

Ashim Maitra and Others Vs State of West Bengal and Another

Court: Calcutta High Court

Date of Decision: April 4, 2007

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 156, 156(2), 227, 228, 36

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€” Section 41, 42

Penal Code, 1860 (IPC) â€” Section 120B, 403, 405, 406, 409

West Bengal Sales Tax Act, 1994 â€” Section 3(1), 30, 65, 66, 67

Citation: (2008) 3 CHN 143

Hon'ble Judges: P.N. Sinha, J

Bench: Single Bench

Advocate: Joymalya Bagchi and Sourav Bhagat, for the Appellant; Asimesh Goswami and Krishna Ghosh, for the Respondent

Judgement

P.N. Sinha, J.

This revisional application u/s 482 of the Code of Criminal Procedure (in short the Code) has been preferred by the

petitioners praying for quashing the proceeding of Special Case No. 29 of 2006 now pending before the learned Additional Sessions Judge, 3rd

Court, Barasat under Sections 88(4)(b)/88(6)/88(7) of the West Bengal Sales Tax Act (hereinafter called the Sales Tax Act, 1994) and u/s

409/420/120B of the Indian Penal Code (in short the IPC) and for setting aside the orders passed in connection with the said case including the

order dated 13.10.2006.

2. Mr. Joymalya Bagchi, the learned Advocate for the petitioners submitted that in the FIR only Kamal Chandra Dey, proprietor of M/s. Ganga

Tea Traders was made an accused. The petitioners were not named in the FIR. The informant was one N.J. Roy, Commercial Tax Officer,

Barrackpore and the FIR was lodged at Bijpur P.S. and, on the basis of such FIR Bijpur P.S. Case No. 95 dated 1.6.05 was started under the

aforesaid Sections of the Sales Tax Act along with Section 409/468/471/120B of the IPC. The investigation was conducted by an officer of the

Bureau of Investigation of Madan Street, Calcutta. The Inspector of Bureau of Investigation had no authority to conduct investigation in the

aforesaid Bijpur P.S. case in which there was allegation of commission of offence u/s 409/420/468/471 of the IPC. After completing investigation

chargesheet No. 113 dated 16.9.06 has been submitted for alleged offence under the aforesaid Sections of Sales Tax Act read with Section

409/420/120B of the IPC. When there was specific allegation of offence under different Sections of the IPC an officer of the Bureau of

Investigation could not have performed investigation into the case. The investigation was wholly illegal. The submission of chargesheet and taking of

cognizance were improper and illegal and the chargesheet should be quashed.

3. Mr. Bagchi also submitted that in a police case concerning commission of offence under the IPC only police can investigate but not the Bureau.

The powers of Bureau and the powers of police are not identical. The persons attached to Bureau of Investigation are subordinate staffs of Bureau

and they are under the supervision of Commercial Tax Officers and are subordinate to them. The designation of a Deputy Superintendent of Police

attached to the Bureau cannot override the powers of police officers incorporated in the statute. In this case, neither Section 4 nor Section 36 of

the Code would come to the aid of the Bureau to assume jurisdiction of investigation into offence under the IPC. The higher rank police officer as

mentioned in Section 36 cannot be construed to include Deputy Superintendent of Police attached to Bureau. Section 36 would be guided by the

higher rank police officer who can exercise power of investigation under the provisions of the Code. In this case accordingly the officers of the

Bureau of Investigation had no authority to proceed with the investigation.

4. Mr. Bagchi contended that Bureau of Investigation has the power to proceed with investigation in respect of matters concerning evasion of tax,

levy, assessment, collection and imposition of penalty under the provisions of the Sales Tax Act, 1994. After lodging of FIR at police station in

respect of alleged offence under the Sales Tax Act along with offence under the IPC, the Bureau assumes the position of complainant and Bureau

of Investigation cannot proceed with investigation in such offence, and only, the police officer can proceed with investigation. In the present matter,

if the complaint was concerning for alleged offence only under the Sales Tax Act for evasion of tax or levy, the Bureau could have conducted the

investigation. In respect of offence under the IPC the investigation can be conducted according to the provisions of the Code and the police

officers of respective police stations can proceed with the investigation and officers of Bureau cannot conduct investigation. In the instant case the

investigation was accordingly without jurisdiction and this itself is a ground for quashing the criminal proceeding. Mr. Bagchi further submitted that

the law prescribes that action, if any, is to be done in a manner that has been prescribed in the statute otherwise it should not be done at all and any

other different mode is not permissible. In support of his contention Mr. Bagchi placed reliance on some decisions namely, Commissioner of

Commercial Taxes, West Bengal v. West Bengal Taxes and Tribunal reported in 2000 STC 453, Roy V.D. Vs. State of Kerala, and State of

West Bengal v. Narayan K. Patodia reported in 2000 C Cr. LR (SC) 319.

5. Mr. Bagchi further contended that these petitioners were not named in the FIR. They had no nexus with the alleged incident and played no role

in the incident. They never paid sales tax. They only used to work for their proprietor. u/s 88 of the Sales Tax Act it is the liability of the dealer to

pay taxes. Section 30 of the Sales Tax Act lays down that every registered dealer shall furnish return and it is the duty of the dealers to pay taxes.

The application forms of Ganga Tea Company were not seized to show that Ganga Tea Traders took part in the tea auction at Siliguri and

purchased tea and subsequently evaded payment of tax. The base of the prosecution case was that the Ganga Tea Traders took part in the tea

auction at Siliguri and purchased huge quantity of tea but did not pay tax. There are certain forms and applications to be filed before taking part in

tea auction and no such form or application was seized to establish that these petitioners on behalf of Ganga Tea Traders took part in the auction.

There was no paper or document or any material to show nexus of the petitioners in the alleged incident to evasion of sales tax. Continuation of the

criminal proceeding would be an abuse of the process of law and it should be quashed. In support of his contention Mr. Bagchi cited the decisions

in Ashok Chaturvedi and Others Vs. Shitulh Chanchani and Another, , Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya reported in

1991 SCC 47, Union of India v. Prafulla Kumar Samal reported in 1979 SCC 609, S.W. Palanitkar and others Vs. State of Bihar and another, ,

Dilawat Balu Kurane v. State of Maharashtra reported in 2002(1) Supreme 55, Harishchandra Prasad Mani and Others Vs. State of Jharkhand

and Another, and The State of Orissa Vs. Sudhansu Sekhar Misra and Others, .

6. Mr. Asimesh Goswami, the learned Public Prosecutor submitted that these petitioners are involved for conspiracy for which elements of offence

u/s 120B of the IPC transpired against them. The Bureau of Investigation constituted by the State Government in the Sales Tax Act, 1994 has the

power to investigate in cases of violation of the different provisions of the Sales Tax Act for which the penal provision has been prescribed in

Section 88 of the Sales Tax Act. The Bureau can investigate in respect of matters relating to levy, assessment, collection and enforcement of any

tax, penalty or interest in respect of such case under the Sales Tax Act. The Bureau has accordingly powers to investigate in cases of evasion of

payment of tax and can submit chargesheet also. The officers of Bureau are also police personnel having same powers. The Joint Secretary,

Finance Department by notification empowered the officers of Bureau to investigate.

7. Referring to Sections 4 and 36 of the Code Mr. Goswami submitted that Sub-section (2) of Section 4 lays down that all offences under any

other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the

time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Sales tax being a

special statute it will override the provisions of the Code and in the matter of investigation concerning evasion of sales tax, the Bureau exercises

power of investigation as well as submission of chargesheet. Section 36 of the Code prescribes that police officers superior in rank to an Officer-

in-Charge of a police station may exercise same powers, throughout the local area to which they are appointed. In this matter, the Deputy

Superintendent of Police attached to Bureau directed investigation and he is an officer superior in rank to the Officer-in-Charge of concerned

police station. The investigation was conducted in terms of his order and accordingly such investigation was neither illegal nor irregular. The police

officer enjoy power from different Police Acts and officers of Bureau being police officers have the power to cause investigation in connection with

matters relating to evasion of sales tax.

8. Mr. Goswami further submitted that a Division Bench of this Court rejected the anticipatory bail prayer of this petitioner. After rejection of the

prayer for anticipatory bail the petitioners have preferred the instant revisional application which is not maintainable. Kamal De is a carpenter by

profession but, he runs Ganga Tea Traders. He himself did not take part in the bid during auction and these petitioners took part in the auction.

One Chandan Rudra along with others purchased the tea in auction and, in fact, behind the curtain M/s. Ganga Tea Traders purchased the tea and

did not pay the sales tax to the tune of over Rs. 36 lakhs. In the FIR along with provisions of Section 88 of the Sales Tax Act elements of offence

under the Indian Penal Code were also mentioned and as there is offence under IPC there is no bar in investigation by the Bureau. In support of his

contention Mr. Goswami relied upon the decision in State of West Bengal v. Narayan K. Patodia (supra) and one unreported decision of this

Court in the matter of Biswanath Jhunjunwala v. State of West Bengal in Civil Rule No. 10627(W) of 1975.

9. After very carefully considering the submissions of the learned Advocates for the parties and perusing the contents of the revisional application,

the materials on record and the decisions cited by the learned Advocates for the respective parties, I am unable to agree with the views of Mr.

Goswami, the learned Public Prosecutor. Section 7 of the Sales Tax Act lays down that the State Government may constitute a Bureau of

Investigation for discharging the functions referred to in Sub-section (3). The Bureau was constituted for effective enforcement of the provisions of

the Sales Tax Act, 1994. Sub-section (3) of Section 7 lays down that, ""The Bureau may, on information or of its own motion, or when the State

Government or the Commissioner so directs, carry out investigation or hold inquiry into any case of alleged or suspected evasion of tax as well as

malpractices connected therewith and send a report in respect thereof to the Commissioner,"" Sub-section (4) of Section 7 lays down that, ""The

Bureau may, for the purpose of holding investigation or inquiry under Sub-section (3), exercise all the powers u/s 65, Section 66, Section 67,

Section 69, Section 70, Section 71, Section 72 and Section 73:

Provided that the Commissioner may, on receipt of a report under Sub-section (3), require the Bureau to transfer to him any accounts, registers or

documents relating to the said report seized by the Bureau and, on such transfer, such accounts, registers or documents shall be retained by him

subject to the provisions of Section 66.

10. Sub-section (6) of Section 7 makes it clear that the Bureau may, after a case has been investigated or enquired into by it, by order, assess or

re-assess tax, impose penalty, determine interest, or collect or enforce payment of tax, penalty or interest in respect of such case under the said

Act. Sub-section (8) of Section 7 prescribes that the Bureau shall have, for carrying out the purposes of this Act, the same powers as are referred

to in Section 86.

11. The combined effect of Sub-sections (3), (4) and (6) is that the Bureau may investigate or hold enquiry into cases of alleged or suspected

evasion of tax as well as malpractices connected therewith and after completion of such investigation or enquiry it should send a report in respect

thereof to the Commissioner. The Commissioner on receipt of a report under Sub-section (3) require the Bureau to transfer to him any accounts,

registers or documents relating to the said report seized by the Bureau and on such transfer such accounts, registers or documents shall be retained

by him subject to the provisions of Section 66.

12. Section 65 of the Sales Tax Act lays down the procedure for production and inspection of accounts, registers and documents by any person

or dealer. Section 66 of the Act prescribes the power in respect of seizure of dealer's accounts and the manner in which such seizure of accounts

can be made. Section 67 of the Sales Tax Act prescribes the procedure for entry and search of place of business or any other place in respect of

any dealer, person, transporter or owner or lessee of warehouse or any other place and how the search of such places can be made. Section 68

prescribes certain provisions on restrictions on movement of goods specified in Part A of Schedule IV and notified goods. Section 69 of the Act

prescribes the procedure for interception, detention and search of road vehicles and search of warehouses etc. Section 70 lays down the

procedure for seizure of goods specified in Part A of Schedule IV and notified goods. Section 71 of the Act prescribes the penalty for transporting

goods into West Bengal in contravention of Section 68. Section 72 of the Sales Tax Act lays down the procedure for regulatory measures for

transport of goods through West Bengal. Section 73 of the Act lays down the measures to prevent evasion of tax on sales in West Bengal or to

ensure payment of tax on purchases in West Bengal. Sections 76 to 78 lays down procedure for penalty for concealment of sales and for furnishing

of incorrect particulars of sales and purchases, for unauthorised use of goods by any registered dealer or undertaking and for improper use of

declaration by a registered dealer.

13. Section 88 deals with offences and penalties and special provision for liability to prosecution and compounding of offences. Sub-section (12)

of Section 88 clearly lays down that, "No Court shall take cognizance of any offence under this Act or the Rules made thereunder except with the

previous sanction of the Commissioner, and no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate shall try such offence.

14. A reading of the aforesaid Sections and Sub-sections clearly establish that the Bureau may enquire or investigate into the offence or offences

under the Sales Tax Act for evasion of tax or malpractices connected therewith but, the Bureau has no power to investigate into an offence which

falls solely within the ambit of the IPC. After registration of FIR in a police station the investigation or enquiry may be conducted by the police

officers only according to the provisions of the Code or according to the provisions of other Police Acts and Police Regulation Book. In such

matters, the officers of the Bureau or authorities under the Sales Tax Act, 1994 have no power of investigation in respect of such alleged or

suspected offence/offences under the IPC. Elements of offence or offences under the IPC are totally different in respect of nature of alleged

offence under the provisions of the Sales Tax Act. After registration of FIR only the police officers can exercise power of investigation and

authority as well as jurisdiction under the provisions of the Code and the police officers have full power to proceed with the matter of investigation

in accordance with different provisions of the Code. After lodging of FIR, the Bureau or officers attached to Bureau, or the authorities under the

Sales Tax Act have no power of investigation or enquiry in respect of offence/offences under the IPC. The Bureau can investigate only in respect

of evasion of tax, assessment, realisation, imposition and recovery of penalty as well as matters concerning malpractices connected therewith.

15. The officers attached to the Bureau are subordinate officers and such officers are not recognised as officers of regular police wing having

power of enquiry or investigation under the Code. Bureau is a creature of statute and it must discharge its duty within the four-corners of the statute

and it cannot discharge any function which was not authorised to it under the provisions of the Sales Tax Act. Section 7 of the Sales Tax Act has

specified how the composition of the Bureau can be made and no person other than the persons specified in Sub-section (2) of Section 7 can

claim to be a member or part of the Bureau. Any person other than those appointed u/s 3(1) of the Sales Tax Act, 1994 can be attached to

Bureau but they can simply assist the Bureau in its functions but such persons do not become integral part of the Bureau. They are merely

subordinate staffs to assist the Bureau and they cannot independently exercise the powers enjoyed by the Bureau.

16. At some places the police officers attached to the Bureau have been described or mentioned as "police" within the Bureau. The said term is

confusing and use of the words "police" or "police wing" within the Bureau cannot be construed as regular police officers having jurisdiction and

power of investigation and enquiry as provided in the Code. Such police officers are merely subordinate officers and they do not form part of the

Bureau.

17. The staffs of Bureau can conduct any investigation or enquiry to prevent or detect evasion of tax or any malpractices connected therewith. But

such investigation has to be conducted in accordance with the provisions of the 1994 Act. The essential requirements of different offences and

penalties prescribed in Section 88 of the Sales Tax Act, 1994 are completely different from essential elements of offences under Sections

409/420/468/471 of the IPC. The police officers attached to the Bureau being subordinate staffs ceases to be members of the police exercising

different powers of enquiry and investigation under the provisions of the Code. Section 88(12) of the Sales Tax Act, 1994 clearly lays down that

no Court shall take cognizance of any offence under this Act or the rules made thereunder except with the previous sanction of the Commissioner.

It makes clear that the Bureau of Investigation cannot lodge any complaint before a Magistrate without obtaining prior sanction from the

Commissioner. It succinctly reveal that the Commissioner can accord sanction for initiation of proceeding before the Court of Magistrate only in

relation of offences and penalties under the Sales Tax Act, 1994. The Commissioner has no power to accord sanction for prosecution in respect of

alleged offence in the FIR under Sections 409/420/468/471 of the IPC. In the instant matter the sanction for prosecution against the petitioners

was defective, and in fact, there was no sanction by the Commissioner for initiation of proceeding against these petitioners. The sanction accorded

by the Commissioner is lying in the case diary. It reveals that the Commissioner, Commercial Taxes, West Bengal vide memo No. 13587 CT 9P-

18/2006 dated 17.8.06 accorded sanction for initiation of proceeding against (i) Kamal Chandra Dey, (ii) Chandan Rudra and (iii) Shyamlal

Agarwal. In the chargesheet submitted by the Bureau the said sanction was quoted. The aforesaid sanction is totally silent in respect of these

petitioners and, it is clear that, the Commissioner did not accord any sanction for prosecution or for lodging complaint against these petitioners.

Accordingly, initiation of the proceeding against these petitioners was wholly bad.

18. Mr. Goswami pointed out that a police officer described as Deputy Superintendent of Police, Bureau of Investigation directed the O.C.,

Bijpore P.S. that the investigation would be conducted by the Bureau. I fail to understand how an officer attached to the Bureau in the Commercial

Tax Directorate as a subordinate staff can be designated as Deputy Superintendent of Police, Bureau of Investigation. Such designation cannot

confer any extra power or authority to such officer which has not been prescribed in the provisions of the Act of 1994. An officer describing

himself as Deputy Superintendent of Police, Bureau of Investigation cannot direct the Officer-in-Charge of a police station to the effect that the

investigation would be made by the Bureau of Investigation. The Deputy Superintendent of Police, Bureau of Investigation cannot exercise powers

u/s 36 of the Code. If the Deputy Superintendent of Police of the district of North 24-Parganas directed in the matter of investigation, it would

have been lawful as under the provisions of Section 36 of the Code such Deputy Superintendent of Police of the district of North 24-Parganas

would have been an officer superior in rank to Officer-in-Charge of Bijpore Police Station. The FIR was registered at Bijpore P.S. with the

allegation of commission of offence u/s 409/420/468/471/120B of IPC along with Sections 88(4)(a)/88(6)/88(7) of the Sales Tax Act, 1994.

After registration of such FIR wherein specific averments of commission of offence under different Sections of the IPC was mentioned, the Bureau

could not have conducted investigation over such incident under the garb of making investigation into alleged offence u/s 88(4)(a)/88(6)/88(7) of

the Sales Tax Act. After registration of FIR at Bijpore P.S. with specific allegation of commission of several serious offences under the IPC only

the police officers who have the powers of investigation under the provisions of the Code would have proceeded with the investigation into such

FIR.

19. The provisions of Section 4(2) of the Code cannot be used in this case in the matter of investigation. It is the settled principle of law if there is

special statute the investigation may be made according to the provisions of such special statute concerning offence as described in such statute.

The combined reading of Section 4(2) and Section 5 of the Code indicate that all offences, whether under the IPC or under any other law, have to

be investigated, enquired into, tried or otherwise dealt with according to the provisions of the Code, unless there is clear enactment relating the

manner or place of investigating, enquiring into, trying or otherwise dealing with such offences in which case such an enactment will prevail over the

Code. It is well-known that when no special procedure is prescribed by the special law, the procedure in the Code should be followed. In the

Sales Tax Act, 1994 there is no special provision showing manner of investigating, enquiring into, trying or otherwise dealing with the offences

under the IPC. Accordingly, Section 4(2) of the Code cannot be invoked by the Bureau of Investigation or its officers to assume powers of

investigation under the Code which can be exercised by the regular police officers under the Code. In the FIR besides different Sub-sections of

Section 88 of Sales Tax Act it was disclosed that there was commission of several cognizable offences under the IPC. Had it been only FIR

relating to offence or offences u/s 88 and Sub-sections within that Section of the Sales Tax Act, the officers of Bureau would have exercised the

power of investigation, and that too, within the powers prescribed in the Sales Tax Act and officers of Bureau could not have invoked jurisdiction

and powers of regular police as prescribed in the Code.

20. The officers of the Bureau had no authority or jurisdiction to investigate into the Bijpur P.S. Case No. 95 dated 1.6.2005 in respect of the

alleged offences under the IPC. The Deputy Superintendent of Police attached to the Bureau cannot exercise powers of superior police officer of

police u/s 36 of the Code. In Section 36 of the Code the word "rank" was used and the word "rank" means hierarchy within the police

organisation. An offence not formally appointed to the police organisation cannot avail of power Section 36 of the Code. Section 156 of the Code

lays down power of police officer to investigate into cognizable cases. Officer-in- Charge of a police station can investigate into any cognizable

case himself without the order of the Magistrate or he may authorise any other police officer of the concerned police station to investigate into

cognizable cases. Sub-section (2) of Section 156 of the Code lays down that no proceeding of a police officer in any case shall at any stage be

called in question on the ground that the case was one which such officer was not empowered under this Section to investigate. This power u/s 156

of the Code is not available to the officers of the Bureau of Investigation under the Sales Tax Act, 1994. Officers attached to the Bureau are not

police officers in true sense and they cannot invoke powers of investigation u/s 156 of the Code. u/s 36 of the Code any police officer superior in

rank to Officer-in-Charge of police station may himself take up investigation into any cognizable case or may direct any police subordinate to him

to cause investigation. Deputy Superintendent of Police attached to the Bureau is not a superior police officer within the meaning of Section 36 of

the Code. He had no power to direct the Officer-in-Charge of the Bijpur P.S. that in the present case the investigation would be conducted by a

police officer attached to the Bureau. The officer of the Bureau who is not a superior police officer within the meaning of Section 36 of the Code

and who cannot invoke power u/s 156 of the Code cannot direct an officer subordinate to him to conduct investigation into cognizable cases

disclosing offences under the IPC.

21. Mr. Goswami, the learned Public Prosecutor placed reliance on *State of West Bengal v. Narayan K. Patodia* (supra) and unreported

judgment of this Court in Civil Rule No. 10627 (W) of 1975 (*Biswanath Jhunjunwala v. State of West Bengal*) in support of his contention that

the Bureau of Investigation has the power to investigate in this case and to submit chargesheet. The views of the learned Public Prosecutor are not

acceptable. The decision in *Biswanath Jhunjunwala v. State of West Bengal* (supra) is not applicable in the facts and circumstances of the present

case. In that decision this Court only held that appointment of subordinate post in the Bureau with the concurrence of the government is valid. In

that decision it was not laid down by this Court that the police personnel attached to Bureau enjoy the same power of police officers in the matter

of investigation under the Code.

22. In *State of West Bengal v. Narayan K. Patodia* (supra) the Supreme Court laid down the law completely on a different context which rather

goes against the submission of Mr. Goswami. In *Narayan K. Patodia*, the complaint was presented by the Assistant Commissioner of Commercial

Taxes to the Deputy Superintendent of Police attached to the Bureau formed under the Sales Tax Act. The Deputy Superintendent, in his turn,

forwarded the complaint to the Officer-in-Charge of the Hare Street P.S., Calcutta with a request to start a case u/s 403/409/465/468/471/419/420/120B of the IPC read with Section 88(6) and (7) of the Sales Tax Act, 1994 treating the complaint as FIR.

Accordingly, the police case was registered by the Hare Street P.S. and investigation also started. The accused persons moved the High Court in a

revision and the High Court quashed the FIR, and thereafter, the State of West Bengal preferred appeal before the Hon"ble Supreme Court. The

Hon"ble Supreme Court observed that, ""It is open to the Bureau to get the assistance of any other legally constituted investigating agency for

effectively enquiring 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. If the view of the learned Single Judge gets approval it would lead to starting 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 not any special police force not even the Central Bureau of Investigation can be authorised to

conduct investigation.... 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 investigation by the police.... 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."" In the instant

matter the FIR was registered not only under different Sub-sections of Section 88 of the Sales Tax Act but also u/s 409/468/471/420/120B of the

IPC. In a case of such serious alleged offence the efficacious investigation can be conducted by the police investigating agency only, and not by the

Bureau of Investigation as the Bureau has power to conduct investigation into alleged offence u/s 88 of the Sales Tax Act and other offence under

the Sales Tax Act itself and Bureau has no power to investigate in respect of serious offences under the IPC.

23. In Roy V.D. v. State of Kerala (supra) the case was under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985. It

was found that the arrest and search was made by an officer who was not empowered or authorised to conduct search and to arrest the accused

and there was violation of provisions of Sections 41 and 42 of the said Act. It was held by the Supreme" Court that, violation of Sections 41 and

42 being per se illegal would vitiate the trial and in such a case powers u/s 482 of the Code can be invoked to quash the proceeding. Though the

principle laid down in this reported decision is not concerning the provisions of Sales Tax Act, the basic law laid down there is squarely applicable

in the present matter. In the present case different serious Sections of the IPC were mentioned in the FIR and the officers of Bureau of

Investigation under the Sales Tax Act had no power or authority to investigate into such alleged offences.

24. In Commissioner of Commercial Taxes, West Bengal v. West Bengal Taxes and Tribunal (supra) a Division Bench of this Court observed that

Sub-section (2) of Section 6 ousts the jurisdiction of the Tribunal to deal with any proceeding triable by any Court or Courts in accordance with

the provisions of the Code. It was further held in that decision that jurisdiction of the Tribunal must be exercised in terms of the notification issued

by the State. Such notification can be issued only in respect of matters relating to levy, assessment, collection and enforcement of any tax under any

specified State Act and matters connected therewith or incidental thereto. Though in the reported decision this Court considered the jurisdiction of

Tribunal, the principle of law is to some extent applicable in the present case also. The Bureau of Investigation must exercise its jurisdiction within

the four-corners of the powers enjoyed by it under the Sales Tax Act and Bureau cannot investigate into serious offences under the IPC which was

reflected in the FIR and Bureau could not have conducted investigation in respect of serious offences under the IPC as Bureau has no authority to

investigate into such offence.

25. It appears that in this case N.J. Roy, the Commercial Tax Officer, Barrackpore charge forwarded the complaint to the O.C., Bijpur P.S. for

starting a case. The Special I.G. and Deputy General of Police and Joint Commissioner of Police, Bureau of Investigation made endorsement over

the FIR that Sri A.C. Das, Inspector of Police, Bureau of Investigation will investigate the case. Such a direction was without jurisdiction as the

Special I.G. and Deputy Inspector General of Police attached to Bureau of Investigation was not an officer superior in rank of the Officer-in-

Charge of the concerned police station and the Deputy Inspector General of Police of Bureau could not have exercised power u/s 36 of the Code.

I do admit that investigation was necessary when there was such serious allegations and proper and efficacious investigation can be done by the

regular police investigating agency. There is no ground for quashing the FIR as it discloses cognizable offence and investigation should be

conducted to reveal the truth. If the Bureau decides to confine investigation into alleged or suspected evasion of tax as well as malpractices

connected therewith it may conduct investigation exercising powers and procedures as laid down in Sales Tax Act, 1994.

26. The other decisions cited by Mr. Bagchi do not require consideration as I am of opinion that the stage is not ripe to consider whether prima

facie elements of alleged offence against the petitioners were established or not. Such decisions were concerning elements of offence under

Sections 405, 406 and 420 of the IPC and what are the subject-matter of consideration during the stage under Sections 227 and 228 of the Code.

The petitioners were not named in the FIR and against the petitioners chargesheet was submitted for alleged offence u/s 120B of the IPC. Against

the petitioners chargesheet u/s 88 or under any Sub-section of Section 88 of the Sales Tax Act was not submitted. I have also indicated earlier that

the Commissioner did not accord sanction against the petitioners for prosecuting them. The Bureau could not have submitted chargesheet against

the petitioners u/s 120B of IPC as Bureau had no authority to conduct investigation against the petitioners in respect of the offence u/s 120B of

IPC when elements of offence under different Sub-sections of Section 88 of the Sales Tax Act were not established against the petitioners and

there was no investigation u/s 88 of the Sales Tax Act against the petitioners. Submission of chargesheet against the petitioners was accordingly

bad in law and the learned Magistrate was not right in taking cognizance of offence against the petitioners. The order of the learned Magistrate

taking cognizance of offence against the petitioners being bad in law is set aside. The order of the learned Magistrate dated 13.10.06 issuing

warrant of arrest against the petitioners is accordingly not legal and proper and the said order is also set aside.

27. The FIR discloses elements of cognizable offence and being so the FIR cannot be quashed. This Court in-this revision reserves its opinion in

the matter of submission of chargesheet against other accused persons against whom the Commissioner accorded sanction and against them

chargesheet was submitted under different Sub-sections of Section 88 of the Sales Tax Act along with different Sections of the IPC. Though this

Court earlier indicated that the Bureau had no authority to investigate in respect of such serious offences under the IPC but, the Bureau had the

authority to investigate in respect of alleged offence described in different Sub-sections of Section 88 of the Sales Tax Act. This Court also

reserves its opinion in respect of scope of further investigation by the Bureau or fresh efficacious investigation by regular police authorities to reveal

the truth and brought to light the manner in which alleged offence was committed or who was or were responsible behind such incident.

In view of the discussion made above, the revisional application is partly allowed and disposed of in the light of the observations made above.

28. Criminal Section is directed to forward a copy of this order to the learned Additional District and Sessions Judge, 3rd Court, Barasat and also

a copy to the learned ACJM, Barrackpore for information and necessary action.