

**G.S. Oils Ltd. and Another Vs The State of Maharashtra and Others
 Umeshkumar Narayanlal Agrawal Vs State of Maharashtra**

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Oct. 11, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 156(3), 167, 167(2), 403, 452
Maharashtra Value Added Tax Act, 2002 â€” Section 74, 74(1)(b)(c)(d)(e), 74(2), 74(3)(b)(o)(r), 74(4)
Negotiable Instruments Act, 1881 (NI) â€” Section 141
Penal Code, 1860 (IPC) â€” Section 120B, 34, 403, 406, 409
Transplantation of Human Organs and Tissues Act, 1994 â€” Section 22

Citation: (2013) ALLMR(Cri) 1244 : (2013) BomCR(Cri) 197

Hon'ble Judges: Sunil P. Deshmukh, J; B.R. Gavai, J

Bench: Division Bench

Advocate: Anand Jaiswal in Cri. W.P. No. 396/2012 and Mr. Shyam Dewani in APL 494/2012, for the Appellant; S.S. Doifode, Additional Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

1. Heard. The petitioner No. 2 in Writ Petition No. 396 of 2012 and applicant in Criminal Application No. 494 of 2012 claim to be the Directors

of G.S. Oils Ltd. which is petitioner No. 1 in writ petition. For the sake of convenience, the petitioners in writ petition are hereinafter referred to as

the petitioners"" and the applicant in criminal application is referred to as ""the applicant"". They have challenged the registration of FIR No.

139/2012 for the offences under Sections 406, 409, 420, 465, 471, 468, 120-B, 34 of IPC and Section 74(1)(b)(c)(d)(e), 74(2), 74(3)(b)(o)(r),

74(4) of Maharashtra Value Added Tax Act, 2002 at Police Station Wani.

2. Both the petitioner No. 2 as well as the applicant claim to be the Directors of the G.S. Oils Ltd. and the applicant further claims that he is not

entrusted with any functions in the day to day affairs of the company.

3. The First Information Report (FIR) is registered on the basis of the complaint made by Deputy Commissioner (Vigilance), Sales Tax

Department, Amravati Division, Amravati, specifically alleging that the petitioner company had evaded the tax liability of crores of rupees by

preparing false record that the goods were exported outside the State when as a matter of fact the goods were sold in the local market thereby

evading the sales tax payable to the State.

4. Heard Shri Jaiswal, the learned counsel appearing on behalf of the petitioners in Writ Petition No. 396/202 and Shri Dewani, the learned

counsel appearing on behalf of the applicant in Criminal Application No. 494/2012.

5. Shri Jaiswal, the learned counsel has made the following submissions in support of the petition:-

That when a special statute is created by a Legislature to deal with particular type of offences, even if for similar act an offence is created in a

general statute i.e. Indian Penal Code, the provisions of the general statute cannot be invoked. The second contention raised is u/s 77 of the

Maharashtra Value Added Tax Act, 2002 (VAT Act), the investigation of the crime in question cannot be entrusted to the Police Machinery. The

third submission is that the FIR can be registered only after the assessment is completed and the assessing authority comes to a conclusion that

there has been evasion of taxes.

6. The learned counsel relies on the judgment of the Apex Court in the case of Jeewan Kumar Raut vs. C.B.I. reported in (2009) 7 Supreme

Court Cases 526 and in the case of Mirza Iqbal Hussain vs. State of U.P. reported in AIR 1983 Supreme Court 60.

7. Shri Dewani, the learned counsel appearing on behalf of the applicant in Criminal Application No. 494/2012 submits that the provisions of

Section 75 of the VAT Act are analogous to the provisions of Section 141 of the Negotiable Instruments Act. The learned counsel, therefore,

submits that unless there are specific allegations against the Director regarding the specific role played by him in the day to day affairs of the

company, the offence could not have been registered. The learned counsel submits that on this short ground the proceedings initiated against the

applicant deserve to be quashed and set aside. The learned counsel relies on various judgments of the Apex Court i.e. S.K. Alagh Vs. State of

U.P. and Others, ; (2007) 12 SCC 788 - K. Srikanth Singh vs. North East Securities Ltd; Maksud Saiyed Vs. State of Gujarat and Others, ;

Keki Hormusji Gharda and Others Vs. Mehervan Rustom Irani and Another, ; State of NCT of Delhi through Prosecuting Officer, Insecticides,

Government of NCT, Delhi Vs. Rajiv Khurana, ; Pepsico India Holdings Pvt. Ltd. Vs. Food Inspector and Another, ; 2011 (5) SCALE-137 -

Subhankar Biswas vs. Sandeep Meta; 2011 ALL MR (Cri) 3603 (S.C.)- M/s Thermax Ltd. vs. K.M. Johny; 2012 IV AD (S.C.)489 Aneeta

Hada vs. M/s Godfather Travels & Tours Pvt. Ltd. and the judgment delivered by one of us (Gavai, J.) in the case of Pramod Parmeshwarlal

Banka vs. State of Maharashtra (Criminal Application No. 450/2007- dated 19.07.2011).

8. Shri Doifode, the learned Additional Public Prosecutor on the contrary submits that there is nothing in the statute i.e. VAT Act which prohibits

the investigation to be carried by a Police Officer. The learned APP by relying on the judgment of the Apex Court in the case of State of West

Bengal Vs. Narayan K. Patodia, 7, submits that in the absence of a prohibition in the statute prohibiting a Police Officer from carrying out

investigation, when there are offences under the special statute and also under the general statute, the Police can very well carry out the

investigation.

9. Undoubtedly some of the offences with which the petitioner and applicant have been charged are only found both in Section 74 of the VAT Act

and also under the Indian Penal Code. However, from the record it can clearly be seen in addition to the offences which are common in both the

statute, the FIR is also registered for certain offences like under Sections 464 and 471 of I.P.C.

10. For appreciating the submissions of the petitioners, it would be relevant to refer to the provisions of Section 77 of the VAT Act which reads

thus:-

77. Investigation of Offences

(1) Subject to such conditions, if any, as may be prescribed, the Commissioner may authorise, either generally or in respect of a particular case or

class of cases any officer or person subordinate to him to investigate all or any of the offences punishable under this Act.

(2) Every officer so authorised shall, in the conduct of such investigation, exercise the powers conferred by the Code of Criminal Procedure, 1973

(20 of 1974), upon an officer in charge of a police station for the investigation of a cognizable offence.

11. A perusal of the said section reveals that the Commissioner may authorise, either generally or in respect of a particular case or class of cases,

any officer or person subordinate to him to investigate all or any of the offences punishable under this Act. Sub-section (2) of said section provides

that such an Officer who is authorised, in the conduct of such investigation, exercise the powers conferred by the Code of Criminal Procedure,

upon an officer in charge of a police station for the investigation of a cognizable offence.

12. A similar question fell for consideration before the Apex Court in the case of State of W.B. (supra). In the said case, under the W.B. Sales

Tax Act, a provision was made that the investigation under the said offence was to be carried out by Bureau of Investigation. In the said case also,

a complaint was presented by the Assistant Commissioner of Commercial Taxes to the Deputy Superintendent of Police who in turn forwarded it

to the officer in charge of the police station, for starting the investigation for the offences punishable under Sections 403, 409, 465, 468, 471, 419

and 420 read with Section 120-B of the I.P.C. and Sections 88(1)(b), (6) and (7) of the Sales Tax Act, 1994 treating as FIR. The registration of

the said FIR came to be challenged before the Calcutta High Court. The Calcutta High Court holding that the investigation could not have been

carried out by anyone except the Bureau of Investigation, as constituted under the said Act, quashed and set aside the proceedings. The State of

West Bengal went in appeal before the Apex Court. The Apex Court while setting aside the judgment of the Calcutta High Court has observed in

paragraphs No. 16, 17, 18 and 19 which read thus:-

16. The offence envisaged in sub-section (6) is specifically created as supplemental to any other penalty provided by any law for the time being in

force. This means, offences falling under the Indian Penal Code and committed by a person while committing the offence contemplated in sub-

section (6) cannot get displaced for the sole reason that the accused has committed the offence falling under subsection (6) of Section 88.

17. Section 7(1) of the Sales Tax Act empowers the State government to constitute a Bureau of Investigation for discharging the functions referred

to in sub-section (3) thereof. It empowers the Bureau to carry on the investigation or hold enquiry into any case or alleged or suspected case of

evasion of tax or malpractice created thereof and send a report of it to the Commissioner. A reading of Section 7 makes it clear that creation of

Bureau of Investigation for the purpose of discharging the function envisaged in sub-section (3) which, of course, includes investigation also. But

there is nothing in Section 7 that such investigation can be carried on "only" by the Bureau and not any other investigating agency. It is open to the

Bureau to get the assistance of any other legally constituted investigating agency for effectively inquiring into all the ramifications of the offence. As

in this case if offences falling under the Indian Penal Code or any other enactment are also detected during the course of investigation conducted by

the Bureau there is no inhibition to pass over the investigation to the regular police.

18. If the view of the learned single judge gets approval it would lead to startling consequences. The consequences of such an interpretation would

be that if the person who commits the offence u/s 88 of the Act also commits other serious offences falling under Indian Penal Code as part of the

same transaction neither the regular police nor any special police force nor even the Central Bureau of Investigation can be authorised to conduct

investigation. The accused in such cases would then be well ensconced insulated from the legal consequences of proper and effective investigation.

Criminal justice would be the serious casualty then.

19. That apart, how could the FIR be quashed if the investigating agency should have been different? By lodging FIR alone no investigation is

conducted by the police. It is the first step towards starting investigation by the police. If High Court was of the opinion that investigation has to be

conducted by the Bureau then also there was no need to quash the FIR. Any way we take the view that as offences under the Indian Penal Code

are also involved, efficacious investigation can be conducted by entrusting it to the police investigating agency. Inherent powers of the High Court

as recognised in Section 482 of the Code are reserved to be used ""to give effect to any orders under the Code, or to prevent abuse of the process

of any court or otherwise to secure the ends of justice."" It is quite unfortunate that learned single judge overlooked the reality that by quashing the

FIR in the case the High Court did not achieve any one of the above factors. On the contrary, the result of quashing the FIR had rendered the

allegation of offences made against a person to remain consigned in stupor perennially. Hence, instead of achieving ends of criminal justice, the

impugned order would achieve the reverse of it.

13. The facts of the present case are completely identical. Not only that in the present case also, Section 77 does not provide that the investigation

shall be carried out only by the officer of the Sales Tax Department. In that view of the matter, the present case even on facts is clearly covered by

the judgment of the Apex Court in the case of State of W.B. (supra).

14. The said case has been tried to be distinguished by Shri Jaiswal on the ground that sub-section (6) of Section 88 also provides that the

accused shall also be liable for prosecution u/s 403 and, therefore, on facts the said case would not be applicable to the facts of the present case.

With great respect to the arguments advanced by the learned counsel, we are unable to accept the same. Para 16 of the said judgment would be

relevant to consider the submission in that regard.

15. The Apex Court has in clear terms has held that merely because the accused has committed an offence falling under the special statute would

not mean that the offences under the Indian Penal Code would get displaced. As already discussed hereinabove, the accused are also charged

additionally for the offence punishable under Sections 465 and 471 of I.P.C. which are not common with any of the offences as provided under the

VAT Act.

16. Insofar as the judgment of the Apex Court in the case of Jeewan Kumar Raut vs. Central Bureau of Investigation is concerned, the facts in the

said case are totally different. In the said case, the FIR was registered by the Police Officer and subsequently the investigation was transferred to

the C.B.I. In the said case the C.B.I. upon completion of the investigation, had filed the complaint u/s 22 of the Transplantation of Human Organs

Act, 1994 (TOHO Act) contending that the complaint filed by the CBI could not be treated as a charge sheet and as such the accused were

entitled to the benefit of Section 167 (2) of the Code of Criminal Procedure. An application was made before the learned Magistrate for release of

the accused on bail. The said application was rejected by the learned Magistrate by holding that the complaint by the C.B.I. u/s 22 would amount

to filing of charge sheet and as such the provisions of Section 167(2) of Cr. P.C. would not be attracted in the facts of the said case. The said

finding was upheld by the revisional Court as well as by the High Court. The accused went in appeal. In the facts of the said case, the Apex Court

held that wherever there was a conflict between the provisions of special statute and general statute, the provisions of special statute would prevail

over the general statute. However, in the facts of the said case itself, the Apex Court has held that the complaint petition filed by the CBI was

within the specified period. However, while observing so, the Apex Court observed that the provisions of sub-section (2) of Section 167 of the

Code would not apply in the case before it.

17. Insofar as the judgment in the case of Mirza Iqbal (supra), the Apex Court has taken a similar view and the Apex Court held that wherever

there was a conflict between the provisions of special statute and general statute, the provisions of general statute will have to yield to the

provisions in special statute. However, it has been held that if there is no conflict, then the provisions of general statute could be invoked if it is not

so prohibited by a special statute. In the said case an order of confiscation was made at the completion of the trial by the learned Trial Judge. It

was sought to be contended on behalf of the appellant before the Apex Court that the learned Special Judge has no jurisdiction to pass an order of

confiscation inasmuch the Prevention of Corruption Act did not provide for it and as such the order of confiscation was not sustainable. The Apex

Court held that the Prevention of Corruption Act being totally silent on the question of confiscation, the provisions of Cr. P.C. would apply with the

result that the Court trying an offence under the Prevention of Corruption Act would have the power to pass an order of confiscation by reason of

the provisions contained in Section 452 of Cr. P.C. In this view of the matter, this judgment rather supports the case of the State.

18. Insofar as the third contention of Shri Jaiswal that FIR should not be registered unless there is a finding in the assessment order regarding

evasion of tax is concerned, we find that the said submission is without any merit. There is nothing either in the VAT Act or the under the Cr. P.C.

which would support such a proposition.

19. In this view of the matter, we do not find any merit in writ petition.

20. Insofar as the application is concerned, only ground raised in this application is that there are no specific averments in the FIR against the

applicant as to the role played by him i.e. the applicant is not entrusted with any functions in the day to day affairs of the company. Shri Dewani,

the learned counsel has placed reliance on a catena of judgments in this regard. However, perusal of those judgments would reveal that the

judgments either relate to quashing of the complaint filed by the complainant or quashing of the FIR registered on direction u/s 156(3) of Cr. P.C.

in complaint case filed by the complainant. In these cases, the Apex Court has held that there was no averment in the complaints attributing a

specific role played by the Director and as such neither the order of issuance of process nor a direction u/s 156(3) of Cr. P.C. were sustainable. A

distinction will have to be drawn in a case instituted on a private complaint and on the basis of the FIR.

21. By now it is well settled position of law that the FIR is not an encyclopedia of the entire case. The FIR only sets the investigation machinery

into motion. It need not contain all the details. The reliance in this respect would be placed on the judgment of the Apex Court in the case of

Ashabai Machindra Adhagale Vs. State of Maharashtra and Others, . The matter is still at the stage of investigation. The investigating officer would

be bound to collect the evidence in support of the prosecution case before charge sheet is filed. It is only at the stage of conclusion of the

investigation, the investigating officer will decide as to whether against which of the accused persons the charge sheet is to be filed. It is quite

possible that if after the completion of the investigation the investigating officer may come to the conclusion that the ingredients to constitute a

vicarious liability u/s 77 of the VAT Act are not made out and may itself not file charge sheet against such a Director against whom there is no

material. In any case if the petitioner finds that in the charge sheet there are no allegations against him, he can very well apply for discharge at that

stage. However, the investigation cannot be thwarted at the beginning.

22. In the result, we also find that the application filed by the applicant at this stage would not be tenable.

23. The writ petition as well as application, both are without any merit and as such both are dismissed. In view of the disposal of the petition,

nothing survives in the Criminal Application (APPW) Nos. 147 and 148 of 2012 and as such same are dismissed.