

14.06.2023
Item No.9
gd/ssd

MAT/1054/2023
IA NO: CAN/1/2023, CAN/2/2023
HIMANGSHU KUMAR RAY
VS
STATE OF WEST BENGAL

Mr. Vinay Kr. Shraff,
Ms. Priya Sarah Paul
..for the Appellant.

Md. T.M. Siddiqui
..for the State.

Re: CAN 2 of 2023

1. The applicant prays for leave to prefer appeal against the order dated 3rd April, 2023, whereby the writ petition being WPA 16929 of 2022 was disposed of by the learned Single Judge.

2. The applicant was not a party to the writ application. The applicant says that the order that is sought to be impugned by him, seriously affects him.

3. We have heard learned Counsel for the parties. We are of the view that the applicant may have something to say. Hence we grant leave to the applicant to prefer appeal against the order dated 3rd April, 2023.

4. Accordingly this application being CAN 2 of 2023 is allowed.

Re: CAN 1 of 2023

5. CAN 1 of 2023 has been filed by the appellants seeking condonation of delay of 32 days in filing this appeal.

6. Learned counsel for the appellant has referred to the explanation which has been furnished in the application and also has made submission in respect of the explanation for the delay.

7. We find that the delay in filing this appeal has been sufficiently explained and the appellant was prevented from filing the appeal within time on account of bona fide reason.

8. Hence, CAN 1 of 2023 is, accordingly, allowed. The delay in filing the appeal is condoned.

Re: MAT 1054 of 2023

9. This intra court appeal by a third party is directed against the order passed by the learned Single Bench dated 3rd April, 2023 in WPA 16929 of 2022.

10. The petitioner is a practicing advocate and the third party to the writ proceedings.

11. Md. T.M. Siddiqui, learned State counsel has raised a vehement objection regarding the maintainability of the appeal at the instance of a third party and apart from that it is submitted that pursuant to the directions issued in the said writ petition which were interim in nature, the authorities conducted

investigation and several fake companies who have illegally committed GST fraud have been unearthed and criminal proceedings and other proceedings have been initiated. Therefore, it is submitted that this appeal is not maintainable.

12. We have heard Mr. Shraff, learned advocate appearing for the appellant on the above submission.

13. So far as the maintainability of the appeal is concerned, we are of the view that appeal is maintainable for the reason that soon after the impugned order was passed by the learned Single Bench the Anti Fraud Department of the Kolkata Police as well as the GST Department had issued a series of notice to all the learned advocates who are regularly appearing for their clients in cases pertaining to GST/WBVAT/WBST Acts and other related enactments. When this matter is brought to the notice of this Court, the authorities of the respondent were well advised that they had no jurisdiction to issue notices to the learned advocates calling for information regarding their clients as the information given by the clients is a privileged communication given to an advocate. At this juncture, it is relevant to take note of the decision of the Hon'ble Supreme Court in *State of Punjab v. Sodhi Sukhdev Singh* reported in AIR 1961 SC 493 wherein the Hon'ble Supreme Court held that

Sections 126 and 129 of the Evidence Act protect the communications between a lawyer and a client made during the employment of the lawyer. It is a settled legal position that a communication is privileged if it is made to a legal advisor by a client after the commission of a crime and with a view to his defence, but it is not privileged if it is made before the commission of the crime or wrong and for the purpose of being guided or assisted in furthering or committing it. Thus, Section 126 of the Evidence Act is designed to abort the attempt to intrude privacy of the close preserve of the fund of information conveyed by the client closeted in confidence. In *Bakaulla Mollah v. Debiruddin Mollah (1911-1912) 16 CWN 742 (Cal)* it is held that Section 126 of the Evidence Act prohibits an attorney from disclosing an attorney-client communication without the expression concerned of the client.

14. After being properly advised by the learned State counsel, those notices sent to the learned advocates were withdrawn by e-mails dated 5th June, 2023.

15. In the background of these facts, we are of the view that this appeal is maintainable.

16. The next issue is whether the order and direction issued by the learned Single Bench has been properly understood or misconstrued by the authorities of the Anti Fraud Department. The direction issued by

the learned Single Bench is that the police authorities shall also try to investigate from the angle as to how many fake writ petitions have been filed in this Court in the past before the said writ petitions were heard and had defrauded the government causing huge revenue loss.

17. In our view, the observation issued by the court has to be understood within the four corners of law. The police authorities have been directed to investigate and the observation of the court is to investigate about filing of fake cases. Unfortunately, the authorities of the Anti Fraud Department have misconstrued and misunderstood the scope of the direction which is clear from the notice issued under Section 160 Cr.P.C. to the Directors of various assessees. In those notices the FIR No.260 dated 30.09.2022 has been referred which has been registered by the Hare Street Police Station. Pursuant to the orders passed by the learned Single Bench of this court and without disclosing any details concerning the concerned assessee, the standard format has been adopted by the Anti Fraud Department by issuing notices under Section 160 Cr.P.C. We do not appreciate the manner in which the department has carried out the observations made by the learned writ court. If, according to the department, large scale fraud has been committed by the various assessees

there are the ways and means to investigate the same and the methodology adopted by the Anti Fraud Department by issuing standard format notices under Section 160 Cr.P.C. is wholly illegal. Therefore, we clarify the order passed by the learned Single Bench by directing the authorities both the revenue authorities as well as the police authorities who are to investigate the cases of revenue fraud to first conduct thorough study of the documents available with the GST Department and thereafter should channelise the investigation making it assessee sentric and not by resorting to issuing standardized format of notices which appear to be in the nature of a public notice. Therefore, the notices issued under Section 160 Cr.P.C. which are standardize forms are set aside and we give liberty to the Police Department as well as the GST Department to conduct a proper investigation qua the assessees and not to generalize and grant all assessees throughout the State of West Bengal to be fraudsters this approach is not in accordance with law.

18. It is needless to state that it is the GST authorities who have first to conduct the thorough study and investigation to ascertain as to whether there has been any illegal availment of GST. Upon such assessment it will be well open to the GST authorities to initiate proceedings under the provisions of the GST Act. However, if the authority comes to the conclusion

that there is a criminal overt act attached to the said violation, then the matter should be handed over to the appropriate investigation authority who has to proceed in accordance with law.

19. With the above direction, the appeal stands disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)