

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JULY, 2024

BEFORE

THE HON'BLE Mr. JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL APPEAL No.2104/2023

C/W

**CRL.A. Nos.1339/2020, 925/2021, 950/2021,
954/2021, 1207/2021, 1222/2021, 1223/2021,
1224/2021, 1229/2021, 1319/2021, 1326/2021,
1330/2021, 1337/2021, 672/2022, 810/2022,
898/2022, 2233/2022, 2245/2022 AND 1913/2023.**

IN CRL.A.No.2104/2024:

BETWEEN :

THE INCOME TAX DEPARTMENT
BY ITS INCOME TAX OFFICER (TDS)
WARD -2(1), H.M.T. BHAVAN
NO.59, BELLARY ROAD
BANGALORE - 560 032.

... APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND :

1. M/S. JENIOUS CLOTHING PRIVATE LTD
NO.1-35/5/1, INDUSTRIAL SUBURB
TUMKUR ROAD, YESHWANTHPUR

BANGALORE – 560 022.
(A COMPANY REGISTERED UNDER COMPANIES ACT.
REP. BY ITS MANAGING DIRECTOR –SUNIL V RAHEJA)

2. SUNIL V RAHEJA, MANAGING DIRECTOR
M/S. JENIOUS CLOTHING PRIVATE LTD.,
NO.1-35/5/1, INDUSTRIAL SUBURB
TUMKUR ROAD, YESHWANTHPUR
BANGALORE – 560 022.
(SECOND RESPONDENT VIDE ORDER DTD. 7.12.2019
WAS DISCHARGED BEFORE TRIAL COURT)

...RESPONDENTS

(BY SRI. S. ANNAMALAI, ADVOCATE FOR RESPONDENT NO.1)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377
BY S.P.P. FOR THE STATE PRAYING TO MAY BE PLEASED TO
ENHANCE THE LEVY OF FINE IMPOSED ON FIRST
RESPONDENT IN C.C.NO.89/2019 BY THE SPECIAL COURT
FOR ECONOMIC OFFENCE AT BENGALURU DATED 25.09.2020
AND ETC.,

IN CRL.A.NO.1339/2020:

BETWEEN :

THE ASSISTANT COMMISSIONER OF INCOME TAX
(TDS), INCOME TAX DEPARTMENT
CIRCLE-2(1), H.M.T. BHAVAN
BELLARY ROAD
BANGALORE – 560 032.

...APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND:

M/S. PEOPLE TECH IT CONSULTANCY PRIVATE LIMITED
 6TH FLOOR, GRAMMA BLOCK
 SIGMA SOFT TECH PARK,
 WHITEFIELD MAIN ROAD
 BANGALORE – 560 066.
 (A COMPANY REGISTERED UNDER COMPANIES ACT)

...RESPONDENT

(BY SRI. S. ANNAMALAI, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377
 CR.P.C PRAYING TO SEEKING FOR ENHANCEMENT OF
 SENTENCE BY MODIFYING THE JUDGMENT DATED 19.10.2019
 PASSED BY THE SPECIAL COURT FOR ECONOMIC OFFENCES,
 BENGALURU IN C.C.NO.148/2019 AND ETC.,

IN CRL.A.NO.925/2021:**BETWEEN :**

THE ASSISTANT COMMISSIONER OF INCOME TAX
 (TDS), INCOME TAX DEPARTMENT
 CIRCLE-2(1), H.M.T. BHAVAN
 BELLARY ROAD, BANGALORE – 560 032.

...APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND:

M/S. PEOPLE TECH IT CONSULTANCY PRIVATE LIMITED
 6TH FLOOR, GRAMMA BLOCK, SIGMA SOFT TECH PARK
 WHITEFIELD MAIN ROAD
 BANGALORE – 560 066.

(A COMPANY REGISTERED UNDER COMPANIES ACT)
 REP. BY KUTUMBA RAO MEKA.

....RESPONDENT

(BY SRI. S. ANNAMALAI, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377
 CR.P.C PRAYING TO MODIFY THE JUDGMENT RELATING TO
 SENTENCE DATED 19.10.2019 PASSED BY THE SPECIAL COURT
 FOR ECONOMIC OFFENCES, BENGALURU IN C.C.NO.147/2019
 AND ETC.,

IN CRL.A.No.950/2021:

BETWEEN :

THE ASSISTANT COMMISSIONER OF INCOME TAX
 (TDS), INCOME TAX DEPARTMENT
 CIRCLE-2(1), H.M.T. BHAVAN
 BELLARY ROAD, BANGALORE – 560 032.

...APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND:

M/S. PEOPLE TECH IT CONSULTANCY PRIVATE LIMITED
 6TH FLOOR, GRAMMA BLOCK, SIGMA SOFT TECH PARK
 WHITEFIELD MAIN ROAD, BANGALORE – 560 066.
 (A COMPANY REGISTERED UNDER COMPANIES ACT)

....RESPONDENT

(BY SRI. S. ANNAMALAI, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377
 CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF ACQUITTAL
 OF RESPONDENT VIDE ITS JUDGMENT DATED 19.10.2019
 PASSED BY THE SPECIAL COURT FOR ECONOMIC OFFENCES,
 BENGALURU IN C.C.NO.148/2019 AND CONVICT THE

RESPONDENTS FOR THE OFFENCE P/U/S 276B OF INCOME TAX ACT AND ETC.,

IN CRL.A.NO.954/2021:

BETWEEN :

THE INCOME TAX OFFICER
INCOME TAX DEPARTMENT
WARD-2(3), H.M.T.BHAVAN
BELLARY ROAD
BANGALORE – 560 032.

...APPELLANT

(BY SRI E.I.SANMATHI, ADVOCATE)

AND:

M/S. PANANCEA HOSPITAL PVT. LTD
No.334, 3RD STAGE, 3RD FLOOR
DR. SIDDAIAH PURANIK ROAD
BASAVESHWARANAGAR
BANGALORE – 560 079
REPRESENTED BY ITS MANAGING DIRECTOR
DR. C JAYANNA.

...RESPONDENT

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377 CR.P.C. PRAYING TO MODIFY THE JUDGEMENT RELATING TO SENTENCE DATED 16.11.2019 IN C.C.No.101/2018 BY THE SPECIAL COURT FOR ECONOMIC OFFENCES AT BENGALURU AND ENHANCE THE SENTENCE PASSED AGAINST ACCUSED No.1 COMPANY FOR THE OFFENCE P/U/S 276B OF THE I.T ACT AND ETC.,

IN CRL.A.No.1207/2021:**BETWEEN :**

THE INCOME TAX DEPARTMENT
 BY ITS INCOME TAX OFFICER (TDS)
 WARD -3(1), H.M.T. BHAVAN
 No.59, BELLARY ROAD
 BANGALORE – 560 032.

... APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND:

M/S. RAVIPATI BROADCASTERS PVT. LTD.,
 No.482, RVS COMPLEX, 3RD FLOOR
 80 FEET ROAD, HMT LAYOUT
 R T NAGAR
 BANGALORE – 560 032
 REP. BY RAVIPATI SRINIVASARAVI CHANDRASHEKAR

...RESPONDENT

(BY SRI ANNAMALAI S, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377
 CR.P.C. PRAYING TO ENHANCE THE FINE AMOUNT IN
 C.C.No.74/2019 BY THE SPECIAL COURT FOR ECONOMIC
 OFFENCES AT BENGALURU DATED 19.12.2020 AND ETC.,

IN CRL.A.No.1222/2021:**BETWEEN :**

THE ASSISTANT COMMISSIONER OF
 INCOME TAX (OSD),
 INCOME TAX DEPARTMENT, TDS
 H.M.T. BHAVAN, No.59

BELLARY ROAD, BANGALORE – 560 032.
NOW PRESENT REPRESENTED BY
THE DEPUTY COMMISSIONER OF INCOME TAX, (TSD)

...APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND:

1. M/S. GOLDEN GATE PROPERTIES LTD.,
No.820, GOLDEN HOUSE, 80 FEET ROAD
8TH BLOCK, KORAMANGALA
BANGALORE – 560 095.
(A COMPANY INCORPORATED UNDER
COMPANIES ACT REP BY ITS PRL. OFFICERS
AND DIRECTORS, PRATAP AND SANJAY RAI-A2)
2. SANJAY RAI, DIRECTOR
M/S. GOLDEN GATE PROPERTIES LTD.,
No.820, GOLDEN HOUSE
80 FEET ROAD, 8TH BLOCK
KORAMANGALA
BANGALORE – 560 095.
3. K KRISHNAN, DIRECTOR
M/S. GOLDEN GATE PROPERTIES LTD.,
No.820, GOLDEN HOUSE
80 FEET ROAD, 8TH BLOCK
KORAMANGALA
BANGALORE – 560 095.

...RESPONDENTS

(BY SRI G S NAGHARISH, ADVOCATE FOR R1 & R3
SRI G R SRINIVAS, ADVOCATE FOR R2)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377 CR.P.C. PRAYING TO ENHANCE THE SENTENCE PASSED APPROPRIATELY IN C.C.No.68/2018 BY THE SPECIAL COURT FOR ECONOMIC OFFENCES AT BENGALURU DATED 23.10.2020 AND ETC.,

IN CRL.A.No.1223/2021:

BETWEEN :

THE ASSISTANT COMMISSIONER OF INCOME-TAX
INCOME TAX DEPARTMENT, TDS CRICLE-3(1)
H.M.T. BHAVAN, BELLARY ROAD
BANGALORE - 560 032.

...APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND:

M/S. SICON DESIGN TECHNOLOGIES PRIVATE LIMITED
4TH FLOOR, SRI NARAYANI ARCADE, No.321-247/3-4
KUNDALAHALLI, ITPL MAIN ROAD, BROKE FILED,
BANGALORE - 560 037
REPRESENTED BY SHIVASHANKAR
A COMPANY REGISTERED UNDER COMPANIES ACT

...RESPONDENT

(BY SRI CHANDRASHEKARA K, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377 CR.P.C. PRAYING TO ENHANCE THE SENTENCE PASSED VIDE JUDGMENT DATED 15.02.2020 AND 17.02.2020 IN C.C.No.77/2018 ON THE FILE OF THE SPECIAL COURT FOR ECONOMIC OFFENCES, BENGALURU AND ETC.,

IN CRL.A.No.1224/2021:**BETWEEN :**

THE INCOME TAX DEPARTMENT
 BY DEPUTY COMMISSIONER OF
 INCOME TAX, TDS CIRCLE-3(1)
 H.M.T. BHAVAN, No.59
 BELLARY ROAD
 BANGALORE – 560 032.

...APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND:

M/S. SOWPARNIKA PROJECTS AND
 INFRASTRUCTURES PRIVATE LIMITED
 No.750, C-BLOCK, 1 & 5 MAIN ROAD
 ACES LAYOUT, KUNDANAHALLI
 BANGALORE – 560 036.
 REPRESENTED BY ITS DIRECTOR
 SRI SUBRAMANINAN SREENIVASAN.

...RESPONDENT

(BY SRI ANNAMALAI S, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377(1)
 OF CR.P.C. PRAYING TO CALL FOR RECORDS IN C.C.No.86/2018
 BY THE SPECIAL COURT FOR ECONOMIC OFFENCE AT
 BENGALURU DATED 28.10.2020 AND ENHANCE THE FINE
 AMOUNT AND ETC.,

IN CRL.A.No.1229/2021:**BETWEEN :**

THE INCOME TAX DEPARTMENT
 BY DEPUTY COMMISSIONER OF

INCOME TAX, TDS CIRCLE-3(1)
H.M.T. BHAVAN, No.59
BELLARY ROAD,
BANGALORE – 560 032.

...APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND:

M/S. SOWPARNIKA PROJECTS AND
INFRASTRUCTURES PRIVATE LIMITED
No.750, C-BLOCK, 1 & 5 MAIN ROAD
ACES LAYOUT, KUNDANAHALLI
BANGALORE – 560 036.
REPRESENTED BY ITS DIRECTOR
SRI SUBRAMANINAN SREENIVASAN.

...RESPONDENT

(BY SRI ANNAMALAI S, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377(1)
OF CR.P.C. PRAYING TO CALL FOR RECORDS IN C.C.No.84/2018
BY THE SPECIAL COURT FOR ECONOMIC OFFENCES AT
BANGALORE DATED 28.10.2020 AND ENHANCE THE FINE
AMOUNT AND ETC.,

IN CRL.A.No.1319/2021:

BETWEEN :

THE INCOME TAX OFFICER, TDS
INCOME TAX DEPARTMENT, WARD-2(3)
HMT BHAVAN BELLARY ROAD
BANGALORE – 560 032.

...APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND:

1. M/S. POOJA FOOTWEAR PRIVATE LIMITED
No.19/1, SHANKARA DEVARA MUTT LANE
MANAVARATHPET, BANGALORE – 560 003
(A COMPANY REGISTERED UNDER COMPANIES ACT,
REP BY TIS DIRECTOR – RAJ LALWANI)
2. RAJ LALWANI, DIRECTOR
M/S. POOJA FOOTWEAR PRIVATE LIMITED
No.19/1, SHANKARA DEVARA MUTT LANE
MANARAVARPET, BANGALORE – 560 003.

...RESPONDENTS

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377(1) OF CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 19.03.2020 PASSED BY THE PRESIDING SPECIAL COURT FOR ECONOMIC OFFENCES, BANGALORE IN C.C.No.81/2019 THE APPELLANT/ACCUSED No.1 FOR THE OFFENCE P/U/S 276B OF I.T. ACT AND ETC.,

IN CRL.A.No.1326/2021:

BETWEEN :

THE INCOME TAX OFFICER, TDS
INCOME TAX DEPARTMENT, WARD-2(3)
HMT BHAVAN BELLARY ROAD
BANGALORE – 560 032.

...APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND:

1. M/S. POOJA FOOTWEAR PRIVATE LIMITED
No.19/1, SHANKARA DEVARA MUTT LANE
MANAVARATHPET, BANGALORE – 560 003.

(A COMPANY REGISTERED UNDER COMPANIES ACT,
REP BY TIS DIRECTOR – RAJ LALWANI)

2. RAJ LALWANI, DIRECTOR
M/s. POOJA FOOTWEAR PRIVATE LIMITED
No.19/1, SHANKARA DEVARA MUTT LANE
MANARAVARPET, BANGALORE – 560 003.

...RESPONDENTS

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377(1)
OF CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT OF
CONVICTION DATED 19.03.2020 PASSED BY THE PRESIDING
SPECIAL COURT FOR ECONOMIC OFFENCES, BANGALORE IN
C.C.No.78/2019 THE APPELLANT/ACCUSED No.1 FOR THE
OFFENCE P/U/S 276B OF I.T. ACT AND ETC.,

IN CRL.A.No.1330/2021:

BETWEEN :

THE INCOME TAX OFFICER, TDS
INCOME TAX DEPARTMENT, WARD-2(3)
HMT BHAVAN BELLARY ROAD
BANGALORE – 560 032.

...APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND:

1. M/s. POOJA FOOTWEAR PRIVATE LIMITED
No.19/1, SHANKARA DEVARA MUTT LANE
MANAVARATHPET, BANGALORE – 560 003.
(A COMPANY REGISTERED UNDER COMPANIES ACT,
REP. BY TIS DIRECTOR – RAJ LALWANI)
2. RAJ LALWANI, DIRECTOR
M/S. POOJA FOOTWEAR PRIVATE LIMITED

No.19/1, SHANKARA DEVARA MUTT LANE
MANARAVARPET, BANGALORE – 560 003.

...RESPONDENTS

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377(1) OF CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 19.03.2020 PASSED BY THE PRESIDING SPECIAL COURT FOR ECONOMIC OFFENCES, BANGALORE IN C.C.No.77/2019 THE APPELLANT/ACCUSED No.1 FOR THE OFFENCE P/U/S 276B OF I.T. ACT AND ETC.,

IN CRL.A.No.1337/2021:

BETWEEN :

THE INCOME TAX DEPARTMENT
BY ITS INCOME TAX OFFICER (TDS)
WARD -1(1), H.M.T. BHAVAN
BANGALORE – 560 032.

... APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND:

1. M/S. ATLAS BRANDS PVT. LTD
No.13/14, BRANDS PRIVATE LTD.,
SIGNGSANDRA VILLAGE, BEGUR HOBLI
BANGALORE (A COMPANY REGISTERED UNDER
COMPANIES ACT, REP BY ITS DIRECTOR-SECOND
ACCUSED NAMELY RAMESH S)
2. RAMESH S BULCHANDANI, DIRECTOR
M/S. ATLAS BRANDS PVT. LTD
No.13/14, BRANDS PRIVATE LTD
SIGNGSANDRA VILLAGE, BEGUR HOBLI
BANGALORE – 560 068.

...RESPONDENTS

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377 OF CR.P.C. PRAYING TO ENHANCE THE LEVY OF FINE AGAINST RESPONDENT No.1 IN C.C.No.104/2019 BY THE SPECIAL COURT FOR ECONOMIC OFFENCES AT BENGALURU DATED 19.03.2020 AND ETC.,

IN CRL.A.No.672/2022:

BETWEEN :

THE INCOME TAX DEPARTMENT
BY ITS INCOME TAX OFFICER (TDS)
WARD -3(1), H.M.T. BHAVAN
No.59, BELLARY ROAD
BANGALORE – 560 032.

... APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND:

M/S. RAVIPATI BROADCASTERS PVT. LTD.,
No.482, RVS COMPLEX
3RD FLOOR, 80 FEET ROAD
HMT LAYOUT, R T NAGAR
BANGALORE – 560 032.

...RESPONDENT

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377(1) OF CR.P.C. PRAYING TO CALL FOR RECORDS IN C.C.No.76/2019 BY THE SPECIAL COURT FOR ECONOMIC OFFENCES, BANGALORE DATED 19.12.2020 AND ENHANCE THE FINE AMOUNT AND ETC.,

IN CRL.A.No.810/2022:

BETWEEN :

THE INCOME TAX DEPARTMENT
ASSISTANCE COMMISSIONER OF INCOME TAX
DS CIRCLE -2(1), H.M.T. BHAVAN
BELLARY ROAD
BANGALORE – 560 032.

... APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND:

1. M/S. MIRAFRA SOFTWARE TECHNOLOGIES PVT LTD
No.72 & 73, AKSHAY TECH PART, 2ND FLOOR
EPIP ZONE, PHASE-1, WHITEFILED
BANGALORE – 560 066.
(A COMPANY REGISTERED UNDER COMPANIES ACT,
REPRESENTED BY ITS DIRECTOR –SHYAN PADALA)
2. SHYAM PADALA, DIRECTOR
No.72 & 73, AKSHAY TECH PARK, 2ND FLOOR
EPIP ZONE, PHASE -1, WHITEFILED
BANGALORE – 560 066.

...RESPONDENTS

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(4)
OF CR.P.C. PRAYING TO ENHANCE THE SENTENCE PASSED
AGAINST ACCUSED No.1 IN C.C.No.50/2019 BY THE SPECIAL
COURT FOR ECONOMIC OFFENCES AT BENGALURU DATED
16.09.2021 AND ETC.,

IN CRL.A.No.898/2022:

BETWEEN :

THE INCOME TAX OFFICER
INCOME TAX DEPARTMENT
WARD-2(3), H.M.T.BHAVAN
BELLARY ROAD
BANGALORE – 560 032.

...APPELLANT

(BY SRI E.I.SANMATHI, ADVOCATE)

AND:

1. M/S. PANACEA HOSPITAL PVT. LTD
No.334, 3RD STAGE, 3RD FLOOR
DR. SIDDAIAH PURANIK ROAD
BASAVESHWARANAGAR
No.1, BANGALORE.
(A COMPANY REGISTERED UNDER COMPANIES ACT,
REPRESENTED BY ITS
MANAGING DIRECTOR – R-2).
2. DR.C.JAYANNA, MANAGING DIRECTOR
M/s. PANACEA HOSPITAL PVT. LTD
No.334, 3RD STAGE, 3RD FLOOR
DR.SIDDAIAH PURANIK ROAD
BASAVESHWARANAGAR, BANGALORE.

...RESPONDENS

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377
CR.P.C. PRAYING TO ENAHNCE THE SENTENCE PASSED
AGAINST ACCUSED No.1 IN C.C.No.87/2019 BY THE SPECIAL
COURT FOR ECONOMIC OFFENCES AT BENGALURU DATED
16.10.2021 AND ETC.,

IN CRL.A.No.2233/2022:

BETWEEN :

THE INCOME TAX DEPARTMENT
BY DEPUTY COMMISSIONER OF
INCOME TAX, TDS CIRCLE-3(1)
H.M.T. BHAVAN, No.59
BELLARY ROAD
BANGALORE – 560 032.

...APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND:

M/S. SOWPARNIKA PROJECTS AND
INFRASTRUCTURES PRIVATE LIMITED
No.750, C-BLOCK, 1 & 5 MAIN ROAD
ACES LAYOUT, KUNDANAHALLI
BANGALORE – 560 036.
REPRESENTED BY ITS DIRECTOR
SRI SUBRAMANINAN SREENIVASAN.

...RESPONDENT

(BY SRI ANNAMALAI S, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377(1)
OF CR.P.C. PRAYING TO CALL FOR RECORDS IN C.C.No.85/2018
BY THE SPECIAL COURT FOR ECONOMIC OFFENCES AT
BANGALORE DATED 28.10.2020 AND ENHANCE THE FINE
AMOUNT AND ETC.,

IN CRL.A.No.2245/2022:

BETWEEN :

THE INCOME TAX DEPARTMENT
BY DEPUTY COMMISSIONER OF

INCOME TAX, TDS CIRCLE-3(1)
H.M.T. BHAVAN, No.59
BELLARY ROAD
BANGALORE – 560 032.

...APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND:

M/S. SOWPARNIKA PROJECTS AND
INFRASTRUCTURES PRIVATE LIMITED
No.750, C-BLOCK, 1 & 5 MAIN ROAD
ACES LAYOUT, KUNDANAHALLI
BANGALORE – 560 036.
REPRESENTED BY ITS DIRECTOR
SRI SUBRAMANINAN SREENIVASAN.

...RESPONDENT

(BY SRI ANNAMALAI S, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377(1)
OF CR.P.C. PRAYING TO CALL FOR RECORDS IN
C.C.No.128/2018 BY THE SPECIAL COURT FOR ECONOMIC
OFFENCES AT BANGALORE DATED 28.10.2020 AND ENHANCE
THE FINE AMOUNT AND ETC.,

IN CRL.A.No.1913/2023:

BETWEEN :

THE INCOME TAX DEPARTMENT
BY ITS INCOME TAX OFFICER (TDS)
WARD -2(1), H.M.T. BHAVAN
No.59, BELLARY ROAD
BANGALORE – 560 032.

... APPELLANT

(BY SRI E I SANMATHI, ADVOCATE)

AND :

1. M/S. JENIOUS CLOTHING PRIVATE LTD
No.1-35/5/1, INDUSTRIAL SUBURB
TUMKUR ROAD, YESHWANTHPUR
BANGALORE.
(A COMPANY REGISTRED UNDER COMPANIES ACT.
REP. BY ITS
MANAGING DIRECTOR –SUNIL V RAHEJA)

2. SUNIL V RAHEJA, MANAGING DIRECTOR
M/S. JENIOUS CLOTHING PRIVATE LTD.,
No.1-35/5/1, INDUSTRIAL SUBURB
TUMKUR ROAD, YESHWANTHPUR
BANGALORE.
(SECOND RESPONDENT
VIDE ORDER DTD. 7.12.2019
WAS DISCHARGED BEFORE TRIAL COURT)

...RESPONDENTS

(BY SRI S ANNAMALAI, ADVOCATE FOR R1)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 377 Cr.P.C. PLEASED TO CALL FOR RECORDS IN C.C.No.90/2019 BY THE SPECIAL COURT FOR ECONOMIC OFFENCES AT BANGALORE DATED 25.09.2020 AND ENHANCE THE LEVY OF FINE IMPOSED ON FIRST RESPONDENT AND ETC.,

THESE CRIMINAL APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, THIS DAY, **SHIVASHANKAR AMARANNAVAR J**, DELIVERED THE FOLLOWING;

JUDGMENT

1. The Income Tax Department has filed these appeals under Section 377 of Cr.P.C. against the sentence on the ground of its inadequacy. The details of these appeals are as under:

Sl. No	Cri Appeal (H.C)	Trial Court name	C.C.NO. with judgment Date	Offence	Sentence
1	1339/2020	Spl. Court for economic offences at Bengaluru	148/2018 dtd. 19/10/2019	Sec 276 B R/w 278B of I.T Act. 1961 with Rule 30	25,000/-
2	925/2021	Same	147/2018 Dtd. 19/10/2019	Same	25,000/-
3	950/2021	Same	149/2018 dtd. 19/10/2019	Sec 276B	25,000/-
4	954/2021	Same	101/2018 dtd. 16/11/2019	Sec 276 B R/w 278B of I.T Act. 1961 with Rule 30	20,000/-
5	1207/2021	Same	74/2019 dtd. 19/12/2020	Sec 276B	20,000/-
6	1222/2021	Same	68/2018 dtd. 23/10/2020	Sec 276B	20,000/-
7	1223/2021	Same	77/2018 dtd. 15/02/2020	Sec 276B	1,00,000/-
8	1224/2021	Same	86/2018 dtd. 28/10/2020	Sec 276B	25,000/-
9	1229/2021	Same	84/2018 dtd. 28/10/2020	Sec 276B	25,000/-
10	1319/2021	Same	81/2019 Dtd. 19/03/2020	Sec 276B	5,000/-

11	1326/2021	Same	78/2019 dtd. 19/03/2020	Sec 276 B R/w 278B of I.T Act. 1961	-
12	1330/2021	Same	77/2019 dtd 19/03/2020	Sec 276 B R/w 278B of I.T Act. 1961	5,000/-
13	1337/2021	Same	104/2019 Dtd. 19/03/2020	Sec 276 B R/w 278B of I.T Act. 1961	10,000/-
14	672/2022	Same	76/2019 Dtd. 19/12/2020	Sec 276 B	20,000/-
15	810/2022	Same	50/2019 Dtd. 16/09/2021	Sec 276 B R/w 278B of I.T Act. 1961	10,000/-
16	898/2022	Same	87/2019 Dtd. 16/10/2021	Sec 276 B	20,000/-
17	2233/2022	Same	85/2018 Dtd. 28/10/2020	Sec 276 B	25,000/-
18	2245/2022	Same	128/2018 Dtd. 28/10/2020	Sec 276 B	20,000/-
19	1913/2023	Same	90/2019 Dtd. 30/05/2023	Sec 276 B	10,000/-
20	2104/2023	Same	89/2019 Dtd. 25/09/2020	Sec 276 B	10,000/-

2. The judgment of conviction and order on sentence has been passed by the Special Court for Economic Offences, Bengaluru, Special Court established under Section 280-A of the Income Tax Act, 1961

(hereinafter for the sake of brevity referred to as the 'I.T. Act, 1961'). A special Court of Judicial Magistrate First Class has been established under notification dated 01.09.1982 bearing No. LAW/106/LCE 79 issued by the Government of Karnataka reads as under:

"NOTIFICATION

In exercise of the powers conferred by the proviso to sub-section (1) of Section 11 read with clause (j) of section 2 and Section 13 of the Code of Criminal Procedure, 1973, (Central Act 2 of 1974), the Government of Karnataka, in consultation with the High Court of Karnataka, establishes for a period of one year with effect from the 13th day of September 1982, a special court of Judicial Magistrate First Class for the trial of offences under the Acts specified in the schedule having jurisdiction within the local area of the revenue district of Bangalore including the Bangalore Metropolitan area.

SCHEDULE

1. *The Central Excises and Salt Act, 1944*
2. *The Imports and Exports (Central) Act, 1947*

3. *The Wealth Tax Act, 1957*
4. *The Income Tax Act, 1961*
5. *The Customs Act, 1962*
6. *The Gold (Control) Act, 1968*
7. *The Foreign Exchange Regulation Act, 1973*
8. *Companies Profits (Surtax) Act, 1964*
9. *The Gift Tax Act, 1958*
10. *The Export (Quality, Control and Inspection) Act, 1963*
11. *The Companies Act, 1956*
12. *Monopolies and Restrictive Trade Practices Act, 1969.*

3. The order pursuant to which the above notification is issued reads as under:

"PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

"Subject : Special Court – Constitution of – for trial of Economic Offences – at Bangalore from 13.09.1982 – Orders reg. ---

ORDER NO. LAW 106 LCE 79/DATED 01.09.1982

Read: 1. Letter No. 2-1-1979 Judl. dated 27-4-1979 from the Government of India, Ministry of Home Affairs, New Delhi.

2. Correspondence ending with letter C.No. VIII/17/21/79 Legal dated 18-10-79 from the collector of Central Excise, Central Revenues Building, Bangalore.

3. Letter No.23-6-79 dated 14-4-81 and Wireless Messages under No.23/5/82 Jus dated 3-5-82, 27-4-82, 26-5-82-and 16-6-82 from the Government of India, Ministry of Law, Justice and Company Affairs, New Delhi.

4. Correspondence ending with letter No.GOB.393/1979 dated 21-8-1982 from the Registrar, High Court of Karnataka, Bangalore.

PREAMBLE:

The Government of India, Ministry of Home Affairs, New Delhi, in their letter No.2-1-79 Judl. Dated 27-4-79 have suggested to this Government that additional courts may be established exclusively for dealing with economic offences, in accordance with the 47th report of the law Commission recommending the establishment of Special Courts for the effective and speedy prosecution of such

offences. The Government of India have suggested that the territorial jurisdiction of the Special Court may be the whole State.

The suggestion of the Government of India was examined in consultation with the High Court of Karnataka, Bangalore.

The High Court of Karnataka suggested that a Special Court may be established for Bangalore District including the Metropolitan area of the City of Bangalore. The High Court of Karnataka is of the view that conferring state wide jurisdiction to the Special Court would involve time, expenditure and serious inconvenience to the accused, witnesses, defence counsel etc.. The High Court is also of the view that the question of establishing similar courts in Divisional Head Quarters could be considered later after observing the functioning of the proposed Court at Bangalore.

Accordingly, the Registrar, High Court of Karnataka has forwarded proposals for the creation of a Special Court at Bangalore for trial of economic offences under certain Central Acts. Presided over by an officer of the rank of a Civil Judge and Chief Judicial Magistrate together with certain non-

gazetted staff in accordance with the uniform staffing pattern to be attached to the court for a period, of one year in the first instance.

ORDER

After examining all the relevant aspects of the case, sanction is hereby accorded to the establishment of Special Court of Judicial Magistrate First Class at Bangalore for the trial of offences under the twelve Central Acts noted specified below with the post of a presiding officer and the non-gazetted staff attached thereto as detailed in the margin having jurisdiction over the area comprising the revenue district of Bangalore (including the metropolitan area of the Bangalore city) for a period of one year from 13-9-82 in the first instance.

xxx xxx xxx

The 12 Central Acts. Referred to above are the following namely:

- 1. The Central Excises and Salt Act, 1944*
- 2. The Imports and Exports (Central) Act, 1947*
- 3. The Wealth Tax Act, 1957*
- 4. The Income Tax Act, 1961*
- 5. The Customs Act, 1962*

6. *The Gold (Control) Act, 1968*
7. *The Foreign Exchange Regulation Act, 1973*
8. *Companies Profits (Surtax) Act, 1964*
9. *The Gift Tax Act, 1958*
10. *The Export (Quality, Control and Inspection) Act, 1963*
11. *The Companies Act, 1956*
12. *Monopolies and Restrictive Trade Practices Act, 1969.*

4. Another notification dated 04.02.1985 bearing No. LAW 139 LCE 79 has been issued by the Government of Karnataka which reads thus:

NOTIFICATION

In exercise of the powers conferred by the Provision to Sub-Section (1) of Section 11 read with clause (1) of Section 2, and Section 13 of the Code of Criminal Procedure, 1973 (Act. No. 2 of 1974) the Government of Karnataka, in consultation with the High Court of Karnataka, hereby makes the following amendment to the Notification No. LAW 196 LCE 79 dated 01.09.1982, namely :

In the schedule to the said Notification after serial number 12, the following shall be inserted:

"13. The Railway Property (Unlawful Possession) Act, 1966 (Act No. 20 of 1966)

14. The Employees Provident Fund and Miscellaneous Provisions Act, 1952 (Act No.19 of 1952)

5. The Special Court of Judicial Magistrate First Class which has been established by the above notification dated 01.09.1982 for trial of offences under the Central Acts is specified in the schedule as having jurisdiction within the local areas of revenue district of Bengaluru including Bengaluru metropolitan areas.

6. The Ministry of Finance (Department of Revenue) (Central Board of Direct Taxes) has issued notification dated 11.10.2019 bearing No. 79/2019 under sub-Section (1) of Section 280-A of I.T. Act, 1961 designating the

Special Court for the area mentioned in the said notification. Said notification reads thus:

NOTIFICATION

New Delhi, the 11th October 2019,

No. 79/2019

S.O. 3676(E). In exercise of the powers conferred by sub-section (1) of section 280A of the Income -tax Act, 1961 (43 of 1961), the Central Government, in consultation with the Chief Justice of the High Court of Karnataka, hereby designates the following Courts in the State of Karnataka, as mentioned in Column (2) of the table below, as Special Court, for the area mentioned in the corresponding entry in column (3) of the said table, namely:-

Sl. No.	Court	Area
1	<i>Principal Civil Judge and Judicial Magistrate First Class, Ballari</i>	<i>Ballari</i>
2	<i>Judicial Magistrate First Class -II. Belagavi</i>	<i>Belagavi</i>
3	<i>(i) Principal Civil Judge and Judicial Magistrate First Class. Chitradurga. (ii) 1 Additional Civil Judge and</i>	<i>Chitradurga</i>

	<i>Judicial Magistrate First Class, Chitradurga</i>	
4	<i>(i)Judicial Magistrate First Class -II Court Mangaluru (ii) Judicial Magistrate First Class - III Court Mangaluru</i>	<i>Dakshina Kannada Mangaluru</i>
5	<i>(i)Principal Civil Judge, Dharwad (ii) II Additional Civil Judge and Judicial Magistrate First Class. Dharwad (iii) 1 Additional Civil Judge, Hubbali (iv) III Additional Civil Judge, Hubbali (v) Civil Judge and Judicial Magistrate First Class, Navalgund</i>	<i>Dharwad</i>
6	<i>Senior Civil Judge and Judicial Magistrate First Class, Ron</i>	<i>Gadag</i>
7	<i>(i) Senior Civil Judge, Pandavapura (ii) Principal Civil Judge and Judicial Magistrate First Class, Mandya (iii) Additional Civil Judge and Judicial Magistrate First Class, Mandya (iv) II Additional Civil Judge and Judicial Magistrate First Class, Mandya (v) Judicial Magistrate First Class, Mandya (vi) Civil Judge and Judicial Magistrate First Class,</i>	<i>Mandya</i>

	<p><i>Srirangapatna</i> <i>(vii) Additional Civil Judge and Judicial Magistrate First Class, Srirangapatna</i> <i>(viii) Civil Judge and Judicial Magistrate First Class, Krishnarajpet</i> <i>(ix) Civil Judge and Judicial Magistrate First Class, Nagamangala</i> <i>(x) Principal Civil Judge and Judicial Magistrate First Class, Malavalli</i> <i>(xi) I Additional Civil Judge and Judicial Magistrate First Class. Malavalli</i> <i>(xii) Principal Civil Judge and Judicial Magistrate First Class, Maddur</i> <i>(xiii) I Additional Civil Judge and Judicial Magistrate First Class, Maddur</i> <i>(xiv) II Additional Civil Judge and Judicial Magistrate First Class, Maddur</i> <i>(xv) Civil Judge and Judicial Magistrate First Class, Pandavapura</i></p>	
8	<p><i>(i) III Additional Senior Civil Judge and Chief Judicial Magistrate, Mysuru</i></p> <p><i>(ii) Senior Civil Judge and Judicial Magistrate First Class, Krishnarajanagara</i></p>	<i>Mysuru</i>

	<p><i>(iii) III Additional Civil Judge and Judicial Magistrate First Class, Mysuru</i></p> <p><i>(iv) V Additional Civil Judge and Judicial Magistrate First Class, Mysuru</i></p>	
9	<p><i>i) Principal Civil Judge and Judicial Magistrate First Class Kunigal</i></p> <p><i>(ii) Principal Civil Judge and Judicial Magistrate First Class, Gubbi</i></p> <p><i>(iii) Senior Civil Judge and Judicial Magistrate First Class, Tiptur</i></p> <p><i>(iv) IV Additional Civil Judge and Judicial Magistrate First Class, Tumakuru</i></p>	<i>Tumakuru</i>
10	<i>Additional Civil Judge and Judicial Magistrate First Class, Udupi</i>	<i>Udupi</i>
11	<i>Civil Judge and Judicial Magistrate First Class, Ankola</i>	<i>Uttara Kannada Karwar</i>

7. The offence for which the respondents – accused have been convicted are all under Chapter XXII of I.T. Act, 1961. The following provisions of said Chapter XXII deals with designating Courts of Magistrate First Class as Special

Court, offences triable by Special Court, trial of offences as summons case and application of Code of Criminal Procedure, 1973 to proceedings before Special Court, which reads thus:

280A. (1) *The Central Government, in consultation with the Chief Justice of the High Court, may, for trial of offences punishable under this Chapter, by notification, designate one or more courts of Magistrates of the first class as Special Court for such area or areas or for such cases or class or group of cases as may be specified in the notification.*

Explanation.- In this sub-section, "High Court" means the High Court of the State in which a Magistrate of first class designated as Special Court was functioning immediately before such designation.

(2) *While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of*

Criminal Procedure, 1973, (2 of 1974.) be charged at the same trial.

Offences triable by Special Court.

280B. *Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974.)–*

(a) the offences punishable under this Chapter shall be triable only by the Special Court, if so designated, for the area or areas or for cases or class or group of cases, as the case may be, in which the offence has been committed:

Provided *that a court competent to try offences under section 292,–*

(i) which has been designated as a Special Court under this section, shall continue to try the offences before it or offences arising under this Act after such designation;

(ii) which has not been designated as a Special Court may continue to try

such offence pending before it till its disposal;

(b) a Special Court may, upon a complaint made by an authority authorized in this behalf under this Act take cognizance of the offence for which the accused is committed for trial.

Trial of offences as summons case.

280C. *Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court, shall try, an offence under this Chapter punishable with imprisonment not exceeding two years or with fine or with both, as a summons case, and the provisions of the Code of Criminal Procedure, 1973 as applicable in the case of trial of summons case, shall apply accordingly.*

Application of Code of Criminal Procedure, 1973 to proceedings before Special Court.

280D. *(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal*

Procedure, 1973 (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and the person conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor:

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) *A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, requiring special knowledge of law.*

(3) *Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly."*

8. Said provisions contained under Sections 280-A to 280-D of I.T. Act, 1961 are inserted by Finance Act 2012 with effect from 01.07.2012. Prior to the above said amendment and insertion of Section 280A, the notification dated 01.09.1982 was issued for establishing the Special Court of Judicial Magistrate First Class for trial of offences under 12 enactments and subsequently, 2 enactments were added by notification dated 04.02.1985.

9. Section 377 of Cr.P.C. came to be amended by Act No. 25/2005 with effect from 23.06.2006. Section 377 of Cr.P.C. as amended by Act No. 25/2005 reads thus:

"377. Appeal by the State Government against sentence

(1) Save as otherwise provided in subsection (2), the State Government may, in any case of conviction on a trial held by any court other than a High Court, direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy :-

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other Court.

(2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (24 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy-

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other court.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Court of Session or, as the case may be, the

High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

(4)”

10. Section 377 of Cr.P.C. prior to amendment Act 25/2007 reads thus:

"377. Appeal by the State Government against sentence.- (1) *Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.*

(2) *If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency*

empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.”

11. Prior to amendment Act No. 25/2005 the High Court only had jurisdiction to entertain appeal against the sentence on the ground of its inadequacy. Subsequent to amendment of sub-section (1) and sub-section (2) of Section 377 of Cr.P.C., appeal against the sentence on the ground of inadequacy is provided (a) to the Court of Sessions, if the sentence is passed by the Magistrate; and

(b) to the High Court, if sentence is passed by any other Court. The object of the said amendment to sub-section (1) and sub-section (2) of Section 377 of Cr.P.C., is to permit the filing of an appeal in the Court of Sessions instead of the High Court on the ground of inadequacy of sentence passed by a Magistrate.

12. Learned counsel for appellant would contend that the order of sentence has been passed by the Special Court for Economic Offences and it has to be considered as the sentence passed by 'any other Court' and appeals against inadequacy of sentence will lie to the High Court under clause (b) of sub-section (1) or clause (b) of sub-section (2) of Section 377 of Cr.P.C. He contends that the Special Court for Economic Offences is not a Court of Magistrate and therefore, the appeal will not lie to the Court of Sessions under clause (a) of sub-section (1) or clause (a) of sub-section (2) of Section 377 of Cr.P.C.

13. Learned counsel for respondents – accused would contend that the appeals lie against the judgment of conviction and order on sentence passed by Magistrate to the Sessions Court under Section 374 of Cr.P.C. The respondents – accused have challenged the judgment of conviction and order on sentence by filing appeals before the Sessions Court under Section 374 of Cr.P.C. and they are pending before the Sessions Court. He submits that the Special Court for Economic Offences is presided over by a Judicial Magistrate First Class or Chief Judicial Magistrate and therefore, said Special Court does not come under the term ‘any other Court’ under clause (b) of sub-section (1) or clause (b) of sub-section (2) of Section 377 of Cr.P.C. He contends that the order on sentence passed by the Special Court is the sentence passed by the Magistrate and an appeal lies to the Court of Sessions under clause (a) of sub-section (1) or clause (a) of sub-section (2) of Section 377 of Cr.P.C. He submits that if the appeal has been tried against

the conviction by the Sessions Court and if the appeal is dealt by the High Court against inadequacy of sentence there may be conflicting judgments.

14. Learned counsel for appellant has not cited any decisions on the point urged by him.

15. I came across an unreported decision of a coordinate Bench of this Court in the case of **R. Raja Rao, Income Tax Officer Vs. M/s. Skyline Constructions Ltd. And another**, rendered in **Crl.A. No. 1420/2003** dated **30.01.2009**. In the said decision the coordinate Bench has considered similar point urged by the learned counsel for appellant and observed thus:

"8. Though at the first look it could be said that the contention of the learned counsel may be right as the decision in question is on a trial conducted by the magistrate, but on a close examination of records, it is noticed that the impugned decision is rendered, no doubt, by a magistrate presiding over the Special Court of Economic Offences. It admits of no doubt that in

any case of conviction by any court other than a High Court, the State Government may direct an appeal to be filed before the High Court on the ground of inadequacy of sentence. The legislative intent in incorporating it makes the position different. Sub-section (2) provides an appeal to the High Court if the sentence is passed by any other court. This undoubtedly excludes the magistrate as covered under clause (a).

9. The question would be, which are these other courts referred to in clause (b). The Code of Criminal Procedure identifies three categories of courts-court of judicial magistrate, court of metropolitan magistrate and court of sessions. Another category of courts is nomenclatured as Special Courts as may be notified by the State Government. For ascertainment about the origin of Special Courts for Economic Offences, I had directed the registry to place the notification, if any, by virtue of which such courts are constituted. In response to such direction, on 14.8.2008 registry has placed on record a Government Order bearing No.LAW:106:LCE: 79

BANGALORE dated 1.9.1982, preamble of which reads thus:

xxx xxx

(referred in paragraph No. 3, supra)

10. Under that notification, the Special Court for Economic Offences came to be established in Bangalore with effect from 20.10.1987 as seen from the notification. Therefore, it is clear that on conviction of an accused in a trial before the Special Court for Economic offences, though the rank of the presiding officer is shown of the cadre of Civil Judge (Junior Division), discharging the duties and powers of a magistrate within the meaning of Cr.P.C., but in view of conferment of special jurisdiction to try cases relating to economic offences under twelve enactments referred therein, it is 'Special court'. Therefore, I have no hesitation to conclude that the words appearing in clause(b), 'any other court' brings within its sweep 'Special Courts', even though they may be presided over by the officer of the rank of a magistrate. In this view of the matter, in a case of conviction of the accused by Special courts like, in the instant case, the special court

for Economic Offences, the State Government or the Central Government, as the case may be, can prefer an appeal directly to the High court and not to the sessions court as provided in clause(a) of sub-section(1) of section 377 , Cr.P.C.

16. In the said decision the coordinate Bench has concluded that the words appearing in clause (b) - 'any other court' brings within its sweep 'Special Courts' even though they may be presided over by the officers of the rank of a Magistrate.

17. The said appeal, Crl.A. No. 1420/2003 has been filed in the year 2003 against the order on sentence dated 11.04.2003 passed in C.C. No. 1059/1999 by the Special Court of Economic Offences, Bengaluru, for offence under Section 276-B read with Section 278-B of the I.T. Act, 1961. Since the said appeal is filed in the year 2003, Section 377 of Cr.P.C., as it stood prior to amendment by Amendment Act No. 25/2005 was applicable. The Court

ought not to have considered the aspect of maintainability by taking into consideration the amended provisions of clause (a) of sub-section (1) of Section 377 of Cr.P.C. as amended by Act No. 25/2005. Apart from that, the conclusion that the words in clause (b) 'any other Court' brings within its sweep Special Courts even though they may be presided over by the officer of the rank of a Magistrate, in my view, is not proper for the following reasons:

Prior to establishment of Special Court of Judicial Magistrate First Class the trial of offences under the 12 + 2 enactments were within the jurisdiction of Judicial Magistrate First Class. In the preamble of the order No. LAW 106 ICE 79 dated 01.09.1982 it is stated that the Government of India suggested that additional Courts may be established exclusively for dealing with the economic offence in accordance with 47th report of the Law Commission recommending the establishment of special

Courts for effective and speedy prosecution of such offences. Therefore, the Special Court came to be established which is presided over by Judicial Magistrate First Class only for the purpose of effective and speedy prosecution of economic offences. If the Special Courts are presided over by Sessions Judge, then the said Special Courts might be said to come under clause (b) - 'any other Court'. As the Special Courts are presided over by the officer of the rank of a Magistrate, the Special Courts cannot come under clause (b) - 'any other Court'.

18. The offences under Chapter XXII of the I.T. Act, 1961 are non-cognizable offences in view of Section 279-A of the I.T. Act, 1961 which reads thus:

"279A. *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 an offence punishable under Section 276B or section 276C or section 276CC or section 277 or Section 278 shall be deemed to be non-cognizable within the meaning of that Code."*

19. As per the first schedule of Cr.P.C. classification of offence against other laws if offence is punishable for imprisonment for less than 3 years or with fine only, it is classified as non-cognizable, bailable and triable by any Magistrate. As the offences stated in Section 279-A of the I.T. Act, 1961 are non-cognizable within the meaning of Cr.P.C., they are triable by a Magistrate.

20. Offences registered by or against elected representatives are now tried by Special Courts established and it is presided over by a Sessions Judge. That Special Court which is presided over by a Sessions Judge can be said to come under clause (b) - 'any other Court'. The Special Court for economic offences, Bangalore, is presided over by an officer of the rank of Magistrate and does not come under clause (b) - 'any other Court'. The appeal against convictions for offence under Chapter XXII of I.T. Act, 1961 lie to the Sessions Judge under Section 374 of Cr.P.C. Learned counsel for respondent submitted that the

respondent – accused has challenged the judgment of conviction passed by the Special Court and the said criminal appeal is pending before the Sessions Court. If the appeal has been tried against the judgment of conviction by the Sessions Court and if the appeal is dealt by the High Court against inadequacy of sentence it may lead to passing of conflicting judgments. In case in an appeal against conviction if the Sessions Court reverses the judgment of conviction and acquits the accused and the High Court allows the appeal filed against inadequacy of sentence then the said judgments are conflicting judgments against the same judgment of conviction passed by the Special Court. In order to avoid such conflicting judgments the appeal against conviction and appeal against inadequacy of the sentence are to be dealt with by the same Court.

21. The Full Bench of this Court in the case of ***Ammannamma and others Vs. State of Karnataka*** reported in ***ILR 2005 KAR 1029*** has held that in cases

where appeal against conviction is filed and appeal against enhancement is also filed, the Bench considering the same is required to dispose of the same simultaneously and together and not separately i.e. not in any other manner.

22. Learned counsel for appellant argued that in an appeal filed against the sentence on the ground of inadequacy under Section 377 of Cr.P.C. the accused may plead for his acquittal or for reduction of sentence as provided under sub-section (3) of Section 377 of Cr.P.C. The right of appeal is provided to the accused to challenge the judgment of conviction and order on sentence under sub-section (3) of Section 374 of Cr.P.C. So also sub-section (3) of Section 377 of Cr.P.C. provides for the accused to plead for his acquittal or for reduction of sentence. The accused who has been convicted need not wait till the State files an appeal under Section 377 of Cr.P.C. to plead for his acquittal or for reduction of sentence. The accused has a statutory right under sub-

section (3) of Section 374 of Cr.P.C. to challenge the judgment of conviction and order on sentence passed by the Special Court. If the accused has not challenged the judgment of conviction and order on sentence by filing an appeal under sub-section (3) of Section 374 of Cr.P.C., then in the appeal filed under Section 377 of Cr.P.C. he can plead for his acquittal or reduction of sentence under sub-section (3) of Section 377 of Cr.P.C.

23. For the reasons stated above, the appeals preferred by the Income Tax Department under Section 377 of Cr.P.C. are not maintainable and accordingly all the appeals are dismissed.

24. Before parting it is necessary to consider the provisions of Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity hereinafter referred to as the BNSS) with regard to appeals against the sentence on the ground of its inadequacy. Section 418 of BNSS deals with the same and it reads thus:

"418. Appeal by State Government against sentence.- (1) *Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy—*

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other Court.

(2) *If such conviction is in a case in which the offence has been investigated by any agency empowered to make investigation into an offence under any Central Act other than this Sanhita, the Central Government may also direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy—*

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other Court.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Court of Session or, as the case may be, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

(4) When an appeal has been filed against a sentence passed under section 64, section 65, section 66, section 67, section 68, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023, the appeal shall be disposed of within a period of six months from the date of filing of such appeal.

25. On a reading of Section 418 of BNSS it is in pari materia with Section 377 of Cr.P.C. Even under the BNSS no provision has been introduced for filing appeal before the High Court if the sentence is passed by the Magistrate. Sub-Section (3) of Section 415 of BNSS provides for filing

appeal to the Court of Sessions against judgment of conviction on a trial held by the Magistrate. The reasons noted supra will also apply to the appeals filed or to be filed under Section 418 of BNSS.

26. Liberty is given to the appellant – Income Tax Department to present the appeal before the jurisdictional Sessions Court within a period of two months from the date of this judgment. It is made clear that period which has been spent before this Court will not come in the way for considering the period of limitation, if the appeal is filed before the jurisdictional Sessions Court within the time noted supra.

In view of the dismissal of the appeal, all pending applications are disposed off.

**Sd/-
JUDGE**

LRS.