

ITC Limited Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Nov-24-2014

Judge : Vijay Prakash Pathak

Appeal No. : Application No. 46813 of 2014

Appellant : ITC Limited

Respondent : State of U.P. and Another

Advocate for Pet/Ap. : Sri. Raghav Nayar

Judgement :

Vijay Prakash Pathak, J.

Heard Sri Vipin Sinha, learned Senior Advocate assisted by Sri Raghav Nayar, learned counsel for the petitioner as well as Sri Vinod Kant, learned AGA and also learned standing counsel on behalf of the Central Excise Department and perused the record.

Present petition has been filed with the prayer to quash the impugned order dated 26.07.2014 passed in Complaint Case No. 1790 of 1997 (Union of India through Shri R.N. Rustagi, Assistant Commissioner Vs. ITC Limited), alleging commission of offence under Section 9 of the Central Excise and Salt Act, 1944, pending before the Special Chief Judicial Magistrate, Meerut, by which the matter has been

fixed for remaining evidence of the complainant u/s 244 Cr.P.C.

Learned counsel for the petitioner has mainly contended that challenging the entire proceeding of complaint case No.1790 of 1997, the petitioner had approached this Court by way of filing an application u/s 482 Cr.P.C. No. 41435 of 2013, which has been finally disposed of by this Court vide order dated 6.12.2013 with the observation that the petitioner is permitted to appear before the concerned court within a month from today through his counsel to press its application dated 5.11.2007 claiming discharge and in case, the said discharge application is not available on record, it will be open for the petitioner to file fresh discharge application within the stipulated period and the concerned court shall after hearing the counsel decide the application on merit in accordance with law and in pursuance of the said order dated 6.12.2013 the petitioner filed a written submission in support of his earlier discharge application filed under Section 245(2) Cr.P.C., but the learned Magistrate has not decided the said discharge application so far and illegally passed the said order dated 26.7.2014 with the observation that before deciding the application under Section 245(2) Cr.P.C. one more opportunity should be given to the complainant to adduce his evidence and hence the matter has been fixed for remaining evidence under Section 244 Cr.P.C.

On the other hand, learned AGA as well as learned counsel for the Central Excise Department supported the order passed by learned Magistrate, but could not dispute the observation of this Court given in the order dated 6.12.2013 passed in the aforesaid criminal misc. application u/s 482 Cr.P.C. No. 41435 of 2013.

I have considered the said arguments and have perused the order impugned along with all other material available on record.

It appears that challenging the entire proceeding of the complaint case No. 1790 of 1997, the petitioner had approached this court by way of filing an application u/s 482 Cr.P.C. No. 41435 of 2013, which has been disposed of, vide order dated 6.12.2013 and the petitioner was permitted to appear before the court concerned through his counsel and press his application filed on 5.11.2007 claiming discharge and in case, the said discharge application was not available on record,

it shall be open to the petitioner to file fresh discharge application, which shall be decided by the learned court below on merit in accordance with law. It further appears that the petitioner filed a written submission in support of his earlier discharge application u/s 245(2) Cr.P.C. It further appears that the learned Magistrate has not decided the said application of the petitioner claiming discharge, rather he fixed the next date for remaining evidence u/s 244 Cr.P.C., whereas this Court vide order dated 6.12.2013 has directed to decide the said discharge application on merit in accordance with law within a period which shall not exceed a period of three months. This court has also observed that if the concerned court after hearing the counsel for the accused persuaded to have the view that the accused ought not to have been summoned and the charge is groundless, it shall not abstain from discharging the accused only on the ground that the material available at the time of summoning was the same, which is available on record at the time of hearing the discharge application u/s 245(2) Cr.P.C. and on the other hand if the lower court even after hearing the counsel for the accused holds the view that the accused has been rightly summoned and the material produced by the complainant does not indicate the charges to be groundless it shall make an order to that effect and proceed further in the matter in accordance with law and shall also be free to adopt such measures to procure the attendance of the accused as the law permits.

It appears that the learned Magistrate did not comply with the said order dated 6.12.2013 passed by this Court properly and in letter and spirit by not deciding the discharge application moved by the petitioner as directed by this Court, rather has fixed the matter for taking remaining evidence u/s 244 Cr.P.C., whereas the discharge application u/s 245(2) Cr.P.C. may be decide at any stage even before the evidence u/s 244 Cr.P.C.

In view of the aforesaid considerations, the order dated 26.7.2014 passed by the Magistrate concerned does not appear to be proper and accordingly the learned Magistrate is directed to decide the application for discharge moved on behalf of the petitioner u/s 245(2) Cr.P.C. within a period of three months from today after complying with the order dated 6.12.2013 passed by this Court in criminal misc. application u/s 482 Cr.P.C. No. 41435 of 2013.

Till the disposal of the said application, no coercive action shall be taken against the petitioner.

With the aforesaid observations this petition is disposed of finally.

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