



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

WRIT PETITION No. 40019 of 2024

KISHORE WADHWANI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Abhinav Malhotra, learned counsel for the petitioner.

Shri Amit Rawal, learned Government Advocate for respondent No.1 / State.

Shri Prasanna Prasad, learned counsel for respondents No.2 to 4.

Heard on : 25.02.2025

Delivered on : 13.03.2025

O R D E R

Per : Justice Vivek Rusia

With the consent of the parties, finally heard.

The petitioner has filed the present petition under Article 226 of the Constitution of India seeking quashment of FIR No.88/2021 dated 10.02.2021 registered at Police Station – Tukoganj, District Indore for the commission of offences punishable under Sections 420, 467, 468, 471 & 120-B of the Indian Penal Code. The petitioner is also challenging the constitutional validity of Section 132(6) of the Central Goods & Services Tax Act, 2017 (in short 'CGST Act'). Because of a challenge to the provision of the CGST Act, this writ petition is listed before the Division Bench.

FACTS OF THE CASE

02. Respondents No.3, 4 & 5 are the officials of the GST



Department working under the Ministry of Finance.

2.1. The petitioner is a proprietor of M/s Elora Tobacco Company Limited (in short 'ETCL'). ETCL is a company registered under the provisions of the Companies Act, of 1956 and engaged in the manufacturing of cigarettes pan masala etc.

2.2. The DGGI, Bhopal, Zonal Unit through Indore initiated an investigation against ETCL in June 2020. The initial investigation revealed that ETCL was involved in clandestine manufacturing and clearance/supply of cigarettes and evaded the duty/tax of rupees 2000 crores from the period July 2017 to June, 2020. Kishore Wadhvani Syndicate through Associates Managing Firm found involved in the evasion of 420 crores of GST. He was arrested on 15.06.2020 under Section 69 of the CGST Act for committing the offence specified under Section 132(1)(a).

2.3 The petitioner approached this Court by way of an application under Section 439 of the Code of Criminal Procedure, 1973 (M.Cr.C. No.26653 of 2020). Vide order dated 13.08.2020, he was granted bail in Crime No.23/2020 registered under Section 132(1)(a)(i) of the CGST Act & Section 409, 467, 471, 120-B of the IPC at the instance of Department of Revenue Intelligence and Directorate General of Goods and Services Tax Intelligence Central Excise Office, District – Indore.

2.4. Thereafter, two separate show-cause notices were issued in respect of evasion of central excise duty and GST by the Additional Director, DGGI Bhopal Unit for demand of GST amounting to Rs.1946.23 crore and another show-cause dated 03.08.2022 was issued for the demand of central excise duty amounting to Rs.76.68 crore.

2.5. During the initial stage of the investigation, it was also revealed that vehicles used for clearance or removal of pan masala and tobacco



had Dabang Dunia Press stickers and drivers of the vehicles were carrying media identity cards of Dabang Dunia Press. Kishore Wadhvani is also a Director of M/s Dabang Dunia Publication Private Limited (in short: DDPL).

2.6. The GST authorities collected 904 invoices in respect of the fraudulent advertisements which said to have been published in Dainik Dabang Dunia and when all were matched with the soft copy of Dabang Dunia Newspaper no such advertisement was found in the soft copy published during the period April, 2016 to January, 2020. The petitioner was found involved in such acts of fraud, forgery, cheating and conspiracy in association with his nephew Mr. Nitish Wadhvani. The GST official has handed over all these materials with a written complaint to the Police Station – Tukoganj. On the basis of such information and material, FIR No.88/2021 was registered on 10.02.2021 under Section 420, 467, 468, 471 & 120-B of the IPC against the petitioner and Nitesh Wadhvani.

2.7. As per the contents of the FIR, Kishore Wadhvani and Nitesh Wadhvani in order to take the Government advertisements and other benefits illegally shown inflated the sale of newspapers up to 60000 to 100000 per day in the records, whereas the actual daily circulation of the said newspaper was 5000 – 8000. The unaccounted money earned from the other businesses has been shown in the audit and accounts of DDPL by forging the documents. The fake and forged tax invoices were generated without being published large number of advertisements in the daily newspapers. The FIR further reveals that these two accused are also involved in money laundering by publishing this newspaper. It is important to mention here that still the investigation is going on and none of the accused has been arrested so far by the police.



2.8. Only Kishore Wadhvani has filed the present petition for quashment of the FIR as well as challenging the validity of Section 132(6) of the CGST Act.

03. Shri Abhinav Malhotra, learned counsel appearing for the petitioner submits that when Crime No.23/2020 has already been registered under Section 132(1)(a)(i) of the CGST Act r/w Sections 409, 467, 471, 120-B of the IPC against the petitioner by the GST authority, then this second FIR has wrongly been registered against him with intention to harm them because, for the same offence, registration of two FIRs is not permissible. It is further submitted that even till today in the first Crime No.23/2020, a charge sheet has not been filed before the competent Court, therefore, registration of this FIR is nothing but a misuse of the process of law. In similar facts and circumstances, this Court in the case of ***Deepak Singhal v/s Union of India & Others reported in 2024 SCC OnLine MP 5580*** has quashed the FIR. The said order has been upheld by the Apex Court. The power of this Court under Article 226 of the Constitution of India is akin to the power under Section 482 of the Cr.P.C., therefore, a writ petition seeking quashment of FIR is maintainable.

4.1. Shri Malhotra, learned counsel for the petitioner placed reliance upon the judgment delivered in the case of ***T.T. Antony v/s The State of Kerala & Others reported in (2001) 6 SCC 181***, in which the Apex Court has held that *there can be no second FIR and no investigation on receipt of every subsequent information in respect of the same cognizable offence.*

4.2. Reliance has also been placed upon a judgment delivered in the case of ***Amitbhai Anilchandra Shaj v/s Central Bureau of Investigation & Another reported in (2013) 4 SCC 348***, in which the



Apex Court held that a *second FIR is permissible when different offences committed in same transaction or offence arising as a consequence of prior offence.*

4.3. Shri Malhotra, learned counsel further placed reliance upon a judgment delivered in the case of ***Krishna Lal Chawla & Others v/s The State of Uttar Pradesh & Another*** reported in (2021) 5 SCC 435, in which the Apex Court had held that *second complaint is not only impermissible, but would be violative of Article 21 of the Constitution of India. The Court has the power not merely to decide on acquittal or conviction of the accused person after the trial, but also the duty to nip frivolous litigations in the bud even before they reach the stage of trial by discharging the accused in fit cases.*

4.4. On a similar issue, reliance has also been placed upon a judgment delivered in the case of ***Tarak Dash Mukharjee & Others v/s The State of Uttar Pradesh & Others*** reported in 2022 SCC OnLine SC 2121 = 2022 LiveLaw (SC) 731, in which the Apex Court held that registration of such multiple FIR is nothing, but abuse of the process of law.

4.5. At last, Shri Malhotra, learned counsel placed reliance upon a judgment delivered in the case of ***Kapil Agrawal & Others v/s Sanjay Sharma & Others*** reported in (2021) 5 SCC 524.

05. Learned counsel for the petitioner has not argued as to why Section 132(6) of the CGST Act is liable to be declared unconstitutional. The aforementioned provision only puts an embargo on the registration of complaints without permission from the Commissioner. This provision is in favour of the person protecting him from registration of a false complaint without approval from the Commissioner CGST, therefore, in our considered opinion, this



provision cannot be held *ultra vires*.

06. Shri Amit Rawal, a learned Government Advocate appearing on behalf of the respondent / State objects that during the investigation, the Investigating Officer has collected 904 tax invoices. The statements of some of the people have been recorded in which they denied their signature on the receipts and that they did not make huge payments for advertisement in the Dabang Dunia Newspaper. In this case, the police are only investigating concerning forgery and cheating on the premises of Dabang Dunia Press by these two accused persons, not under the GST. The Investigating Officer has recorded the statement of Admin. Gurukul Vidyalaya, Indore has categorically stated that no such advertisement was given to Dabang Dunia Press for publication in the newspaper. The invoice in the name of Gurukul Vidyalaya to the tune of Rs.2,40,00,000/- is fake. The investigation is going on by the police, the allegations are serious in nature, hence at this Writ Petition filed in the nature of M.Cr.C. may be dismissed.

07. Shri Prasanna Prasad, learned counsel appearing for the respondent / GST Department contended that the writ petition is liable to be dismissed. The present FIR has nothing to do with the crime registered under the provisions of the CGST Act. During the investigation, certain fake invoices were collected by the GST authorities which were simply brought to the knowledge of the local police station. It is further submitted by the learned counsel that although these forged and fake documents were used by this petitioner to evade the GST. The office of the Commissioner, CGST & Central Excise Commissionerate, Indore has concluded the hearing in the show-cause notices issued to Kishore Wadhvani and others for evasion of tax of Rs.1,51,64,38,832/- and cess of Rs.17,94,58,34,178/- for the



Financial Year – 2017 – 18 to 2020 – 21. The scope of both the FIRs, is altogether different, hence, the writ petition is liable to be dismissed.

APPRECIATION & CONCLUSION

08. So far as the constitutional validity of Section 132(6) of the CGST is concerned the same has nothing to do with the registration of the present FIR against the petitioner and another, rather Section 132(6) gives protection to any person from prosecution for an offence under this section without previous sanction by the higher authorities like Commissioner. There is absolutely nothing in the Writ Petition to suggest that section 132(6) is being misused and hence liable to be declared unconstitutional.

09. In the present case, the petitioner is not being prosecuted for any offence under the CGST Act for which the Enforcement Case Information Report (ECIR) was registered, and the investigation is ongoing on. The present FIR is registered under various sections of I.P.C. as the present petitioner has fabricated a large number of tax invoices to show on record vide circulation of Dabang Duniya. The GST evasion of Rs.500 crore is said to have been adjusted in the sale of Daband Duniya by showing the artificial sale of one lakh copies per day, whereas the actual sale was five to eight thousand. The GST Authorities also found various fake invoices to transform black money into white, therefore, this case is triable under Sections 420, 467, 468, 471 & 120-B of the IPC and not under the provisions of the CGST Act. The only link is that the GST amount which the petitioner did not pay to the Government was tried to make white by his sister concern Daband Dunia Publication Private Limited owned by the present petitioner. We do not find any ground to interfere with the investigation which is going on against the present petitioner.



10. We called the OIC to enquire as to why the investigation has not been completed to date. The OIC, submitted that a large number of forged invoices have been found related to so-called private persons and companies who gave advertisements to the petitioner's news paper are worth crores of rupees and it is being very difficult to contact each of them as most of them are fake. However, whatever the case may be, let the investigation be completed within two months and the final report be prepared positively.

11. In view of the aforesaid observations, the Writ Petition stands dismissed. No order as to costs.

(VIVEK RUSIA)
J U D G E

(GAJENDRA SINGH)
J U D G E

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