

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr.) No. 415 of 2018

1. Pramod Agarwal, son of Late Kishorilal Agarwal, aged about 62 years, resident of Salasar House, Behind Saran Cycle Industries, Seepat Road, P.O & P.S Lingiyadih, Town & Dist.-Bilaspur (Chattisgarh).
2. Pradeep Agarwal, son of Sri Pramod Agarwal, aged about 42 years, resident of Salasar House, Behind Saran Cycle Industries, Seepat Road, P.O & P.S Lingiyadih, Town & Dist.-Bilaspur (Chattisgarh)

... Petitioners

Versus

1. Union of India, through its Secretary, Department of Revenue, Ministry of Finance, North Block, P.O. and P.S. North Block, New Delhi-110001
2. GST Council, through its Secretary having its office at GST Council Secretariat, 5th Floor, Tower-II, Jeevan Bharti Building, Janpath Road, P.O. & P.S.-Connaught Place, New Delhi
3. Directorate General of Goods & Services Tax Intelligence, Regional Unit, Jamshedpur, through its Senior Intelligence Officer, having its Office at 2nd Floor, 159 Saurya Trade Centre, Dhalbhum Road, P.O. & P.S.-Sakchi, Town-Jamshedpur, District-Singhbhum (East)

... Respondents

With

W.P.(Cr.) No. 416 of 2018

Pankaj Agarwal, son of Late Kishorilal Agarwal, aged about 40 years, resident of Flat No. 107, Block-A, Wing-C, Srishthi Palazzo, St. Xaviers School Road, Near Akansha School, Avanti Vihar, P.O & P.S Telibandha, Town & Dist.-Raipur (Chattisgarh).

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Palazzo, St. Xaviers School Road, Near Akansha School, Avanti Vihar, P.O. & P.S. Telibandha, Town & Dist.-Raipur (Chhattisgarh).

2. Suman Agarwal, wife of Sri Pankaj Agarwal, aged about 36 years, resident of Flat No. 107, Block-A, Wing-C, Srishthi Palazzo, St. Xaviers School Road, Near Akansha School, Avanti Vihar, P.O. & P.S. Telibandha, Town & Dist.-Raipur (Chhattisgarh).

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... **Respondents**

With

W.P.(Cr.) No. 418 of 2018

Ravi Agarwal, S/o Late Om Prakash Gupta, Aged about 38 years, resident of House No. 28/601, Ashoka Ratan, Vidhan Sabha Road, P.O. & P.S.-Sankar Nagar, Town & District-Raipur (Chhattisgarh).

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... **Respondents**

CORAM : HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

For the Petitioner(s)	: Mr. R. S. Mazumdar, Sr. Advocate Mr. Nitin Kumar Pasari, Advocate Ms. Sidhi Jalan, Advocate Ms. Vishakha Gupta, Advocate [in all cases]
For the Respondent No.2	: Mr. Ratnesh Kumar, Advocate Mr. Amit Kumar, Advocate [in all cases]

04/21.02.2019

In this batch of writ petitions, primary apprehension expressed by the petitioners is that in the garb of notice under section 70 of the Central Goods and Services Tax Act, 2017 they may be arrested.

2. What has been contended on behalf of the petitioners is recorded in the order dated 14.01.2019, which is extracted below:

Contention raised on behalf of the petitioner(s) is that pursuant to summons issued to the petitioners when they appear before the Senior Intelligence Officer, on the first date itself on their appearance, the Central Intelligence Officer has no jurisdiction to arrest the petitioners. And, if that is done this is a power exercised by the Central Intelligence Officer with which he is not vested in law and, in particular, it is in contravention of sub-section 3 to section 41-A of the Code of Criminal Procedure as well as various pronouncements by the Hon'ble Supreme Court.

Let a copy of the order be given to the learned counsel for the respondents.”

3. The petitioners admit that they have received the summons issued by the Senior Intelligence Officer, however, for variety of reasons – one of the reasons is their apprehension that

they may be arrested – they have not appeared before the Officer. They have referred to an incident relating to the petitioner in W.P.(Cr.) No. 261 of 2018. Such allegations, of course, have been denied by the respondents. In the counter-affidavit, the respondents have pleaded that to destabilize the national economy some shell companies and unscrupulous firms have claimed illegal Input Tax Credit by issuing fake and forged invoice without actual supply of goods and services and without payment of applicable GST to the Government. Various fraudulent suppliers with multi-state network have been identified by the Intelligence Agencies and some of such firms are registered in the State of Jharkhand. In the aforesaid background, it is pleaded that testimony of the petitioners is necessary to verify the genuineness of transactions in question. It is claimed that the investigation has revealed fake transactions to the tune of Rs.400 crores and whether the petitioners are connected in any manner with such transactions, directly or indirectly, can be ascertained only after they appear before the Investigating Officer (Senior Intelligence Officer). In paragraph no. 25 of the counter-affidavit, the respondents have asserted, thus;

“25. That the contents and averments made in Para 20 of the Writ Petition is denied in the manner stated. It is most humbly submitted that Section 69 of the CGST Act, 2017 mandates the competent authority for order to arrest a person, only after having “reasons to believe”, which is developed based on investigation conducted at various ends and after collating the evidences collected in course of investigation. It is most humbly submitted that the said power is being exercised by the competent authority with due responsibility as is evident from the fact that this office is an investigating wing and in course of investigation a number of persons are being summoned under section 70 of the CGST Act, 2017 for tendering their statements, but everybody was not arrested. Only the person, against whom there appears “reasons to believe” after proper investigation, is being arrested. The Hon’ble High Court Calcutta in the CRM 3327 of 2018 (Sanjay Kumar Bhuwalka –Vs. – Union of India) and CRM 3328 of 2018 (Neeraj Jain –Vs. – Union of India)

has observed, in similar case, that:-

“..... ‘reasonable belief’ or reason to believe as a standard to arrest requires that arresting officer subjectively believe that the suspect has committed the offence and that objectively reasonable person would reach the same conclusion reasonable grounds do not require as much evidence as a prima facie case but do require that thing believed to be more likely than not.”

It appears from the submission of the petitioners in instant petition that his presumption of being arrested reflects their culpable mental state, however, they are having due opportunity as per law to make submissions in their favour.”

4. Section 69 and section 70 of the Central Goods and Services Tax Act, 2017 are quoted below:

“69. Power to arrest- (1) Where the commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by an order, authorize any officer of central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

70. Power to summon persons to give evidence and produce documents.-(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as

provided in the case of a civil Court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(2) Every such inquiry referred to in sub-section (1) 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).”

5. Section 69 of the Central Goods and Services Tax Act, 2017 provides that where the Commissioner has reasons to believe that a person has committed any offence specified in clauses (a), (b), (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by an order authorize any officer of Central Tax to arrest such persons.

6. Copies of the summons issued to the petitioners under section 70 of the Central Goods and Services Tax Act, 2017 have been brought on record.

7. Summons issued to the petitioners are under the signature of the Senior Intelligence Officer, Directorate General of Goods and Service Tax Intelligence, Regional Unit, Jamshedpur.

8. When the summons issued to the petitioners are examined on a conjoint reading of section 69 and section 70 of the Central Goods and Services Tax Act, 2017, it becomes apparent that under section 69 it is the Commissioner who, if he has reasons to believe, can by an order authorize any officer of Central Tax to arrest an assessee. Therefore, the Senior Intelligence Officer who has issued summons to the petitioners cannot arrest the assessee before the Commissioner records his satisfaction on “reasons to believe” and pass an order authorizing him to affect arrest of the assessee.

9. In view of the clear statutory provisions under section 69 read with section 70 of the Central Goods and Services Tax Act, 2017 and the stand taken in paragraph no. 25 of the counter-affidavit, these writ petitions are disposed of with a direction to the petitioners that they shall appear before the Senior Intelligence Officer who has issued summons to them as and when called and, of course, they shall not be arrested on the first day when they appear before him. It needs no reiteration

that the Senior Intelligence Officer shall act fairly and his actions must demonstrate fairness in action.

10. With the aforesaid directions, these writ petitions stand disposed of.

(Shree Chandrashekhar, J.)

Amit/