



2024:KER:68032

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN**

**THURSDAY, THE 5<sup>TH</sup> DAY OF SEPTEMBER 2024 / 14TH BHADRA, 1946**

**CRL.MC NO. 359 OF 2015**

**AGAINST THE ORDER/JUDGMENT DATED IN CC NO.637 OF  
2014 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE (E&O),  
ERNAKULAM**

**PETITIONERS:**

- 1 AUGUST CINEMA(INDIA) PVT. LTD.  
RAJ SADAN, TC 26/322 - 5, NEAR ACV,  
SECRETARIAT WARD, STATUE,  
THIRUVANANTHAPURAM - 695 013, REPRESENTED  
BY ITS PRINCIPAL OFFICER, MANAGING  
DIRECTOR MR.SHAJI NADESAN.**
- 2 MR.SAJI NADESAN  
SRR HOUSE, PERUNGUZHI, AZHOOR,  
THIRUVANANTHAPURAM - 695 305, MANAGING  
DIRECTOR, AUGUST CINEMA (INDIA) PVT. LTD,  
THIRUVANANTHAPURAM.**
- 3 MR.PRITHVIRAJ SUKUMARAN  
TC 6/2262(7), PRARTHANA, CITY PARK  
COMPOUND, VATTIYOORKKAVU,  
THIRUVANANTHAPURAM - 695 013, DIRECTOR,  
AUGUST CINEMA (INDIA) PVT. LTD,  
THIRUVANANTHAPURAM.**



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- 4 MR.SANTHOSH SIVAN  
C-25/102, NEW AKASH GANGA CO-OP SOCIETY,  
YAMUNA NAGAR, OSHIWARA, ANDHERI (W),  
MUMBAI - 400 053, DIRECTOR, AUGUST CINEMA  
(INDIA) PVT. LTD, THIRUVANANTHAPURAM.

BY ADV SRI.C.UNNIKRISHNAN (KOLLAM)

**RESPONDENTS:**

- 1 INCOME TAX OFFICER (TDS)  
3RD FLOOR, AAYAKAR BHAVAN, KOWDIAR,  
THIRUVANANTHAPURAM - 693 003.
- 2 UNION OF INDIA  
REPRESENTED BY ITS ASST. SOLICITOR  
GENERAL, HIGH COURT OF KERALA.
- 3 STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.

BY ADVS.  
SRI.P.K.R.MENON, SR.COUNSEL, GOI(TAXES)  
SRI.JOSE JOSEPH, SC, FOR INCOME TAX  
SRI.RENJITH.T.R, SR.PP  
SRI.V.GANESAN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR  
ADMISSION ON 05.09.2024, THE COURT ON THE SAME DAY  
PASSED THE FOLLOWING:



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**P.V.KUNHIKRISHNAN, J.**

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**Crl.M.C. No.359 of 2015**  
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**Dated this the 05<sup>th</sup> day of September, 2024**

**ORDER**

The petitioners are accused Nos.1 to 4 in CC No.637/2014 on the file of Additional Chief Judicial Magistrate Court (Economic Offences) Ernakulam. It is a complaint filed against the petitioners by the Income Tax Officer (TDS), alleging offence under Section 276B of the Income Tax Act.

2. The allegation in the complaint in brief is that, when an inspection was conducted on 03.02.2012 in the premises of the accused, it was found that the accused was making various payments during 2010-11 which were liable to tax deduction at source such as fees of artists and other contracts, professional and other consultancy



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charges, rents etc., without deducting tax and thereby not paying Rs.11,44,375/-. Hence, it is alleged that the accused committed the offence. According to the petitioners, even if the entire allegations are accepted, no offence is made out.

3. Heard the learned counsel appearing for the petitioners. Eventhough, this case was posted for hearing on two occasions, there was no representation for the 1<sup>st</sup> and 2<sup>nd</sup> respondents. Therefore, this Court heard the learned Public Prosecutor.

4. The offence alleged in this case is under Section 276B of the Income Tax Act. It is submitted by the petitioners that, during the financial year 2010-11, which at the beginning of the operations of the petitioners Company, TDS were not deducted from the payment and remuneration effected during the 1<sup>st</sup> Cinema namely 'Urumi', produced by the Company. According to the petitioners, this



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happened due to ignorance. When it was pointed out by the department, the entire amount of TDS which was liable to be paid i.e. Rs.11,44,375/- along with its penal interest were paid on 14.03.2012, 28.03.2012 and 29.03.2012, as evident by Annexure-A3. Hence, it is alleged that there is no necessity at all to initiate prosecution under Section 276B of the Income Tax Act. It is also contented that, Section 276B is intended for non-payment of already deducted amount of TDS alone. I think, there is force in the above argument. Section 276B of the Income Tax Act is extracted hereunder:

***“S.276(B) - If a person fails to pay to the credit of the Central Government,-***

*(a) the tax deducted at source by him as required by or under the provision of Chapter XVII (B); or*

*(b) the tax payable by him as required by or under,*

*(i) sub sec (2) of Section 115 - O; or*



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*(ii) the second proviso to Section 194 B,  
He shall be punishable with rigorous imprisonment  
for a term which shall not be less than 3 months  
but which may extend to 7 years and with fine.”*

5. As per the above Section, if a person fails to pay to the credit of the Central Government, the tax deducted at source by him as required by or under the provision of Chapter XVII(B) or the tax payable by him as required or under sub Section (2) of Section 115 - O or the second proviso to Section 194B, shall be punishable with imprisonment not less than three months but which may extend to 7 years and with fine.

6. In this case, the allegation is that, the petitioners never deducted tax at source. If that be the case, I think, there is force in the argument of the petitioners that Section 276B of the Income Tax Act is not attracted. Moreover, the entire amount



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with penal interest is already paid by the petitioners. If that be the case, the continuation of prosecution is not necessary against the petitioners.

Therefore, this Criminal Miscellaneous Case is allowed. All further proceedings against the petitioners in CC No.637/2014 on the file of Additional Chief Judicial Magistrate Court (Economic Offences) Ernakulam are quashed.

**Sd/-**

**P.V.KUNHIKRISHNAN  
JUDGE**

nvj



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**APPENDIX OF CRL.MC 359/2015**

**PETITIONER EXHIBITS**

**A1 - TRUE COPY OF THE COMPLAINT IN  
CC NO. 637/2014 FILED BY THE 1ST  
RESPONDENT BEFORE THE HON'BLE ACJM  
(EO) COURT, ERNAKULAM.**

**A2 - TRUE COPY OF THE CERTIFICATE  
OF INCORPORATION ISSUED BY THE  
REGISTRAR OF COMPANIES, KERALA.**

**A3 - TRUE COPIES OF THE TAX PAYER  
COUNTERFOILS DT. 14.3.12, 28.3.12  
AND 29.3.12.**

**A4 - TRUE COPY OF THE RESOLUTION  
DT. 10.8.10 OF THE 1ST PETITIONER  
COMPANY.**

**RESPONDENTS EXHIBITS :NIL**

**//TRUE COPY//**

**PA TO JUDGE**