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Raj Kumar Aggarwal Vs. the State

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Court : Delhi

Decided On : Oct-01-1986

Reported in : 1987(12)DRJ62; [1987]65STC238(Delhi)

Judge : Jagdish Chandra, J.

Acts : Central Sales Tax Act, 1956 - Sections 6A; Delhi Sales Tax Act, 1975 - Sections 50(1)

Appeal No. : Criminal Miscellaneous (Main) No. 415 of 1986

Appellant : Raj Kumar Aggarwal

Respondent : The State

Judgement :

Jagdish Chandra, J.

1. The petitioner, Raj Kumar Aggarwal, has brought this petition under section 482 of the Code of Criminal Procedure, 1973 (in short the Code) for the setting aside of the order dated 15th February, 1986, passed by Shri P. D. Gupta, Metropolitan Magistrate, New Delhi as also for quashing the proceedings pending in the said court in case FIR No. 721 of 1981 of Police Station, Connaught Place, New Delhi.

2. The offence is alleged to have taken place during the tenure of the petitioner as Company Secretary of M/s. Jain Sudh Vanaspati Ltd. (hereinafter to be referred to

as the company) when in the year 1978-79 the company imported palm oil from Singapore, which arrived at Bombay and was got cleared through clearing agents M/s. Damani Bros., Bombay. The company sold 23,940 tins of said palm oil on consignment basis to M/s. Hind Agencies, Barabanki (U.P.), during the period from 3rd January, 1979, to 8th January, 1979. However, on the directions of the company the clearing agents dispatched the said goods to various railway stations, viz., Lucknow, Bareilly, Agra, Ghaziabad, Kanpur and Allahabad in U.P. direct from Bombay to M/s. Hind Agencies, Barabanki (U.P.), and the railway receipts of the said goods were sent by the clearing agents from Bombay to the company at New Delhi who on receipt of the railway receipts endorsed the same in favor of M/s. Hind Agencies, Barabanki (U.P.), for collection of the consignment from the abovementioned railway stations in U.P. M/s. Hind Agencies, Barabanki (U.P.) was the commission agent of the company. M/s. Hind Agencies, Barabanki on the authority of the aforesaid railway receipts, took the delivery of the aforesaid goods from the aforesaid railway stations in U.P. and sold the said goods at the respective areas.

3. At the instance of the U.P. sales tax authorities, the Enforcement Branch of Delhi Sales Tax Department conducted enquiries into the export of the aforesaid palm oil tins to M/s. Hind Agencies, Barabanki (U.P.), by the company and received an intimation from the Station Master, Barabanki, that no such goods had been received there as per the railway record and that the aforesaid business transaction between M/s. Hind Agencies, Barabanki (U.P.), and the company was bogus.

4. It was vide letter No. JSV/489/80 dated 4th February, 1980 (copy annexure A-1) that the petitioner, R. K. Aggarwal, in his capacity as secretary of the company had informed the Sales Tax Department, Delhi, that the aforesaid goods had been sent by the company from the company's Delhi warehouse from 1st January, 1979, to 8th January, 1979, and it is this information of the goods having been sent from Delhi warehouse of the company to M/s. Hind Agencies, Barabanki (U.P.), which is the crux of the alleged offence and the complaint as this information is alleged to be factually false and further that the destination, i.e., M/s. Hind Agencies, Lucknow Road, Barabanki (U.P.), given in the enclosure to the aforesaid letter

dated 4th February, 1980, of the petitioner was also incorrect as the goods were sent not to Barabanki but to various other places, viz., Lucknow, Bareilly, Agra, Ghaziabad, Kanpur and Allahabad in U.P. whereas admittedly these goods had been dispatched directly from Bombay to these various stations in U.P. by the clearing agents of the company at the direction of the company.

5. The report under section 173 of the Code has been filed by the police of Police Station, Connaught Place, New Delhi, against the company and its secretary, Raj Kumar Aggarwal, petitioner, and its managing director, Vinod Kumar. The case is a summons trial case and as such under section 251 of the Code only substance of accusation was to be stated by the learned magistrate to the accused persons including the petitioner and no formal charge was to be framed against them and before the learned magistrate the learned defense counsel confined his argument only in regard to the point of the grant of the requisite sanction to prosecute the accused persons but the learned magistrate disagreeing with him was of the opinion that the accused persons were not entitled to an order of discharge and consequently directed the notice under section 251 of the Code to be served upon the accused persons including the petitioner, vide the impugned order.

6. The learned counsel for the petitioner while assailing the impugned order as also the complaint and the proceedings therein, contended that no case whatever was made out against any of the accused persons including the petitioner under section 50(1)(j) of the Delhi Sales Tax Act, 1975 (in short the Act) which provision reads as follows :

'Whoever -

knowingly maintains or produces incorrect accounts, registers or documents or knowingly furnishes incorrect information; or'.

7. In fact he wants quashing of the complaint and the subsequent proceedings ending in the aforesaid impugned order under the inherent powers of this Court under section 482 of the Code. The law on this point is settled by the Supreme Court authorities, the latest of which is reported as Municipal Corporation of Delhi v. Ram Kishan Rohtagi : 1983 CriLJ159 which has laid down as follows :

'It is, thereforee, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under section 482 of the present Code.'

8. In view of this authority the complaint and the proceedings including the impugned order can be quashed only if on the face of the complaint or the papers accompanying the same, no offence under section 50(1)(j) of the Delhi Sales Tax Act is made out, without adding or subtracting anything. The alleged offence is that of supplying false information by the petitioner in his capacity as secretary of the company vide his letter dated 4th February, 1980, and the enclosure thereof according to which the goods in question had been sent to M/s. Hind Agencies, Barabanki (U.P.), from the company's warehouse whereas admittedly those goods were never received physically by the company in Delhi nor were the same sent from Delhi to M/s. Hind Agencies, Barabanki (U.P.), and were admittedly sent direct from Bombay to the various abovementioned railway stations in U.P. by M/s. Damani Bros., Bombay, clearing agents of the company, and only the railway receipts had been received by the company at Delhi from M/s. Damani Bros., Bombay, and then in turn endorsed by the company in favor of M/s. Hind Agencies, Barabanki (U.P.), and sent to M/s. Hind Agencies, Barabanki (U.P.), which in turn sold the goods in the respective areas in U.P. Even though it was contended by the learned counsel for the petitioner which fact also finds mention in the complaint that after the case was registered by the Sales Tax Department of Delhi with Police Station, Connaught Place, New Delhi, the Investigating Officer, Shri Inder Lal Kapur, ACP II, vide his letter dated 12th January, 1982 addressed to the Commissioner of Sales Tax, New Delhi, pointed out that the company had neither concealed the consignment sales nor made sales tax evasion and that there was no mala fide intention on its part in the matter of the supplying of the information in question and that the company had shown Delhi warehouse as the dispatch place of the goods in question only because the challans in respect thereof had been issued from Delhi, the complaint further shows that the Commissioner, Sales Tax, sent letter dated 21st June, 1983, in reply that the

goods had been received in Delhi warehouse and thereafter the same were disposed of and thereupon a report containing the detailed facts of the case was submitted to prosecution agency for legal opinion which revealed that the information furnished by the petitioner in his capacity as secretary of the company in his aforesaid letter dated 4th February, 1980, that the goods were sent from Delhi warehouse against various railway receipts mentioned in the enclosure to that letter, to M/s. Hind Agencies, Barabanki, was not factually correct and furthermore even the destination (M/s. Hind Agencies, Barabanki) given in the enclosure to that letter was also not correct as the goods were sent to various railway stations, viz., Agra, Kanpur, Ghaziabad, etc., already referred to above and not to Barabanki which false information is punishable under section 50(1)(j) of the Delhi Sales Tax Act, 1975. The contentions of the learned counsel for the petitioner that the information in question was not false and was correct as per normal practice in the trade and that in fact it was a case of sales on consignment basis by the company to M/s. Hind Agencies, Lucknow Road, Barabanki (U.P.), by sending the railway receipts in respect of the goods in question to the latter after making the necessary endorsements in favor of M/s. Hind Agencies, Barabanki (U.P.), without actually sending the goods from Delhi to Barabanki, and that it was in fact no sale by the company in favor of M/s. Hind Agencies, Barabanki (U.P.), and that the effective sales were to be made by M/s. Hind Agencies, Barabanki (U.P.), who were the commission agents of the company and further that the sending of the railway receipts from Delhi to Barabanki was covered under section 6A of the Central Sales Tax Act, 1956 which was an exception to section 3 of the said Act which provided the point of time when a sale or purchase of goods is said to take place in the course of inter-State trade or commerce, and in the alternative even if the offence as alleged was made out, the alleged commission thereof lacked the necessary means read on the part of the accused persons including the petitioner and these could be written off without any punishment or penalty, are matters of defense which can be considered by the learned trial court at the appropriate stage of the case and cannot be looked into by the High Court in exercise of its inherent powers under section 482 of the Code for quashing the complaint and the subsequent proceedings including the impugned order, in view of : 1983 CriLJ159 (Municipal Corporation of Delhi v. Ram Kishan Rohtagi) as the assertion in the complaint and the alleged false information contained in the letter dated 4th February, 1980 of the petitioner in his capacity as secretary of the company to the Sales Tax Department, Delhi, and the annexure thereto and the complaint alleging the admitted facts that the goods in question were sent from Bombay to the various abovementioned places in U.P. where the sales took place.

9. In view of the aforesaid discussion, the petition fails and is dismissed.

10. Petition dismissed.

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