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2026:AHC:118653-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. WRIT PETITION No. - 23443 of 2025

Samarpan Jain

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Sharad Sharma, Sushil Shukla
Counsel for Respondent(s)	:	G.A.

Court No. - 47

HON'BLE J.J. MUNIR, J.
HON'BLE TARUN SAXENA, J.

Order on Criminal Misc. Amendment Application No.3 of 2026.

1. The application is **allowed**.

2. Let the amendment be carried out during the course of the day.

Order on Writ Petition

1. A counter affidavit has been filed by respondent no. 3, to which a rejoinder has been filed and a personal affidavit of the Deputy Commissioner, State Goods and Services Tax Department, Sector-I, Rampur has also been filed.

2. The parties do not propose to file any further affidavits.

3. Admit.

4. Heard forthwith.

5. Heard Mr. Sushil Shukla, learned Senior Advocate assisted by Mr.

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Sharad Sharma, learned Counsel for the petitioner, Mr. Anoop Trivedi, learned Additional Advocate General, assisted by Ms. Sadhna Singh, learned Additional Government Advocate appearing on behalf of respondent no. 3 and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate appearing on behalf of respondent nos. 1 and 2.

6. In its amended form, this petition now challenges the First Information Report dated 04.10.2025 giving rise to Case Crime No. 175 of 2025, under Sections 61(2), 318(4), 336(3), 338, 340(2), BNS, Police Station-Kotwali, District- Rampur as well as the impugned cognizance order dated 14.05.2026 passed by the learned Additional Chief Judicial Magistrate, Court No. 1, Rampur and the charge-sheet giving rise to Case Crime No. 3171 of 2026 on the Magistrate's file.

7. The short case of the petitioner is that he is an Advocate enrolled with the Bar Council of U.P. since 20.12.2021. He practices and specializes in indirect taxes, direct taxes and corporate laws. He is also an Advocate on Record before this Court, his AOR No. being A/S0088/25. One Mohd. Haris is the proprietor of the firm, called M/s M H Enterprises having GSTIN-09AJDPH7962C3Z5 with its registered office at Mohalla Magazine, Bareilly Gate, PS Sadar, District Rampur. He approached the petitioner and engaged him as his Advocate to file a statutory appeal under Section 107 of the Goods and Services Tax Act, 2017 questioning orders dated 16th of April, 2025 passed by the Deputy Commissioner, GST, Sector-1, Rampur, under Section 74 of the State Goods and Services Tax Act, 2017 assessing a sum of Rs. 81,46,291/- as tax, besides interest and penalty for the financial year 2021-2022, Rs. 4,90,78,118/- as tax, interest and penalty for the financial year 2022-2023 and Rs.

4,80,16,615/- towards tax, interest and penalty for the financial year 2023-2024 against his firm. For the financial year 2021-2022, the petitioner did not file an appeal and assertion to that effect in the FIR is said to be factually incorrect.

8. According to the instructions of his client Mohd. Haris, the petitioner filed two online statutory appeals on 15th of August, 2025 before the Appellate Authority-3 in accordance with Section 107 of the GST Act, 2017, uploading the memoranda of appeals and other required documents on the GST Portal in respect of two identical orders dated 18.04.2025 passed by the Deputy commissioner, GST, Sector-1, Rampur. It is emphasized that payment of pre-deposit of 10 % of the disputed tax by utilization of the Input Tax Credit and Electronic Credit Ledger of any assessee is permissible under CBIC-20001/2/2022- GST dated 06.07.2022. The aforesaid provision and procedure for making pre-deposit was interpreted that way by a Division Bench of the Gujarat High Court in **M/s Yasho Industries Ltd. v. Union of India and another**, a judgment that was upheld by the Supreme Court in **Union of India and another v. Yasho Industries Ltd., 2025 SCC OnLine SC 1526**.

9. The case further is that after filing of the statutory appeals on 22.09.2025, the petitioner's client was served *dasti* with an intimation dated 23.09.2025 from the office of the Appellate Authority-3, Moradabad wherein it was said that the pre-deposit of 10 % of the disputed tax from his Electronic Credit Ledger, utilizing Input Tax Credit for filing a statutory appeal cannot be accepted as statutory pre-deposit for the purpose. He was, therefore, directed to clarify on 24.09.2025 on the question of maintainability of the appeal.

10. It is then said that the petitioner was intimated of the Appellate Authority's communication on 22.09.2025, late in the night of 23.09.2025, and, as the petitioner was to attend some urgent meeting at Ghaziabad, he expressed his inability to attend the hearing at Moradabad. The petitioner's client could not arrange an adjournment and the Appellate Authority dismissed the statutory appeal on ground of maintainability, with the remark that pre-deposit of 10% of the disputed tax made by the assessee from his Electronic Ledger, utilizing Input Tax Credit, was not acceptable as a valid tender.

11. After the above appellate order was passed, the informant, that is to say, the Deputy Commissioner of GST, respondent no.3, instead of proceeding to recover the assessed amount of tax, interest and penalty from the petitioner's client, lodged the impugned F.I.R. on 04.10.2025, not only against the petitioner's client but also nominating the petitioner for allegedly making a pre-deposit of 10% of the dispute tax out of the Electronic Credit Ledger by utilizing Input Tax Credit, which, according to the informant, was an illegal course adopted by the petitioner's client in appealing his order. It was also alleged in the F.I.R. that there was evasion of GST, committed by the petitioner's client in conspiracy with the petitioner, in order to cause financial loss to the State Exchequer. It is this part of the F.I.R. which aggrieves the petitioner.

12. It is submitted by Mr. Shushil Shukla, learned Senior Advocate that the petitioner, in filing the appeal and making a tender of the requisite fee deposit of disputed tax, acted in his "professional capacity" and did so to the best of his knowledge, going by the laws of the land, as declared by the Superior Courts of the Country. He relied for the purpose on the

Division Bench decision of the High Court of Gujarat in **M/s Yasho Industries Ltd.** (*supra*).

13. The submission is that even if the petitioner acted in error, he was acting in a "professional capacity". There is nothing to show that he was a partner in his client’s business and, therefore, a conspirator.

14. The further submission is that it is a very perilous proposition to accept that an Advocate, who enters appearance for his client and takes a particular course of action, that he advises, would land himself in midst of a criminal prosecution on the charge of a conspiracy with his client.

15. Mr. Anoop Trivedi, learned Additional Advocate General, when confronted with this issue, has not much to say. The informant, that is to say, the GST Officer, who has been summoned in-person, was asked about the reason why he nominated the assessee’s learned Advocate in the F.I.R., for his professional act in filing an appeal, in the F.I.R., to which he had no answer. Matters have not stopped at this and we must notice, as we have already done that after notice was issued in this case, the Police swung into action and a charge-sheet was promptly cleared and filed in Court, all in one day, that is to say on 14.05.2026 and an order of cognizance was also passed the same day by the learned Additional Chief Judicial Magistrate. This necessitated an amendment of the writ petition, and, now, the order of cognizance and the charge-sheet are also under challenge before us.

16. We have heard Mr. Shushil Shukla, learned Senior Advocate, Mr. Anoop Trivedi, learned Additional Advocate General and Ms. Sadhna Singh, learned Additional Government Advocate on behalf of the GST.

17. After a careful consideration of the matter, what we find is that the impugned F.I.R., lodged in this case, which has led to the police report and the order of cognizance violate all known principles of criminal liability. An Advocate, by his profession, is authorized to represent his client, who may have a case of any kind to be suited in a Court or defended. An Advocate, by his profession, is authorized to defend men charged with murders, rape, terror offences and it is his/her duty to defend them. If, for doing a professional act, like preferring an appeal, an Advocate is to be held in conspiracy with his client, it would be the end of the very existence of the Bar and the right of an Advocate to practice under the Advocates Act. It would, indirectly also, deprive the citizens of their right to the much valued right to legal assistance, because a person, who practices the profession of law before defending his client, would be thinking about his own defence and, this he would be thinking about, before he files a *vakalatnama* and takes steps on behalf of his client. This kind of a situation, which hits as the roots of the principles enshrined under Articles 14 and 21 of the Constitution, cannot be permitted to happen. An Advocate has to work fearlessly and discharge his professional duties, just as an officer of the State is entitled to discharge his duties.

18. Here, even if the Deputy Commissioner of the GST thinks that pre-deposit of the disputed tax could not be debited to the Electronic Ledger out of the Input Tax Credit, the professional decision of the learned Advocate, to do so, does not, in any way, make him a conspirator with the assessee. It is purely a professional act and not at all something to do with his client’s business. It was done in the course of filing an appeal and nothing more. It was based on a particular view of the law, whether right,

wrong or utterly wrong.

19. In the circumstances, we are of opinion that the impugned F.I.R., the charge-sheet filed by the Police, on its basis and the order of cognizance cannot be sustained. This writ petition **succeeds** and is **allowed**. The impugned F.I.R. dated 04.10.2025 giving rise to Case Crime No. 175 of 2025, under Sections 61(2), 318(4), 336(3), 338, 340(2), BNS, Police Station- Kotwali, District- Rampur, Charge-sheet No. 30 of 2026 dated 04.04.2026 filed in Court and the cognizance order dated 14.05.2026, passed by the learned Additional Chief Judicial Magistrate-I, Rampur are all hereby **quashed**, in so far as it relates to the petitioner.

20. The learned Chief Judicial Magistrate, Rampur shall cause an entry to be made in red ink in the General Diary of Police Station Kotwali, District Rampur that the proceedings of Case Crime No. 175 of 2025, under Sections 61(2), 318(4), 336(3), 338, 340(2) of B.N.S. have been **quashed** in so far as it relates to the petitioner, under orders of this Court.

21. Let this order be communicated to the learned Chief Judicial Magistrate, Rampur and through him to the Superintendent of Police, Rampur, the Station House Officer, Police Station Kotwali, District Rampur and the Deputy Commissioner, GST, Sector-I, Rampur by the Registrar (Compliance).

(Tarun Saxena,J.) (J.J. Munir,J.)

May 21, 2026
Abhishek/Prashant