

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Civil Writ Jurisdiction)

W.P.(T) No. 354 of 2024

Shiva Kumar Deora, son of Late Nand Kishore Deora, aged about 51 years, having its place of residence situated at Swarnamani Complex, Zarina Tower, Flat- 2ZB, 33, Canal Road, East, P.O. and P.S. – Ghosh Bagan, District – Kolkata, PIN Code – 700054, West Bengal.**Petitioner**

Versus

1. Union of India, through the Secretary, Ministry of Finance, Department of Revenue, having its office situated at Central Secretariat, North Block, P.O. & P.S. North Avenue, New Delhi – 110001.

2. Senior Intelligence Officer, Director General of GST Intelligence, Regional Unit, Jamshedpur, having its office situated at 3rd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, Sakchi, P.O. and P.S. – Sakchi, Town – Jamshedpur, District – East Singhbhum, Pin Code – 831001, Jharkhand.

3. Joint Director, Director General of GST Intelligence, Regional Unit, Jamshedpur, having its office situated at 3rd Floor, Shaurya Trade Centre, 159, Dhalbhum Road, P.O. and P.S. – Sakchi, Town- Jamshedpur, District – East Singhbhum, Pin Code – 831001, Jharkhand.

...**Respondents**

**CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE NAVNEET KUMAR**

For the Petitioner : Mr. Salona Mittal, Advocate

For the Respondents : Mr. P.A.S. Pati, Sr. SC (DGGI)

13th May 2024

Per, Shree Chandrashekhar, A.C.J.

To recapitulate, the petitioner was interrogated till past midnight and permitted to go home only after his statement was recorded to the satisfaction of the GST Officer.

2. The Constitution of India recognizes basic human rights of every individual. In “*Kharak Singh v. State of U.P.*” AIR 1963 SC 1295 the Hon’ble Supreme Court held that periodic night visits by the police at the home of the accused shall be an invasion to his right to privacy under Article 21 of the Constitution. In “*K.S. Puttaswamy (Privacy-9J.) v. Union of India*” (2017) 10 SCC 1 the Hon’ble Supreme Court held that right to

privacy is implicit in the guarantee under Article 21 of the Constitution of India.

3. To speak or not to speak has been a dilemma for a person called for giving his statement before the Customs Officer, Central Sales Tax Officer, Police Officer etc. The implications are serious. Clause 3 of Article 20 of the Constitution of India provides that no person accused of any offence shall be compelled to be a witness against himself. The Constitutional guarantee against self-incrimination is however not a guarantee that the person exercising right to silence cannot be prosecuted in a Court. Under the Central Goods And Services Tax Act, 2017 (in short, "GST"), a person called for giving evidence or to produce a document or any other thing in any inquiry is under a duty to speak truth. Sub-section (2) to section 70 of the GST provides that every inquiry referred to in sub-section (1) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code. The consequence is therefore that any person whose attendance is considered by the proper office necessary either to give evidence or to produce a document or any other thing in any inquiry under the GST if makes any untrue statement shall be liable to be prosecuted as indicated under sub-section (2).

4. Mr. Salona Mittal, the learned counsel for the petitioner submits that section 50 of the Prevention of Money-Laundering Act, 2002 (in short, "PMLA") which is *pari materia* to section 70 of the GST was interpreted by the Hon'ble Supreme Court in "*Vijay Madanlal Choudhary v. Union of India*" 2022 SCC OnLine SC 929 wherein the Hon'ble Supreme Court held that the officers under the PMLA are not the police officers and they do not exercise the powers under the Code of Criminal Procedure. Having regard to the object and purpose behind making special provisions under the PMLA, the Hon'ble Supreme Court held that at the stage of section 50 the person so summoned is not an accused and therefore the statement given by him shall not amount to confession and thus hit by the Constitutional protection under clause 3 to Article 20. The learned counsel for the petitioner also referred to

a decision in “*P.V. Ramana Reddy v. Union of India*” 2020 SCC OnLine TS 472 wherein Telangana High Court held that the proper officer under the GST is not a police officer. We may also refer to a decision in Criminal Writ Petition (Stamp) No.15417 of 2023 titled “*Ram Kotumal Issrani v. Directorate of Enforcement*” wherein the Bombay High Court held as under:

“10. Perused the petition. It appears that the petitioner entered the Office of the ED, pursuant to the summons under Section 50 of the PMLA on 07.08.2023 at 11:00 a.m. It is not in dispute, that this was the 4th summons issued to the petitioner for recording of his statement. It is also not in dispute, that in addition to the petitioner, two more persons were summoned on the very same day i.e. on 07.08.2023. It appears that as is the practice, when a person enters the Office of the ED, his/her mobile phone is kept with the security and as such the petitioner’s phone was kept with the security. It appears that the statements of two persons who were summoned, were recorded prior to the recording of the petitioner and as such, the recording of the petitioner’s statement started at 10:30 p.m. It appears that the petitioner was taken to the investigation room at 10:00 p.m. on 07.08.2023, pursuant to which, recording of his statement started at 10:30 p.m. and at around 3:30 a.m, petitioner’s questioning was over i.e. recording of his statement, after which, the petitioner was arrested by the ED on 08.08.2023 at 5:30 a.m. It is not in dispute that the petitioner and the ED Officer left for the airport on 08.08.2023 at 7:00 a.m. from the office of the ED situated at Delhi; that the flight took-off at 10:00 a.m. on 08.08.2023; that the flight landed in Mumbai airport at 12:15 p.m. on 08.08.2023; and at 2:00 p.m., the petitioner and the ED Officer arrived at the Office of the ED in Mumbai. It is also not in dispute that at about 5:00 p.m., the petitioner was produced before the learned Special Judge, PMLA and the matter was taken up by the Court at around 5:15 p.m.

11. Having regard to the time-line and the facts, we are of the opinion that the time when the petitioner entered the Office of the ED, pursuant to summons under Section 50 of the PMLA, the petitioner was not kept in confinement, much less, detained. It is not in dispute that when Section 50 summons was issued, the petitioner was not an accused, inasmuch as, Section 50(2) of the PMLA clearly states that the Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have the power to summon “any person” whose attendance is considered necessary, whether to give evidence or to produce any records during the course of any investigation or proceeding under the Act. It is Section 19 of the PMLA which gives power to the Investigating Officer to arrest an individual against whom material is collected as contemplated under Section 2(1) (na), after following the process contemplated under Section 50 of the PMLA. Thus, the petitioner became an accused only when he was arrested under Section 19 of the PMLA, after the authority on the basis of material in his possession had reason to believe that the petitioner was guilty of the offence. Thus, when the petitioner came to the ED office under a summons under Section 50 of the PMLA, the petitioner was not an accused. Thus, if the said time-line is considered the petitioner was produced well within 24 hours of his arrest before the Special Court.

12. Even for the sake of argument, if we consider that the petitioner was detained from 07.08.2023 at 11:00 a.m., and was produced before the learned Special Judge at 5:00 p.m. on 08.08.2023, and exclude the period

of travel i.e. from 7:00 a.m. to 2:00 p.m. the petitioner was still produced before the learned Judge, well within 24 hours, as mandated in law.”

5. In our opinion, the proper officer under the GST should not be requiring or forcing or coercing a person so summoned to give statement after the office hours.

6. The GST Intelligence and Investigation Manual, 2023 lays down (i) elaborate procedure for interrogation and recording of statement (ii) preparation of interrogation (iii) principles of questioning (iv) questioning hostile persons (v) retraction (vi) judicial interpretations and (vii) precautions. Mr. Salona Mittal, the learned counsel for the petitioner submits that this is specifically provided under clause (iv) to paragraph no. 5.142 that statements should be recorded during office hours. However, taking a clue from the expression “exception” under clause (iv), the Commissioner (GST-Investigation) has taken a stand in the present proceeding that in cases where the persons may be arrested and there are chances of such persons absconding during inquiry such cases may also be treated as exceptional cases.

7. The learned counsel for the petitioner has also referred to the Frequently Asked Questions (FAQs) on Goods and Services Tax uploaded on the website of the Central Board of Indirect Taxes and Customs (2nd Edition) dated 31st March 2017 whereunder elaborate guidelines for (a) what are the guidelines for issue of summons and (b) what are the precautions to be observed while issuing summons are indicated. The related suggestions are as under:

“Q 30. What are the guidelines for issue of summons?

Ans. The Central Board of Excise and Customs (CBEC) in the Department of Revenue, Ministry of Finance has issued guidelines from time to time to ensure that summons Provisions are not misused in the field. Some of the important highlights of these guidelines are given below:

- i. summons are to be issued as a last resort where assesses are not co-operating and this section should not be used for the top management;
- ii. the language of the summons should not be harsh and legal which causes unnecessary mental stress and embarrassment to the receiver;
- iii. summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in

writing;

iv. where for operational reasons, it is not possible to obtain such prior written permission, oral/telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity;

v. in all cases, where summons are issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorized the issuance of summons;

vi. senior management officials such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue.

Q 31. What are the precautions to be observed while issuing summons?

Ans. The following precautions should generally be observed when summoning a person:-

(i) A summon should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.

(ii) Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.

(iii) Respect the time of appearance given in the summons. No person should be made to wait for long hours before his statement is recorded excepts when it has been decided very consciously as a matter of strategy.

(iv) Preferably, statements should be recorded during office hours; however, an exception could be made regarding time and place of recording statement having regard to the facts in the case.”

8. We may also refer to the Instruction No. 03/2022-23 (GST-Investigation) the relevant portions of which are extracted as under:

Instruction No. 03/2022-23 (GST-Investigation)

Subject: Guidelines on issuance of summons under section 70 of the Central Goods & Services Tax Act, 2017 -Reg.

It has been brought to the notice of the Board that in certain instances, summons under Section 70 of the Central Goods and Services Tax Act, 2017 ('the CGST Act') have been issued by the field formations to the top senior officials of the companies in a routine manner to call for material evidence/ documents. Besides, summons have also been issued to call for statutory records viz. GSTR-3B, GSTR-1 etc., which are available online in the GST portal.

2. As per Section 70 (1) of the CGST Act, summons can be issued by the proper officer to any person whose attendance is considered necessary either for giving evidence or producing a document or any other thing in an inquiry in the same manner, as provided in the case of a civil court under the provisions of Code of Civil Procedure, 1908 (5 of 1908). As per sub-section (2) of Section 70, securing such documentary and oral evidence under the said legal provision shall be deemed to be a "judicial proceedings" within the meaning of Section 193 and Section 228 of the Indian Penal Code (45 of 1860). While issuing of summons is one of the

instruments with the Department to get/obtain information or documents or statement from any person to find out the evasion of the tax etc., however, it needs to be ensured that exercise of such power is done judiciously and with due consideration. Officers are also advised to explore instances when instead of resorting to summons, a letter for requisition of information may suffice. Previously in respect of legacy laws, the Board has sensitized the officers regarding use of power of issuance of summons diligently. However, Board finds it necessary to issue fresh guidelines under CGST.

3. Accordingly, Board desires that the following guidelines must be followed in matters related to investigation under CGST:

(i) Power to issue summons are generally exercised by Superintendents, though higher officers may also issue summons. Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Deputy/ Assistant Commissioner with the reasons for issuance of summons to be recorded in writing.

(ii) Where for operational reasons it is not possible to obtain such prior written permission, oral/telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity.

(iii) In all cases, where summons are issued, the officer issuing summons should record in file about appearance/ non-appearance of the summoned person and place a copy of statement recorded in file.

(iv) Summons should normally indicate the name of the offender(s) against whom the case is being investigated unless revelation of the name of the offender is detrimental to the cause of investigation, so that the recipient of summons has prima-facie understanding as whether he has been summoned as an accused, co- accused or as witness.

(v) Issuance of summons may be avoided to call upon statutory documents which are digitally/ online available in the GST portal.

(vi) Senior management officials such as CMD/MD/CEO/ CFO/ similar officers of any company or a PSU should not generally be issued summons in the first instance. They should be summoned when there are clear indications in the investigation of their involvement in the decision making process which led to loss of revenue.

(vii) Attention is also invited to Board's Circular No. 122/41/2019-GST dated 5th November, 2019 which makes generation and quoting of Document Identification Number (DIN) mandatory on communication issued by officers of CBIC to tax payers and other concerned persons for the purpose of investigation. Format of summons has been prescribed under Board's Circular No. 128/47/2019-GST dated 23rd December, 2019.

(viii) The summoning officer must be present at the time and date for which summons is issued. In case of any exigency, the summoned person must be informed in advance in writing or orally.

(ix) All persons summoned are bound to appear before the officers concerned, the only exception being women who do not by tradition appear in public or privileged persons. The exemption available to these persons under Section 132 and 133 of CPC, may be kept in consideration while investigating the case.

(x) Issuance of repeated summons without ensuring service of the summons must be avoided. Sometimes it may so happen that summoned person does not join investigations even after being repeatedly summoned. In such cases, after giving reasonable opportunity, generally three summons at reasonable intervals, a complaint should be filed with the jurisdictional magistrate alleging that the accused has committed offence

under Sections 172 of Indian Penal Code (absconding to avoid service of summons or other proceedings) and/or 174 of Indian Penal Code (non-attendance in obedience to an order from public servant), as inquiry under Section 70 of CGST Act has been deemed to be a "judicial proceedings within the meaning of Section 193 and Section 228 of the Indian Penal Code. Before filing such complaints, it must be ensured that summons have adequately been served upon the intended person in accordance with Section 169 of the CGST Act. However, this does not bar to issue further summons to the said person under Section 70 of the Act.

4. These instructions may be brought to the notice of all the field offices/formations under your charge for strict compliance. Non-observance of the instructions will be viewed seriously. Difficulties, if any, in implementation of the aforesaid instructions may be brought to the notice of the Board.

5. Receipt of this Instruction may please be acknowledged. Hindi version will follow.

Commissioner (GST-Inv.), CBIC

9. Having regard to the above-referred guidelines and institutions, the present proceeding is closed with this direction that the GST officers should follow the guidelines and instructions issued by the Commissioner (GST-Investigation) and the CBIC while summoning a person by exercising the powers under section 70 of the GST.

10. We appreciate Mr. Salona Mittal, the learned counsel for the petitioner and Mr. P.A.S. Pati, the learned counsel for the respondents for their commendable assistance to the Court.

(Shree Chandrashekhar, A.C.J.)

(Navneet Kumar, J.)

R.K./Nishant
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