Kuldeep Singh and ors. Etc. Vs. State of U.P. and ors.

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SooperKanoon Citation : sooperkanoon.com/489134

Court : Allahabad

Decided On : Jul-26-2000

Reported in : 2000CriLJ4701

Judge : J.C. Gupta and ;U.S. Tripathi, JJ.

Acts : Trade Tax Act - Sections 14; Constitution of India - Article 226; Code of Criminal Procedure (CrPC) , 1974 - Sections 41(1)

Appeal No. : Criminal Misc. Writ Petn. Nos. 4167, 4257, 4258, 4283, 4289 and 4299 of 2000

Appellant : Kuldeep Singh and ors. Etc.

Respondent : State of U.P. and ors.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : A.K. Rathor, Adv.

Disposition : Petition dismissed

Judgement :

1. In the above noted writ petitions common questions of law are involved, therefore, all the writ petitions are taken up together for disposal regarding which the learned counsel for the petitioners of each petition have no objection.

2. We have heard learned counsel for the petitioners in each petition, the learned A.G.A. and have gone through the record.

3. It was contended by the learned counsel for the petitioners that the F.I.R. has been lodged on wrong facts. Having gone through the First Information Report of the respective writ petitions we find that First Information Report of each case discloses commission of cognizable offence. It is well settled law that when the First Information Report discloses a cognizable offence, the truthfulness of the allegation and the establishment of the guilt can only take place, when the investigation is done or trial proceeds. The probability, reliability or genuineness of the allegations made in the First Information Report cannot be gone into in a proceeding under Article 226 of the Constitution of India. Therefore, we find no ground for quashing of the impugned First Information Reports.

4. The learned counsel for the petitioners relying on judgment of this Court in Krishna Traders Kanpur Nagar v. State of U.P. and Ors. (Criminal Misc. Writ Petition No. 1037 of 1999 decided on 2nd February, 2000, reported in 2000 UPTC 274 contended that in view of Section 14 of Trade Tax Act, the Trade Tax Authority had no jurisdiction to lodge report and the report lodged by Trade Tax Authority is patently without any cause and is an abuse of the process of criminal law. But it was held in subsequent Division Bench case of Ashok Kumar v. State of U.P. and Ors. Criminal Misc. Writ Petition No. 2059 of 2000 decided on 28-4-2000 reported in (2000) 28 All Cri R 1177 that 'it seems to us that the attention of the Bench was not drawn to express provision of Section 14 of the Trade Tax Act and its finer notes to find Out whether the penalty provided thereof is without prejudice to the liability under any other law for the time being in force...Decisions relied upon do not merit to be of any binding efficacy nor can be termed as decisions ad rem.. 'Moreover, the said decision in M/s. Krishna Traders Kanpur v. State of U. P. (supra) was based on decision of this Court in New J.T.C. Corporation New Delhi v. State of U.P. 1999 UPTC 1226. The Apex Court in Civil Appeal No. 3380 of 2000; State of U.P. v. New J.T.C. Corporation decided on 11-5-2000 set aside the above judgment and held as below :- .

After hearing both sides we think that investigating agency must be permitted to complete the investigation and file the final report. We refrain from expressing any opinion regarding the merits of the contentions, lest, they may affect one or the other of the parties. However, while setting aside the impugned order, we make it clear that the part of the impugned order by which the truck was released will not be affected by this order. It is open to either party to raise all their contentions at the appropriate stage. Therefore, we dispose of this appeal without prejudice to such rights.

5. In view of above decision of Apex Court the decision relied on by the learned counsel for the petitioners is not binding on us.

6. It was further contended that the arrest of the petitioners may be stayed during investigation. We have already found above that the First Information Report discloses cognizable offence and therefore F.I.R. cannot be quashed. It has been held by Full Bench of this Court in Satya Pal v. State of U.P., (2000) 40 All Cri C 75 : 1999 All LJ 2660 that in appropriate cases, if the Court is convinced that the power of arrest will be exercised wrongly or mala fidely or in violation of Section 41(1)(a) of the Code of Criminal Procedure, writ of mandamus can be issued restraining the police from misusing its legal power. However, the order of staying arrest may be granted sparingly in the exceptional cases and with circumspection that too in rarest of rare cases keeping in mind that any relief, interim or final during investigation which has the tendency to slow or otherwise hamper the investigation should not be granted.

7. As already pointed out above the question of examining truthfulness or otherwise of the allegations made in the First Information Report is not to be gone into by this Court, as the same is to be determined by the Investigating Agency during investigation. We hope and trust that the Investigating Agency shall act honestly, fairly and independently while making investigation and take legal recourse against the petitioner only when it is necessary to do so.

8. Lastly it was contended that goods seized may be released in favour of the petitioners. But no such prayer has been-made in any of the writ petition. Moreover, order for interim custody of the goods may be made by the Court

having jurisdiction to take cognizance of the case and the petitioners are at liberty to make such prayer before appropriate Court.

9. The above writ petition Nos. 4167 of 2000, 4257 of 2000, 4258 of 2000, 4283 of 2000, 4289 of 2000 and 4299 of 2000 are dismissed with the aforesaid observations.