

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL MISCELLANEOUS No.44888 of 2016**

Arising Out of PS. Case No.-470 Year-2014 Thana- ARA NAGAR District- Bhojpur

- =====
1. Pawan Kumar Rajgarhia, Son of Late Deep Chand Rajgarhia, the Director of M/s Maa Annupurnna Transport Agency Ltd., Sapna Cinema Road, Police Station-Arrah Town, District- Bhojpur, Arrah
  2. Amir Roy, Son of Late Nand Lal Roy, Godown in-Charge of M/s. Maa Annupurnna Transport Agency Ltd., Sapna Cinema Road, Police Station-Arrah Town, District- Bhojpur, Arrah

..... Petitioners

Versus

The State of Bihar

..... Opposite Party

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Code of Criminal Procedure, 1973—Section 482—Bihar Value Added Tax Act, 2005—Section 81(4)—Explosive Substances Act, 1908—Section 5—quashing—of cognizance order—petitioners not paid the taxes on taxable goods—petitioners are Director-cum-Transporter and Godown-in charge of transporting agency in which Sales Tax Officer while inspection found taxable goods were being transported without road permits—petitioners have paid penalty in terms of Section 81(2) of Act, 2005—cognizance was taken without sanction, which is pre-condition of Section 82(2) of Act, 2005—Company was not made an accused by the informant—order of cognizance was quashed and set aside qua petitioners, with all its consequential proceedings—application allowed. (Paras 14 to 16)

(1992) Supplementary (1) SCC 335; (2020) 3 SCC 240—Relied upon.

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Appearance :

For the Petitioner/s : Mr. Rajiv Kumar Singh, Advocate  
For the Opposite Party/s : Mr. Anil Kumar Singh No.1, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA  
ORAL JUDGMENT  
Date : 01-05-2024

Heard learned counsel for the petitioners and  
learned APP appearing on behalf of the State.

2. The present application has been filed by the  
petitioners for quashing the order dated 14.03.2016 passed  
by the learned Chief Judicial Magistrate, Bhojpur, Arrah in  
Arrah (Town) P.S. Case No.470 of 2014, whereby the  
learned jurisdictional Magistrate has taken cognizance for the  
offences punishable under Section 81(4) of the Bihar Value  
Added Tax Act, 2005 (for short 'BVAT Act, 2005') and  
Section 5 of the Explosive Substances Act against the



petitioners.

3. The prosecution case, in brief, is that the informant, namely, Rajiv Ranjan Prasad, the Sales Tax Officer of Arrah Circle filed a written information on 12.12.2014 before the S.H.O. Arrah (Town), Police Station stating, inter alia, that on 10-11.12.2014, he made inspection of the office-cum-godown of M/s. Maa Annapurna Transport Agency Ltd. located at Sapna Cinema Road, Arrah. It has been further alleged that during the inspection by him, taxable goods were found being transported without road permits in violation of Section 61(1) of the BVAT Act and, thus, seized under Section 61(2) of the said Act, as the goods found being transported for helping evasion of tax to the purchasing dealers in collusion of transport agency and its employee punishable under Section 81(4) of the said BVAT Act. The alleged seized goods given to the transporter on his *jimmanama* for it's safety. Hence, on the direction of higher authority, prayer was made by the informant for lodging police case for taking necessary legal action against the petitioner.



4. In the background of aforesaid factual allegation as raised by informant, an FIR was lodged as Arrah (Town) P.S. Case No.470 of 2014 for the offences punishable under Section 81(4) of the BVAT Act, 2005 and Section 5 of the Explosive Substances Act.

5. Learned counsel appearing for the petitioners submitted that the impugned cognizance order is bad in the eyes of law, as same was taken without any previous sanction as mandated through Section 82(2) of the BVAT Act, 2005. it is also submitted that as per seizure list, the goods which were recovered from the godown of petitioners, who is transporter, were categorized in three different categories for which, separately penalty for sum of Rs.2,800/- and secondly Rs.1,72,761=00 were paid and, therefore, it cannot be said that it was a lawful attempts in any manner to evade any payment or the tax as to attract any penal provision as mentioned under Section 81(4) of the BVAT Act, 2005.

6. Doubting the seizure list, learned counsel took shelter of proviso of sub-section (2) of Section 61 of the



BVAT Act, where it is clearly mentioned that the seizure of goods under this sub-section can be prepared only by such officer, who is authorized for the purpose. It must be signed by the dealer also or the person Incharge of goods and minimum of two witnesses but, these mandatory provisions of law were not appears to follow while preparing seizure list in issue.

7. It is submitted by learned counsel that petitioner no.1 is the Director of M/s. Maa Annapurnna Transport Agency Ltd. (for short 'the company'), which is a private limited company, an independent body as registered under the Companies Act, 1956 (as amended in 2013) to establish legal fiction of vicarious liability and on this score alone, the cognizance order *qua* petitioner no.1 is liable to be set aside/quashed. It is further pointed that petitioner no.2 is godown Incharge of the company, where consignment in issue were stored in transit for further transportation. It is apparent from seizure list that the consignment was the fire crackers and also of Hosiery items and, as such, the main ingredient as to attract a *prima facie* case under Section 5 of



the Explosive Substances Act, having a reasonable suspicion regarding possession of Explosive Substance for a lawful object, is not appearing convincing.

8. While concluding argument by taking shelter of a legal provisions, as discussed aforesaid, it is submitted that the cognizance order *qua* petitioners are bad in the eyes of law and while submitting so, the learned counsel appearing for petitioners referred to the legal reports of Hon'ble Supreme Court as passed in the matter of **State of Haryana and Ors. Vs. Bhajan Lal and Ors. [(1992) Supp (1) SCC 335]** and also in the matter of **Sushil Sethi and Anr. vs. State of Arunachal Pradesh and Ors. [(2020) 3 SCC 240]**.

9. Mr. Anil Kumar Singh No.1, learned APP while opposing the present application submitted that the sanction can be obtained at any stage even after taking the cognizance. It is also submitted that mere by paying penalty, it cannot be said that no *prima facie* case is made out against the petitioners.

10. It would be apposite to reproduce the provision



of Sections 61(2), 81 and 82 of the BVAT Act, 2005 for better understanding of the case, which are as under:-

**61. Restriction on movement of goods.-**

- (1) xxx            xxx            xxx
- (2) Any authority or officer who may be authorised by the State Government in this behalf may, for the purpose of verifying whether any goods are being transported in contravention of the provisions of sub- section (1) intercept, detain and search any goods carrier, vehicle or vessel and may also search the warehouse or godown or any other such place of transit storage, where goods are kept in course of transportation and if the said authority is satisfied on such verification and search that transportation of goods is being made in contravention of the provision of sub- section (1), he may seize any such goods together with any container or material for the packing of such goods:
- Provided that a list of all the goods seized under this sub-section shall be prepared by such officer and be signed by the officer, the dealer or the person in-charge of goods and not less than two witnesses and a copy of the seizure list shall be made over to the dealer or the person in charge of the goods, as the case may be.”

- 81. Offences and penalties.**-(1) Whoever-
- (a) carries on business as a dealer without being registered in wilful contravention of section 19, or
- (b) fails without sufficient cause to furnish any information required by section 23, or
- (c) fails, without sufficient cause, when directed so to do under section 59, to keep



any accounts or record in accordance with the directions, or

(d) fails, without sufficient cause, to furnish any return as required by section 24 by the date and in the manner prescribed, shall, on conviction, be punished with imprisonment, of either description, for a term which shall not be less than three months but which may extend to six months and with fine not exceeding one thousand rupees.

(2) Whoever-

(a) knowingly keeps false account of the value of the goods bought or sold by him in contravention of sub-section (1) of section 52 or section 53, or

(b) wilfully attempts, in any manner whatsoever, to evade any payment of any tax, penalty or interest, shall, on conviction, be punished with imprisonment, of either description, for a term which shall not be less than six months but which may extend to one year and with fine not exceeding two thousand rupees.

(3) Whoever-

(a) not being a registered dealer under section 19, falsely represents that he is or was a registered dealer at the time when he sells or buys goods; or

(b) knowingly furnishes a false return; or

(c) knowingly produces before the prescribed authority, false bill, tax invoice, cash-memorandum, voucher, declaration, certificate or other document for any of the purposes of this Act; or

(d) issues to any person a certificate or declaration under this Act or the rules framed or notifications issued thereunder, a bill, cash





memorandum, tax invoice, voucher or other document which he knows or has reason to believe to be false; or

(e) obstructs any officer making inspection or search or seizure under section 56 or section 61 or section 62, shall, on conviction, be punished with imprisonment, of either description, for a term which shall not be less than one year but which may extend to three years and with fine not exceeding three thousand rupees.

(4) Whoever aids or abets any person in the commission of any offence specified in sub-section (1) or sub-section (2) or sub-section (3) shall, on conviction, be liable for punishment of the description specified in respect of the offence in the commission of which he has aided or abetted.

(5) Notwithstanding anything contained in sub-sections (1) to (4), no person shall be proceeded against under these sub-sections for the commission of the offences referred therein if the total amount of tax, interest or penalties evaded or attempted to be evaded is less than five thousand rupees.

(6) Where a dealer is accused of an offence specified in sub-section (1) or sub-section (2) or sub-section (3), the person declared as manager of the business of the dealer under section 22 shall also be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission thereof.

**82. Cognizance of offences.**-(1) Save as provided in section 81, the punishments inflicted under the said section shall be without prejudice to any penalty which may



be imposed under the provisions of this Act.

(2) No court shall take cognizance of any offence under this Act except with the previous sanction of the Commissioner or any officer specially empowered in this behalf and no court inferior to that of a Magistrate of the first class shall try any such offence.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences punishable under section 81 shall be cognizable and bailable.”

11. It would be further apposite to reproduce Section 5 of the Explosive Substances Act, which is as under:-

**“5. Punishment for making or possessing explosives under suspicious circumstances. —**

Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished,—

(a) in the case of any explosive substance, with imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(b) in the case of any special category



explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.]”

12. It would be apposite to reproduce paragraph ‘102’ of the legal report of Hon’ble Supreme Court in the case of **Bhajan Lal** (supra), which is being reproduced hereunder for a ready reference:

“**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 on the basis of 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 Act concerned (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 Act concerned, 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 with a view to spite him due to private and personal grudge.”

13. It would be apposite to reproduce Para-7.2, 7.5, 8.1 and 8.2 of **Sushil Sethi Case** (supra), which runs as under:-

**7.2.** In *Vesa Holdings (P) Ltd. v. State of Kerala*, [(2015) 8 SCC 293] , it is observed and held by this Court that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. It is further observed and held that for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. It is further observed and held that even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of



making initial promise being absent, no offence under Section 420 IPC can be said to have been made out. It is further observed and held that the real test is whether the allegations in the complaint disclose the criminal offence of cheating or not.

xxx      xxx      xxx

**7.5.** In *Sharad Kumar Sanghi v. Sangita Rane*, [(2015) 12 SCC 781], this Court had an occasion to consider the initiation of criminal proceedings against the Managing Director or any officer of a company where company had not been arrayed as a party to the complaint. In the aforesaid decision, it is observed and held by this Court that in the absence of specific allegation against the Managing Director of vicarious liability, in the absence of company being arrayed as a party, no proceedings can be initiated against such Managing Director or any officer of a company. It is further observed and held that when a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability.

xxx      xxx      xxx

**8.1.** As observed hereinabove, the charge-sheet has been filed against the appellants for



the offences under Section 420 read with Section 120-B IPC. However, it is required to be noted that there are no specific allegations and averments in the FIR and/or even in the charge-sheet that fraudulent and dishonest intention of the accused was from the very beginning of the transaction. It is also required to be noted that contract between M/s SPML Infra Limited and the Government was for supply and commissioning of the Nurang Hydel Power Project including three power generating units. The appellants purchased the turbines for the project from another manufacturer. The company used the said turbines in the power project. The contract was in the year 1993. Thereafter in the year 1996 the project was commissioned. In the year 1997, the Department of Power issued a certificate certifying satisfaction over the execution of the project. Even the defect liability period ended/expired in January 1998. In the year 2000, there was some defect found with respect to three turbines. Immediately, the turbines were replaced. The power project started functioning right from the very beginning—1996 onwards. If the intention of the company/appellants was to cheat the Government of Arunachal Pradesh, they would not have replaced the turbines which were



found to be defective. In any case, there are no specific allegations and averments in the complaint that the accused had fraudulent or dishonest intention at the time of entering into the contract. Therefore, applying the law laid down by this Court in the aforesaid decisions, it cannot be said that even a prima facie case for the offence under Section 420 IPC has been made out.

**8.2.** It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In *Maksud Saiyed v. State of Gujarat* [*Maksud Saiyed v. State of Gujarat*, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] , it is observed and held by this Court that the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the company when the accused is the company. It is further observed and held that the vicarious liability of the Managing Director and Director would arise provided any provision





exists in that behalf in the statute. It is further observed that the statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside.”

14. In view of aforesaid factual and legal submissions, it appears that the calyx of allegation which is basis of FIR is non-payment of tax under BVAT Act, 2005. It is admitted position that petitioner no.1 is transporter and petitioner no.2 is the godown Incharge, where the consignment in issue was only crackers and certain hosiery related goods. It also appears from Annexure-3 series that petitioners have paid penalty in terms of Section 81(2) of the BVAT Act for the goods both related to hosiery, for an amount of Rs.2,800/- and also for crackers a sum of



Rs.1,72,761/-. The impugned cognizance order also not showing that the sanction was obtained in this matter, as same appears a mandatory pre-condition in view of Section 82(2) of the BVAT Act, 2005. Goods in issue remains with petitioners, while it was in transit, which is crackers, which by any prudent imagination can not be said to be there for unlawful object and, as such, the basic ingredients to make out a *prima facie* case for offence punishable under Section 5 of the Explosive Substances Act is also not appears convincing. It is not alleged that crackers under transit was without license.

15. Thus, the case of petitioners covered under guideline nos. (1), (5) and (6) of the legal report of **Bhajan Lal case (supra)**, and also under **Sushil Sethi case (supra)** as company was not made accused, accordingly, the impugned order taking cognizance dated 14.03.2016 passed by the learned Chief Judicial Magistrate, Bhojpur, Arrah in Arrah (Town) P.S. Case No.470 of 2014 is hereby quashed and set aside *qua* petitioners, with all its consequential proceedings.



16. The application stands allowed.

17. Let a copy of the judgment be communicated  
to the learned trial court forthwith.

**(Chandra Shekhar Jha, J.)**

Sanjeet/-

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