

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL REVISION PETITION NO.921/2012

BETWEEN:

M/s. PRASHANTHI AFFILIATES
NO.54, MANI BHAVAN
CHANNAKESHAVANAGAR
SINGASANDRA, BENGALURU
REPRESENTED BY ITS PROPRIETOR
SHRI.R.B.SUBRAMANI.

... PETITIONER

(BY SRI ATUL K. ALUR, ADVOCATE)

AND:

THE DEPUTY COMMISSIONER
OF COMMERCIAL TAXES
(AUDIT AND RECOVERY 6.1) DVO 6
NO.488, 3RD FLOOR, KIADB BUILDING
14TH CROSS, PEENYA II STAGE
BENGALURU.

... RESPONDENT

(BY SRI K.S.ABHIJITH, HCGP)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W. SECTION 401 OF CR.P.C PRAYING TO SET ASIDE THE ORDER PASSED BY THE SPL. JMFC (SALES TAX) BENGALURU IN C.MISC.NO.715/2004, DATED 26.07.2012.

THIS CRIMINAL REVISION PETITION COMING ON FOR FINAL HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed under Section 397 read with Section 401 of Cr.P.C., praying to set aside the order passed by the Special JMFC (Sales Tax), Bengaluru in C.Misc.No.715/2004 dated 26.07.2012, call for Trial Court records and grant any other relief as deems fit in the facts and circumstances of the case.

2. Heard the learned counsel appearing for the petitioner and the learned High Court Government Pleader appearing for the respondent.

3. The factual matrix of the case of the prosecution is that the petitioner-firm is a proprietorship concern engaged in the catering business. The petitioner - firm is also registered under the provisions of the Karnataka Sales Tax Act, 1957 and Central Sales Tax Act, 1956. It is also contended that the firm is not earning any profit on sale of food in the Canteens such sale is exempted under V schedule under entry 22 of the old schedule and entry No.6 of the present V schedule. If the goods

are not liable to be taxed under the Act, such goods are brought under Section 8 of the K.S.T. Act and such goods are exempt from payment of tax. The petitioner also maintained the Books of Accounts, as per the provisions of the KST Rules. However, the assessing authority has concluded the assessment order for the Assessment Year 2001-2002 vide order dated 25.02.2004 and the assessing authority comes to the conclusion that the petitioner is liable to pay Sales Tax at 12% on sale of food articles and accordingly levied a tax of Rs.35,25,376/-. In view of the order passed under Section 12(3) of the KST Act, the respondent has issued the demand notice in Form 6 and demanded the said amount for the assessment year 2001-2002. The respondent has granted 21 days time to pay the arrears of tax. On account of non-payment, petition was filed under Section 13(3)(b) of the KST Act to recover the said amount. In order to recover the said amount, the learned Special JMFC (Sales Tax) Court vide order dated 26.07.2012, issued an order through FLW through Commissioner, BBMP to attach and effect encumbrance of amount mentioned in FLW to and for property bearing No.14, Khatha 4/8 situated at Beratta Agrahara, Begur

Hobli. Hence, the present Revision Petition is filed before the Court.

4. The main contention of the learned counsel appearing for the petitioner before this Court is that the learned Special JMFC (Sales Tax) Court ought not to have issued the order of attachment of property through BBMP Commissioner. The learned counsel for the petitioner brought to the notice of this Court that Section 421 of Cr.P.C., for Warrant for levy of fine, particularly, clause (b) of Section 421, wherein, it is specifically mentioned issue a warrant to the Collector of the District, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property or both, of the defaulter. Here is a case of issuing an order of attachment through the BBMP Commissioner and he is not an authorized officer to attach the property.

5. Per contra, the learned High Court Government Pleader appearing for the respondent would submit that when the amount was not paid, the order was passed by the learned

Special JMFC (Sales Tax) Court, Bengaluru. Hence, there are no grounds to allow the petition.

6. Having heard the respective counsel and also on perusal of the material available on record, no dispute with regard to the fact that the recovery proceedings is initiated based on the order. When the petition is filed before the learned Special JMFC (Sales Tax) Court invoking Section 421 of Cr.P.C., issued the warrant and the same is as per Section 421(2) of Cr.P.C., which says only the District Magistrate is empowered to attach the property not the Commissioner, BBMP. When such being the case, the order requires an interference of this Court since the Commissioner of BBMP., has no any authority to attach the property as ordered by the Special JMFC (Sales Tax) Court and the same can be enforced under Section 421(1)(b) of Cr.P.C, through the collector of the District. Hence, it requires an interference of this Court.

7. In view of the discussions made above, I pass the following:

ORDER

The petition is allowed. The order passed by the Special JMFC (Sales Tax), Bengaluru in C.Misc.No.715/2004 dated 26.07.2012, is hereby set aside. The respondent is given liberty to seek appropriate orders invoking Section 421(1)(b) of the Cr.P.C.

**Sd/-
JUDGE**

cp*