

FIR cannot be registered in entry tax evasion cases in the absence of provision under VAT Act

The Hon'ble High Court of Punjab and Haryana at Chandigarh ("**the High Court**") in the case of ***Deepak Kumar v. State of Punjab [CRM-M-38352-2014 dated November 29, 2022]*** held that in case of tax evasion, First Information Report ("**FIR**") cannot be registered as the Value Added Tax Act, 2005 ("**the VAT Act**") does not provide any provisions authorizing the same.

Facts:

Deepak Kumar ("**the Petitioner**") filed the Petition seeking quashing the FIR registered by the police under Section 420/120- Indian Penal Code, 1860 ("**IPC**") and Section 4 of Punjab Tax on Entry of Goods into Local Areas Act, 2000 ("**the PTEGLA Act**"). The Petitioner was arrested by the police when he was bringing furnace oil made from tyres from Haryana and using secret/abandoned passages for the purposes of entering into Punjab in order to evade tax. A FIR was filed for cheating the Government by evading tax. The Petitioner challenged the FIR before the High Court contending that no offence under the IPC was made out as there is no provision for registering the FIR under the VAT Act and secondly, even if the allegations are held to be true then only penalty can be imposed for entering into State of Punjab from any other State through unauthorised passage to evade tax for the act committed by the Petitioner.

Issue:

Whether the FIR registered is valid when there are no provisions for the same in the VAT Act.

Held:

The High Court held as under:

- The provisions of the VAT Act do not provide for the registration of the FIR and the said Act is a Code in itself, therefore, the provisions of the IPC also cannot be invoked.

- Hence, the FIR could not have been registered against a person who is alleged to have evaded tax.

Hence, the Petition filed by the Petitioner was allowed.

Relevant provisions:

Indian Penal Code, 1860

Section 420. Cheating and dishonestly inducing delivery of property—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 120. Concealing design to commit offence punishable with imprisonment.—Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, if offence be committed—if offence be not committed.—shall, if the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

Punjab Tax on Entry of Goods into Local Areas Act, 2000

4. Detention of scheduled goods and levy of penalty. –

(1) If a person liable to pay tax under this Act, fails to pay the tax, the Excise and Taxation Officer, after hearing the said person and for the reasons to be recorded in writing, may order detention of such goods.

(2) If the officer referred to in sub-section (1), is satisfied that the person carrying the scheduled goods, wilfully failed to pay the tax, he may after giving the person a reasonable opportunity of being heard, direct him to pay by way of penalty in addition to the tax payable, a sum not exceeding twice the amount of tax.

(3) The goods detained under sub-section (1), shall be released after the recovery of the tax or penalty or both, as the case may be.

(4) If the amount of tax or penalty, as the case may be referred to in sub-section (3), is not paid by the importer within sixty days from the date of the order levying tax or penalty, the officer concerned shall have the power to sell the goods by public auction in the prescribed manner. The remainder amount, if any left after the recovery of tax and penalty and after deducting the expenses on auction, shall be refundable to the person concerned.

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