

**No bar for prosecution under IPC merely because the provision of GST law prescribes punishment**

The Hon'ble Jharkhand High Court in *Anupam Kumar Pathak v. The State of Jharkhand and Ors. [W.P. (Cr.) No. 141 of 2022 dated July 04, 2023]* held that the FIR logged and criminal proceeding initiated under Sections 120B/406/ 420/471 of the Indian Penal Code (“IPC”) cannot be quashed merely because of the reason that the offence is covered under GST law.

**Facts:**

Mr. Anupam Kumar Pathak (“**the Petitioner**”) is a proprietor of M/s Mahamaya Enterprises engaged in trade of coal and coal products. It was alleged that the Petitioner had purchased goods from M/S Janki Coal Trading which later turned to be a non-existent supplier. The Commercial Tax Headquarters, Ranchi instructed the Petitioner to reverse the ITC availed on purchases from such non-existent supplier.

Later, the Revenue Department (“**the Respondent**”) directed the Petitioner to produce the books of accounts and evidence with respect to payment and transport bill etc. pertaining to supplies received from such non-existent supplier but the Petitioner failed to produce any documents within time, thereafter a DRC-07 was issued with respect to tax, interest, and penalty and treated the activities of the Petitioner suspicious. Subsequently the GST registration of the Petitioner was cancelled vide an order dated March 20, 2020.

The Petitioner obtained new GST registration and continued the business. Thereafter an inspection was conducted by the Respondent on the workplace of Petitioner on August 06, 2020 during which several irregularities were found, such as no hoarding on workplace, no accounts in respect to inward and outward supplies etc.

The Respondent ordered to produce the books of accounts but the Petitioner failed to produce such documents accordingly, the proceedings under section 74(1) of the Jharkhand Goods and

Services Tax Act, 2017 (“**the JGST Act**”) has been initiated and the entire business done by the Petitioner was declared fraud and thereafter entire ITC claimed was rejected for the period 2017-18, 2018-19, 2019-20 and demand of tax, interest and penalty made vide Form DRC-07.

Further, the Respondent requested to cancel the GST registration of second firm of the Petitioner with the intention to commit fraud the trader by misusing GST registration and caused revenue loss by generating fake invoice and in this way the trader has passed on ITC to Purchaser-Trader.

Accordingly, the Respondent requested to institute a criminal case under sections 120B/406/420/471 of the IPC, and other relevant provisions as also under sections 132 (1)(b), 132(1) (c), 132 (1) (e), 132 (1) (f) of the JGST Act.

The Petitioner had filed a writ before the Hon’ble Jharkhand High Court praying for quashed the F.I.R and the criminal proceedings on the ground that when the GST law itself prescribes the punishment under section 132 of under JGST Act and thus, it is a well settled that IPC sections will not attract.

**Issue:**

Whether criminal proceeding can be initiated under IPC even in case where GST law prescribes punishment for the same offence?

**Held:**

The Hon’ble Jharkhand High Court in ***W.P. (Cr.) No. 141 of 2022*** held as under:

- Relied upon the judgement of Hon’ble Supreme Court of India in ***Jayant and others v. State of Madhya Pradesh [(2021) 2 SCC 670]*** wherein the court held that in case where violator is permitted to compound the offences on payment of penalty as per of Section 23A(1), considering the Section 23A(2) of the Mines and Minerals (Development and

Regulation) Act, 1957 (“**the MMDR Act**”), there shall be no further proceedings against the offender in respect of the offences punishable under the MMDR Act or any rule made thereunder so compounded. However, the bar under Section 23A (2) of the MMDR Act shall not affect any proceedings for the offences under the IPC, such as, Sections 379 and 414 of the IPC and the same shall be proceeded without any restriction.

- Held that, the dispute in the case is related to forging of invoice and bills without any transaction and it was found that there was such offence committed by the Petitioner. Since there is no bar for prosecution under IPC merely because the provisions of GST law prescribes punishment.

**Relevant provisions:**

**Section 120B of the IPC:**

***Punishment of criminal conspiracy***

*(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*

*(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.*

**Section 406 of the IPC:**

***Punishment for criminal breach of trust.***

*Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

**Section 420 of the IPC:**

***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 471 of IPC:**

***Using as genuine a forged document or electronic record***

*Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.*

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