

# Kamal Kumar Agarwal vs State Of Up And 3 Others on 18 June, 2024

**Author: Mahesh Chandra Tripathi**

**Bench: Mahesh Chandra Tripathi**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2024:AHC:104044-DB

Court No. - 1

Case :- CRIMINAL MISC. WRIT PETITION No. - 10201 of 2024

Petitioner :- Kamal Kumar Agarwal

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Abhinav Gaur,Ankit Shukla,Mohd. Rashid Siddiqui,Sr. Advocate

Counsel for Respondent :- G.A.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Surendra Singh-I,J.

1. Counter affidavit filed on behalf of the respondent no. 4 is taken on record.

2. Heard Sri Anoop Trivedi, learned Senior Advocate assisted by Sri Abhinav Gaur, learned counsel for the petitioner; Sri Murtaza Ali, learned AGA for the State respondent no. 1 and Sri Raghubir Singh, learned counsel for the respondent no. 4.

3. Present petition has been filed with a prayer for quashing the F.I.R. dated 28.5.2024 registered as Case Crime No. 0092 of 2024, under Sections 354, 354(k), 420, 406, 467, 468, 471, 504, 506, 120-B IPC and Section 66D of Information Technology (Amendment) Act, 2008, Police Station Rakabganj, District Agra. With a further prayer not to arrest the petitioner in pursuance of the impugned F.I.R.

4. Sri Anoop Trivedi, learned Senior Advocate appearing for the petitioner submits that the petitioner is a registered Chartered Accountant duly registered under the Chartered Accountants Act, 1949. He assisted the first informant namely Mrs. Shivya Jain, who is sole proprietor of M/s Archetive Infratech, in obtaining the registration certificates from the Food Safety and Standards Authorities under Food Safety and Standard Act, 2006 and in submission of the application form in the name of "Sassy Kitchen". The registration certificate was issued to the informant by Department of Food Safety and Drug Administration, Food Safety and Standards Authority of India under FSS Act, 2006 dated 19.7.2023 (Paper Book, Pg. 42). She was also issued Udyam Registration Certificate on 17.07.2023 by the Ministry of Micro, Small and Medium Enterprises (Paper Book, Pg. 48) indicating therein her mobile no. 8439696814 and her Email: shivyajain90@gmail.com. He submits that the aforesaid certificates have been issued later on, wherein, the informant herself has endorsed her mobile number and the email and therefore, the version of the FIR is false and fabricated. Similarly, the respondent no.4 has also applied for registration under the GST Act in October, 2023 and preferred an application under Rule 9 of Central Goods and Service Tax Rules, 2017, wherein she has given the same PAN and mobile number and after successful verification of PAN and mobile number, a temporary reference number was generated and communicated to the informant on the said mobile number and e-mail address.

5. Learned Senior Advocate further submits that any supplier, which includes an agent also, is required under Section 31 of the GST, 2017 to issue a tax invoice clearly delineating therein, the description, quantity and value of the goods, the tax charged thereof and such other as may be prescribed. The descriptions, which are required to be provided on the tax invoice, are clearly specified under Rule 46 of the C-GST, Rule 2017. He submits that bare perusal of the FIR, it is quite evident that the firm of respondent no.4 has procured supply order from one M/s RCL Company and in turn, the firm of the company ordered for supply of cement to one other company namely M/s Divyagati Ltd. For supply of the goods (cements) M/s Divyagati has to generate E-way Bill under Rule 138 of the C-GST Rule 2017 and as soon as the E-way Bill is generated by M/s Divyagati on common portal, the information thereof would be automatically sent by the common portal to the firm/company to whom the said goods are billed. The entire information in respect of the goods were sent by the common portal to M/s Archetive Infratech on the registered mobile number of respondent no.4. The information in respect of the movement of goods were duly received by M/s Archetive Infratech on the said mobile number. This process is an automated process and everything is electronically shared by the common portal of the department itself.

6. It is further submitted that the dispute in the present case is between the respondent no. 4 and the Director of M/s Divyagati Ltd., namely, Sri Pawan Kumar Verma. The petitioner has no concern with the business conducted between M/s Archetive Infratech and M/s Divyagati Ltd. and therefore, there is no criminal conspiracy to suggest an offence under Section 120-B IPC. The petitioner has not committed any forgery and as such, no offence under Sections 467, 468 and 471 IPC is made out

against him. There is no allegation against the petitioner, which constitutes an offence under Section 354 and 354A of IPC. The petitioner has been implicated in the present case only due to ulterior motive without there being any role, whatsoever. Lastly, learned Senior Advocate has placed reliance upon Rule 8 Sub Rule 2 and 3 of C-GST Rule 2017 and submits that in case no reprieve is accorded by this Court, the petitioner would suffer irreparable loss and injury.

7. The matter requires consideration.

8. All the respondents are accorded six weeks time to file counter-affidavit. Two weeks, thereafter, for rejoinder. List immediately thereafter.

9. Till the next date of listing or till submission of police report u/s 173(2) Cr.P.C., whichever is earlier, respondents are restrained to arrest the petitioner pursuant to the impugned F.I.R. subject to cooperation in the on-going investigation.

Order Date :- 18.6.2024 A.K.Srivastava