THE HONOURABLE SMT G. ANUPAMA CHAKRAVARTHY

CRIMINAL PETITION No.2684 of 2022

ORDER:

This petition is filed under Section 482 of Code of Criminal Procedure (for short 'Cr.P.C.') by the petitioner/accused seeking to quash the proceedings in C.C.No.263 of 2017, pending on the file of the Special Judge for Economic Offences, Nampally, Hyderabad.

2. The respondent herein is the complainant, who has a complaint under Section 190 R/w. Section 200 of Cr.P.C. for the offences punishable under Sections 276C(1) and 278B of the Income Tax Act, 1961 (for short "the Act").

3. The facts culled out from the complaint are that a survey operation under Section 133A of the Act was carried out on 25.05.2016 by the D.D.I.T.(Inv), Unit-II, Hyderabad in case of certain assessees. During the course of the survey it was found that the petitioners herein have sold the land at Budvel to different parties in the Assessment Years 2015-2016 and 2016-2017 at the rates below the value of the Sub-

Registrar Office. It is further contended that the petitioners herein have sold the properties and realized the money and did not file income tax returns and did not pay any tax for the said assessment years and the summons were issued to the petitioners to show cause as to why prosecution should not be initiated against them as the tax was willfully avoided by the petitioners for the said assessment years.

4. Basing on the said complaint, the Special Court of Economic Offences, Hyderabad registered and numbered the case as C.C.No.263 of 2017 for prosecution against the petitioners for the offences punishable under Sections 276C(1) and 278B of the Act, 1961.

5. As already stated supra, challenging the said proceedings in C.C.No.263 of 2017, the petitioners have filed this quash petition contending that the initiation of the prosecution against the petitioner is illegal and void *ab-initio*.

6. It is the specific contention of the petitioners that the authorization under Section 279(1) of the Act was issued by

the Principal Director of Income Tax (Inv.), Hyderabad, to the Deputy Director of Income Tax (Inv.), Unit-II, Hyderabad and that the Principal Director of Income Tax is not the competent authority to accord sanction under Section 279(1) of the Act. Even assuming for a moment that the Deputy Director of Income Tax is the authority to accord sanction, it has to be seen that the said sanction was to the Deputy Director of Income Tax. But the prosecution has been initiated by the Assistant Director of Income Tax, who is lower in rank to the Deputy Director of Income Tax. Therefore, the complainant does not have any authorization to initiate the prosecution and further the respondent is not having jurisdiction.

7. The respondent has filed a detailed counter-affidavit denying all the contentions of the petitioner. It is specifically stated in the counter-affidavit that the survey operation under Section 133A of the Act was conducted on M/s. Tirumala Tirupati Constructions India Pvt. Ltd. On 25.05.2016. During the course of the survey proceedings, it was noticed that during the financial year 2014-2015, which is relevant to the assessment year 2015-2016, the petitioner

company has sold land admeasuring Ac.25.31 guntas at Budvel Village, Rajendranagar Mandal, Ranga Reddy District, for a total sale consideration of Rs.9.115 crores as against stamp duty value of Rs.62.36 crores. Accordingly, a final survey report was prepared and forwarded to respective Assessing Officers. Subsequently, for the financial year 2014-2015 relevant to the Assessment Year 2015-2016, scrutiny assessment under Section 147 of the Act was completed on 26.12.2019 by adopting the stamp duty value as full value of consideration received as per Section 43CA R/w Section 50C of the Act and added back the duties in the sale consideration of Rs.48,69,00,000/- (Rupees Forty Eight Crores Sixty Nine Lakhs Only) to the income tax admitted resulting in a demand of Rs.31,57,78,025/- (Rupees Thirty One Crores Fifty Seven Lakhs Seventy Eight Thousand Twenty Five Only). Later, a rectification was passed under Section 164 of the Act on 19.08.2021 revising the total demand to Rs.31,74,66,956/- (Rupees Thirty One Crores Seventy Four Lakhs Sixty Six Thousand Nine Hundred and Fifty Six Only). The survey operation was conducted on 21.05.2016 and later

it was noticed that during the financial years 2014-2015 and 2015-2016, relevant to the assessment years 2015-2016 and 2016-2017, the petitioner sold Ac.39.11 guntas of land at Budvel Village, Rajendranagar Mandal, Ranga Reddy District, for a total sale consideration of Rs.11.24 crores as against the Sub-Registrar Office value of Rs.92.61 crores but has not disclosed the income tax from the sale of property for taxation either under the head 'Income from Capital Gains' or 'Income from Business'. Similarly, there were cash deposits in the bank accounts of the assessee to the tune of Rs.47.70 lakhs, which remained unexplained and in the absence of books of account maintained by the assessee company is deemed to be the income of the company. Further, the petitioner-company has not filed Income Tax Return for the assessing year 2015-2016 within the due date prescribed under the Act, i.e., on or before 30.09.2015.

8. Heard Sri S. Ravi, learned Senior Counsel for the petitioners and Sri A. Ramakrishna Reddy, learned Standing Counsel for the respondent.

9. It is the specific contention of the learned Senior Counsel that there shall be sanction under Section 279(1) of the Act. As per the said sanction, dated 30.03.2017, the Principal Director of Income Tax (Inv.), Hyderabad issued sanction under Section 279(1) to the Deputy Director of Income Tax (Inv.), Unit - II, Hyderabad to file a complaint before the Special Judge for Economic Offences, Hyderabad against the petitioner-company. But the complaint was filed by the Assistant Director of Income Tax (Inv.), Unit-II, Aayakar Bhavan, Basheerbagh, Hyderabad, to whom the said sanction has not been granted, which is a grave irregularity as per the Act. Therefore, he prays to quash the impugned proceedings.

10. On perusal of Section 279(1) of the Act would show that the sanction has to be accorded by an officer at the level of Chief Commissioner of Income Tax/Director General of Income Tax. However, in the present case the sanction has been accorded by the Principal Director of Income Tax, who is lower in rank than the Chief Commissioner of Income Tax, and even assuming for a moment that the Principal Director

of Income Tax is the authority to accord sanction, the sanction clearly discloses that it was accorded to the Deputy Director of Income Tax but not Assistant Director of Income Tax. As stated supra, in the present case it is the Assistant Director of Income Tax, who has preferred the complaint, is lower in rank to the Deputy Director of Income Tax.

11. On the other hand, it is the specific contention of the learned standing counsel that, as per Section 319(1)(a) of the Act, every person being company or firm, shall, on or before due date, furnish a return on its income during the previous year in the prescribed form and verified in the prescribed manner and setting forth any such other particulars as may be prescribed. And as the petitioner-company has not filed the returns of the income tax for the assessing year 2015-2016 within the stipulated time, the authorities have every right to initiate prosecution against the petitioner-company.

12. It is further contended by the learned counsel for the respondent that except the sanction of the Principal Commissioner of Income Tax, there cannot be any

prosecution and in the present case, the Principal Director of Income Tax (Inv.) has issued sanction and as per Section 2(16) of the Act, Commissioner means the person appointed to be the Commissioner of Income Tax or the Director of Income Tax or a Principal Commissioner of Income Tax or a Principal Director of Income Tax under sub-section (1) of Section 117, there is no error or irregularity by issuance of sanction by the Principal Director of Income Tax.

13. It is also contended by the learned Standing Counsel that in the present case, initially, the sanction was issued to the Deputy Director of Income Tax for launching prosecution proceedings against the petitioner company. Meanwhile, during the interregnum period of processing the case for prosecution, there was a change in the incumbency due to Annual General Transfers of the Officers and in his place an Assistant Director of Income Tax was posted, who had filed the prosecution complaint in the Court of law.

14. It is the specific contention of the learned Standing Counsel that the duties performed by the Deputy Director of

Income Tax as well as Assistant Director of Income Tax are one and the same, excepting that a senior officer will be termed as Deputy Director of Income Tax and a junior officer as Assistant Director of Income Tax. Therefore, there is no error or irregularity in the present case for launching prosecution against the petitioner-company by the Assistant Director of Income Tax.

15. The learned Senior Counsel for the petitioners in order to support his contentions, relied on the following judgments.

15.1 The judgment of the Delhi High Court in the case of ***Commissioner of Income Tax Vs. Spl's Siddhartha Ltd***[1] and brought to the notice of this Court paragraph Nos.8 and 9 which reads as under:

> "8. Thus, if authority is given expressly by affirmative words upon a defined defined condition, the expression of that condition excludes the doing of the Act authorised under other circumstances than those as defined. It is also established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be "independent" and not "borrowed" or "dictated"

[1] MANU/DE/7165/2011

> satisfaction. Law in this regard is now sell-settled. In Sheo Narain Jaiswal & Ors. Vs. ITO,176 ITR 35 (Pat.), it was held:
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> Where the Assessing Officer does not himself exercise his jurisdiction under Section 14 but merely acts at the behest of any superior authority, it must be held that assumption of jurisdiction was bad for nonsatisfaction of the condition precedent.
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> 9. The Apex Court in the case of Anirudh_Sinhji Karan Sinhji Cinhii ladeia Jadeja Vs. State of Gujarat, MANU/SC/0473/1995 (1995) 5 SCC 302 has held that if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If discretion is exercised under the direction or in compliance with some higher authorities instruction, then it will be a case of failure to exercise discretion altogether."

As per the above precedent it is evident that if a statutory authority has been vested with jurisdiction, he has to exercise it accordingly and if discretion is exercised under the directions or in compliance of some higher authority's instruction, then it would be a case of failure to exercise discretion altogether.

15.2 The judgment of the Madras High Court in the case of ***P.R.P. Granites Vs. Check-Post Officer/Assistant Commercial Tax Officer, Puzhal Check-Post(Incoming)***,

Chennai[2] and brought to the notice of this Court paragraph No.15 which reads as under:

> "15. The respondent is hereby directed to release the goods along with the vehicles, which are the subject matter of the G.D. Nos. 1329, 1330 and 1331 of 2003-2004 dated August 16, 2003 forthwith on the petitioner furnishing an undertaking that the subject goods will not be parted with or alienated for a period of six months within which period the respondent can take any action, if so warranted, in accordance with law for recovery of any tax legally liable from the petitioner. I am constrained to conclude this order with a note of caution to the authorities under the Act to the effect that any action taken by the authorities must have the sanction of law and supported by provisions of law. Otherwise, the same would amount to illegal action and harassment of unwary public for extraneous reasons, which is not authorised under any law and cannot be the intention of the law makers. With this observation the writ petitions are allowed."

As per the above said proposition, the authority which has initiated the prosecution must have sanction of law. Otherwise, it amounts to illegal action.

15.3 The learned Senior Counsel for the petitioner further relied on the judgment of the Hon'ble Apex Court in the case of ***Sate of Uttar Pradesh Vs. Singhara Singh and***

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[2] 2003 SCC OnLine Mad 1045

others[3] and brought to the notice of this Court paragraph No.8, which reads as under:

> "8. The rule adopted in Taylor v. Taylor is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has bene prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on Magistrates the power to record statements or confessions, by necessary implication, prohibited as Magistrate from giving oral evidence of the statements or confessions made to him."

The ratio formulated as per the above precedent is that if a statute has conferred a power to act and has laid down the method, any power must be exercised discreetly, which prohibits doing of act in any another manner. Which means, if a sanction has been granted to the Deputy

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[3] (1964) 4 SCR 485

director to launch prosecution against the petitioner-company, it is for the Deputy Director alone to launch the prosecution but not the Assistant Director.

15.4 The judgment of the Hon'ble Apex Court in the case of ***Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others*** [4]and brought to the notice of this Court paragraph No.24 which reads as under:

> "24. In Matajog's case, 1995 (2) SCR 925 the Constitution Bench held that the complaint may not disclose all the facts to decide the question of applicability of Section 197, but facts subsequently coming either on police or judicial inquiry or even in the course of prosecution evidence may establish the necessity for sanction. In S.B. Saha's case (1979 (4) SCC 177, the court observed that instead of confining itself to the allegations in the complaint the Magistrate can take into account all the materials on the record at the time when the question is raised and falls for consideration. In Pukhraj's case, (supra) this court observed that whether sanction is necessary or not may depend from stage to stage. In Matajog's case the Constitution Bench had further observed that the necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place the material on record during the course of trial for showing what his duty was and also the acts complained of were so inter related with his official duty so as to attract the protection afforded by Section 197 of the Code of Criminal Procedure. This being the position it would be unreasonable to hold that accused even though might have really acted in discharge of his official duty for which the complaints have been lodged yet he will have to wait till the stage under sub section (4) Section 246 of

[4] (1998) 1 Supreme Court Cases 205

> the Code reaches or at least till he will be able to bring in relevant materials while cross examining the prosecution witnesses. On the other had it would be logical to hold that the matter being one dealing with the jurisdiction of the court to take cognisance, the accused would be entitled to produce the relevant and material documents which can be admitted into evidence without formal proof, for the limited consideration of the court whether the necessary ingredients to attract Section 197 of the Code have been established or not. The question of applicability of Section 197 of the Code and the consequential ouster of jurisdiction of the court to take cognisance without a valid sanction is genetically different from the plea of the accused that the averments in the complaint do not make out an offence and as such the order of cognisance and/or the criminal proceedings be quashed. In the aforesaid premises were are of the considered opinion that in accused is not debarred from producing the relevant documentary materials which can be legally looked into without any formal proof, in support of the stand that the acts complained of were committed in exercise of his jurisdiction or purported jurisdiction as a public servant in discharge of his official duty thereby requiring sanction of the appropriate authority."

As per the above precedent, it is no longer a dispute as indicated by the Hon'ble Apex Court in several cases that the question of sanction can be considered at any stage of the proceedings.

16. On the other hand, the learned Standing Counsel for Income Tax relied on the judgment of the Hon'ble Apex Court in the case of ***P. Jayappan Vs. S.K. Perumal, First***

ITO[5]. The ratio formulated in the said judgment is that reassessment proceedings cannot act as bar for initiation of criminal prosecution and there cannot be quash of proceedings under Section 482 of Cr.P.C. The above citation is not applicable to the facts and circumstances of the case, as the petitioner is challenging the fact that the respondent No.1 did not have any power to launch the prosecution proceedings as the sanction was granted to the Deputy Director.

17. Perusal of the entire record, rival contentions of both the parties and the precedents relied upon by them, it is evident that once sanction has been given to a particular authority, i.e., the Deputy Director of Income Tax, the prosecution has to be launched by him alone and not by the Assistant Director of Income Tax, who did not have the power to launch the prosecution proceedings. Though it is the contention of the learned Standing Counsel for the respondent that the Deputy Director of Income Tax is a

[5] [1984] 19 Taxman 1 (SC)

senior officer and the Assistant Director of Income Tax is a junior officer and both were doing the same duties, the said contention cannot be taken into consideration as in the present case, the sanction is accorded to the Deputy Director of Income Tax for initiating prosecution and not to the Assistant Director of Income Tax.

18. In view of the above discussion, this Court is of the considered opinion that it is a fit case to quash the proceedings against the petitioner.

19. Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner/accused in C.C.No.263 of 2017 on the file of the Special Judge for Economic Offences, Nampally, Hyderabad, are hereby quashed.

Miscellaneous applications pending, if any, shall stand closed.

G. ANUPAMA CHAKRAVARTHY, J

September 6, 2023.
BMS