

State Of West Bengal vs Narayan K.Patodia on 6 April, 2000

Equivalent citations: AIR 2000 SUPREME COURT 1405, 2000 (4) SCC 447, 2000 AIR SCW 1136, 2000 (5) SRJ 149, 2000 (4) LRI 1323, 2000 (3) SCALE 94, 2000 KERLJ(TAX) 528, 2000 SCC(CRI) 812, 2000 CALCRILR 319, (2000) 4 JT 269 (SC), 2000 (4) JT 269, (1999) 25 ALLCRIR 1609, (1999) 39 ALLCRIC 385, (2000) 120 STC 370, (2000) 2 CRIMES 95, (2000) SC CR R 566, (2000) 2 EASTCRIC 572, (2000) 2 RECCRIR 516, (2000) 2 CURCRIR 50, (2001) 1 KANTLJ(TRIB) 199, (2000) 3 SUPREME 141, (2000) 3 SCALE 94, (2000) 40 ALLCRIC 936, (2000) 2 CHANDCRIC 104, (2000) 3 ALLCRILR 667

Bench: K.T. Thomas, D.P. Mohapatra

PETITIONER:
STATE OF WEST BENGAL

Vs.

RESPONDENT:
NARAYAN K.PATODIA

DATE OF JUDGMENT: 06/04/2000

BENCH:
K.T. THOMAS & D.P. Mohapatra

JUDGMENT:

of 1999 Thomas J.

L.....T.....T.....T.....T.....T.....T.....T.....T..J Leave granted.

The High Court of Calcutta has quashed the FIR registered in a Police Station mainly on the ground that the person who forwarded the complaint to the police had no authority to do so. The State of West Bengal has, therefore, filed this Appeal by Special Leave. The FIR was registered for certain offences under the Indian penal Code and West Bengal Sales Tax Act 1994 (for short the `Sales Tax Act'). The complaint which was made the basis for such an FIR contained the allegations that respondent submitted two applications on 21.1.1998 before the Assistant Commissioner of Commercial Taxes, Burdwan impersonating himself as one Mohan Agrawal (478 Katwa Road, Hari Narainpur, Burdwan) who is a fictitious person; respondent signed the applications in the false name of the said Agrawal and described him as a businessman dealing in spices under the trade name "Parbati Traders." The applications were made in the Proforma (Form-A) prescribed under

the West Bengal Sales Tax (Registration and Turnover) Rules 1957, and they were appended with documents all of which were forged. On the basis of the said fabricated documents respondent obtained registration under the Sales Tax Act which entitled him to make purchases at concessional rate of sales tax, and also to receive permits for importing spices from outside the State. On the strength of the registration so obtained the respondent applied for the issue of five permits to import spices the sales tax of which would have been 2.73 lacs. In those applications again the respondent personated himself to be the aforesaid fictitious Mohan Agrawal.

When the Bureau of Investigation formed by the Government of West Bengal under the Sales Tax Act, got secret information about the fraud played by the respondent they conducted some discreet investigation and then it was revealed to them that the respondent had committed the said forgery and impersonation to defraud the government of huge sales tax amount. It was further revealed that respondent had wangled another registration on 1.12.1977 in the fictitious name of Surendra Luhariwala who purportedly did business as "Luhariwala Trading Company 33/1, N.S. Road Calcutta." By using the said registration respondent carried on business and defrauded the Government of sales tax to the tune of Rupees thirty-two lakhs.

The said complaint was presented by the Assistant Commissioner of Commercial Taxes to the Deputy Superintendent of Police who was then attached to the Bureau of Investigation formed under the Sales Tax Act. The said Deputy Superintendent, in turn, forwarded the complaint to the officer in charge of Hare Street Police Station, Calcutta with a request to "start a case under Sections 403, 409, 465, 468, 471, 419, 420 read with 120B of Indian Penal Code and Section 88(1)(b)(6) and (7) of the Sales Tax Act, 1994 treating the complaint as FIR."

Pursuant thereto the Station House Officer of Hare Street Police Station registered the FIR. Respondent, getting scent of the same moved the City Civil Court, Calcutta for anticipatory bail but that was rejected on 11.6.1998. He then moved the High Court invoking its revisional and inherent jurisdiction for quashing the FIR and on such motion being made further investigation was stayed by the High Court as per order dated 17.6.1998. Finally the FIR was quashed as per the impugned judgment delivered by learned single judge of the Calcutta High Court on 19.11.1998.

Learned single judge advanced the following reasoning, inter alia, for quashing the FIR:

"Under Section 7 of the West Bengal Sales Tax Act, the Bureau of Investigation constituted under the said Act is the only competent authority to investigate in respect of any offence under the said Act which means no other authority can carry out investigation or hold inquiry into any case of alleged or suspected evasion of tax as well as malpractices connected therewith. It also appears that under the provisions of Section 7(3) no complaint is required to be presented before any authority as has been done in the instant case but only a report is required to be submitted before the Commissioner. Section 7(3) of the West Bengal Sales Tax Act, 1994 clearly says 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. In the instant case, as it appears, the Bureau of Investigation on its own accord and information carried out investigation but instead of sending a report to the Commissioner on the basis of the said investigation, sent a complaint before the Deputy Superintendent of Police, Bureau of Investigation "against clear provisions of law"

and the said Deputy Superintendent of Police Forwarded the same to Hare Street Police Station....."

Further again the single judge observed thus "The person who was making the FIR by forwarding a petition of complaint based on investigation already done had no authority to direct the officer-in-charge, that the case must be again investigated by his own subordinate officer Sri Amitava Chakravorty and that too under the different sections of the IPC read with Section 88(i)(6) & (7) of the West Bengal Sales Tax Act, 1994. Such a procedure is unknown either in the Criminal Procedure Code or in the West Bengal Sales Tax Act, 1994."

The High Court expressed the opinion that under the Sales Tax Act only a Bureau of Investigation constituted by the State Government can conduct the investigation or hold inquiry into any case of alleged or suspected evasion of tax as well as malpractices connected therewith, and hence no police officer can investigate into the offences under the Indian Penal Code or any other Act read with offences committed under Section 88 of the Sales Tax Act.

It is apparent that learned single judge has not been appraised of the danger involved in adopting such a farfetched legal proposition. Assume that a person who committed any offence under section 88 of the Sales Tax Act has also committed some other serious offence in connection with perpetration of the former offence what would be position of the police if the view adopted by the learned single judge is to be followed. Is it that police force has merely to look askance at such persons helplessly on the mere ground that an offence under Sales Tax Act is also involved and hence the powers of the police are unenforceable in that condition?

Learned single judge of the High Court has relied on Section 4 of the Code of Criminal Procedure (for short the 'Code'). To find further support to his view that when a special law is provided for dealing with offences thereunder such offence can be dealt with only in accordance with the provisions of such special law.

To understand the scope of the said legal trammel it is advantageous to refer to Section 4 of the Code. It is extracted below:

4. Trial of offences under the Indian Penal Code and other laws. - (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) 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."

So far as the offences under Indian Penal Code are concerned sub-section (i) mandates that they can be investigated into and tried according to the provisions of the Code. When we go to sub-section (ii) which concerns the offences "under any other law" it is again the rule that such offences shall also be investigated and tried according to the provisions of the Code itself, but with a rider that such investigation or trial shall be subject to the regulation regarding "the manner or place of" such investigation or trial prescribed in any enactment for the time being in force. In *Mirza Iqbal Hussain vs. State of Uttar Pradesh* [1982 (3) SCC 516] a two judge bench of this Court (Chandrachud, CJ and Chinnappa Reddy, J.) considered the contention that in a trial of offences under Prevention of Corruption Act the special court has no power to confiscate any property in view of Section 4(2) of the Code which excludes powers under the code while dealing with offences under laws other than Indian Penal Code. After extracting Section 4(2) of the Code learned judges observed as follows:

"It is clear from this provision that in so far as the offences under laws other than the Indian Penal Code are concerned, the provisions of the Code of Criminal Procedure apply in their full force subject to any specific or contrary provision made by the law under which the offence is investigated or tried."

The Constitution Bench which decided *AR Antulay vs. RS Nayak* [1984 (2) SCC 500] has cautioned that the Code is the parent statute which provides for investigations, inquiry into, and trial of cases and unless there is specific provision in other statute to indicate a different procedure to be followed, the provisions of the Code cannot be displaced. Taking cue from the said ratio this court held recently in *Gangula Ashok vs. State of Andhra Pradesh* [JT 2001 SC 379] while interpreting Section 4(2) of the Code as follows:

"A reading of the sub-section makes it clear that subject to the provisions in other enactments all offences under other laws shall also be investigated, inquired into, tried and otherwise dealt with under the provisions of the Code. This means that if other enactment contains any provision which is contrary to the provisions of the Code, such other functions would apply in place of the particular provision of the Code. If there is no such contrary provision in other laws, then provisions of the Code would apply to the matters covered thereby."

We did not come across any provision in the Sales Tax Act which inhibits the powers of the police as conferred by the Code. Chapter X of the Act deals with "Offences and penalties." Section 88 falls within the said chapter. Sub-section (1)c reads thus:

"Whoever- c fails to make payment of interest payable under section 31 or section 32;.....shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both....."

Section 88 (6) & (7) are also extracted below:

(6) Whoever wilfully attempts in any manner to evade or defeat any tax imposed under this Act, shall, in addition to any other penalty provided by any law for the time being in force, be liable also for the offence of dishonest misappropriation of property under section 403 of the Indian Penal Code, and shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years or with fine not exceeding ten thousand rupees or with both.

(7) Whoever knowingly produces incorrect accounts, registers or documents, or knowingly furnishes incorrect information or suppresses material information shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years or with fine not exceeding ten thousand rupees or with both."

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 sub-section (6) of Section 88.

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.

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 under Section 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.

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.

So from any angle, the High Court has committed serious error in quashing the FIR. We, therefore, allow this appeal and set aside the impugned judgment.