prejudice would be caused to the accused. Thirdly, the amendment did not change the original nature of the complaint being one for defamation. Fourthly, the publication of poem Khalnayakaru being in the nature of subsequent event created a new cause of action in favour of the respondent which could have been prosecuted by the respondent by filing a separate complaint and therefore, to avoid multiplicity of proceedings, the trial court allowed the amendment application. Considering these factors which weighed in the mind of the courts below, in our view, the High Court rightly declined to interfere with the order passed by the Magistrate allowing the amendment application and the impugned order does not suffer from any serious infirmity warranting interference in exercise of jurisdiction under Article 136 of the Constitution."

9. By way of referring Section 135 of the CGST Act, Mr. P.A.S. Pati, learned counsel for opposite party no.2 submits that presumption of culpable mental state can be proved only in trial. He submits that once summon is issued and the petitioner has not appeared, in view of that Section 174 of the Indian Penal Code is well maintainable. On these grounds, he submits that these petitions are fit to be dismissed.

10. In view of the above facts and submissions of the learned counsel for the parties, the Court has gone through the materials on the record including the summons, which have been issued to the company and the same are brought on record in Cr.M.P. No.2449 of 2019. The summon contained in Annexure-2, dated 27.12.2018 is addressed to M/s SSK Devcon Private Limited and pursuant to that, the company vide letter dated 29.12.2018 replied the said summon informing the authority concerned that sum of Rs.1,56,20,520/- was deposited on 05.12.2018 and 45 days' further time was requested for depositing further dues. Vide letter dated 14.01.2019 contained in Annexure-4, the authority allowed time and directed to make full payment of GST amount. The sum of Rs.50 Lakhs and Rs.1 Crore were deposited on 14.01.2019 and 16.01.2019 respectively, which was informed to the authority concerned vide letter dated 17.01.2019 and further four weeks' time was requested to deposit further amount and finally on 08.02.2019, total sum of Rs.5,60,52,391/- inclusive of the earlier payments have been made to the authority concerned. Thus, it is crystal clear that so far as the amount of GST is concerned, that has already been deposited. However in the counter affidavit, it has been stated that sum of Rs.5,21,95,792/- has been received by the authority concerned subject to verification. However, non-filing of any case or initiation of proceeding for any recovery suggest that there is no due against the petitioners.

11. It further appears that there is no further proceeding against the petitioner for determination of any tax not paid and that provision is there in Section 73 of the CGST Act, 2017. Thus, it is an admitted fact that the amount in question has already been paid.

12. Section 70 of the CGST Act, 2017 speaks of power to summon persons to give evidence and produce documents and inquiry under the same will proceed under the provision of the Civil Procedure Code and only Sections 193 and 228 of the Indian Penal Code is applicable in view of Sub-section (2) of Section 70 of the said Act.

13. Section 125 of the CGST Act, 2017 speaks of general penalty to the tune of maximum Rs.25,000/- only and Section 132 of the said Act, prescribes for punishment. It is an admitted case that no case under Sections 125 and 132 of the said Act is initiated against the petitioners.

14. The documents on record clearly suggest that summons have been replied, which was also entertained by the authority by way of granting time. Thus, it cannot be said that this is a case of non-compliance of summon issued by the authority concerned.

15. So far as the amendment in the complaint petition is concerned, the Court is not required to answer the same in view of the judgment relied by Mr. P.A.S. Pati in the case of *S.R. Sukumar (supra)*.

16. In view of the above facts and considering that the summons were replied, which were entertained by the authority concerned and it cannot be said that the petitioners have not complied with the summons, issued by the authority concerned and further there are procedure prescribed under the CGST Act, 2017 for penalty under Section 125 which restricted to a fine of Rs.25,000/- only and none of the failure prescribed in Section 132 of the said Act is the subject matter of the present cases and further Section 70 of the said Act speaks of procedure to be adopted for summoning, that will in accordance with the Code of Civil Procedure and further considering that

the reply to the summons were entertained by the authority concerned, to allow to continue the proceeding under Section 174 of the Indian Penal Code against the petitioners will amount to abuse of process of law.

17. In view of the aforesaid facts, reasons and analysis, the entire criminal proceedings arising out of Complaint Case No.1880 of 2019, dated 15.04.2019 including the order taking cognizance dated 19.06.2019, pending in the Court of the learned Judicial Magistrate, 1st Class, Ranchi are quashed.

18. Accordingly, these petitions are allowed and disposed of.

19. Pending I.A., if any, is disposed of.

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

(Sanjay Kumar Dwivedi, J.)

Ajay/ A.F.R.