IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr.) No. 205 of 2019

Narendar Singh @ Narendra Singh, S/o Sri Arjun Singh, aged about 43 years, resident of 18/U, Village-Champidih, Hata, Champidih, Juri, P.O. and P.S.-Hata, District-East Singhbhum.

..... … Petitioner

Versus

Union of India through Sri Bankim Kumar Mardi, son of Late Mahati Mardi, Income Tax Officer Ward 1(3), P.O. and P.S.-Bistupur, Jamshedpur.

..... … Respondents

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. N.K. Pasari, Advocate.
: Mr. Gaurav Kaushlesh, Advocate.
For the Income Tax : Mr. Anurag Vijay, Jr. S.C.

15/ 07.08.2024 Heard learned counsel appearing for the petitioner and learned counsel appearing for the respondents-Income Tax Department.

2. Prayer in this petition is made for quashing of the entire criminal proceeding including the cognizance order dated 02.11.2017, by which, cognizance has been taken for the offence under Section 276(C)(2) and 277 of the Income Tax Act, 1961 against the petitioner, in connection with Complaint Case No. 544 of 2017, pending in the court of learned Special Judge, Economic Offences, Jamshedpur.

3. The prosecution has been launched by the Income Tax Department against the Petitioner alleging therein that though the Assessee filed its returns of income for Assessment Year 2011-12, showing an income of Rs. 6,85,110/- and declared total income including interest of Rs. 1,00,752/-, however, did not pay the same while filing the returns, although the declaration was made by the petitioner that the tax liability has been discharged. While the returns were processed under section 143(1) of the Act, a demand of Rs. 1,11,730/-, culminated and since no payments had been made, demand was raised, which was deposited on 15.11.2016, pursuant to the letter dated 09.11.2016, issued by the Assessing Officer. Thus, alleging

evasion of tax falling within the purview of willful attempt of evasion to pay taxes under section 276C (2), the Petitioner was prosecuted under section 277 of the Act and for which, sanction to launch the prosecution was taken from Learned Commissioner of Income Tax, Jamshedpur, under section 279 of the Income Tax Act.

4. Mr. N.K. Pasari, learned counsel appearing for the petitioner submits that the petitioner is engaged in the business of trading of tractors for and on behalf of Mahindra and Mahindra, as a franchisee and is a tax assessee, holding PAN No. ARGPS1760G and has been discharging his tax liability as and when the same has accrued, save and except for the period for which, the *lis* relates. He submits that for the Assessment year 2011-2012, corresponding to previous year 2010-11, the petitioner had filed income tax return declaring a total income of Rs. 6,85,110/- on which, the amount of tax liability was calculated to be Rs. 100752/-, which included amount of interest under Section 234-A, 234-B and 234-C of the Income Tax Act, 1961.He further submits that so far as liability is concerned, that is not in dispute, however, the returns were filed without payment of tax, although he has stated that the tax has already been paid, in view of that, letter was received on 09.11.2016, by the Petitioner by the Assessing Officer, wherein a demand for Rs. 111730/- under section 140A(1) of the Income Tax Act, 1961 was made and which was duly deposited by the Petitioner on 15.11.2016 to the Income Tax Department. He further submits that on the very same day i.e. on 15.11.2016, the petitioner was served with a show cause notice, as to why a proceeding under Section 276(2) of the Income Tax Act should not be initiated against him, for non-payment of admitted tax. He submits that the petitioner has filed the reply to the show cause on 27.12.2016.

5. According to him, the petitioner was further directed to show cause as to why sanction for prosecution under Section 279(1) of

the Income Tax Act be not issued and pursuant there the petitioner has further replied to the said show cause on 22.02.2017. He submits that without taking into consideration the replies, filed by the petitioner, the sanction was accorded and the present complaint case was filed on 27.02.2017 in the court of learned Special Judge, Economic Offences, Jamshedpur, which was registered as Complaint Case No. 544 of 2017 and the learned court has been pleased to take cognizance against the petitioner under Sections 276(C)(2) and 277 of the Income Tax Act, 1961.

6. Learned counsel appearing for petitioner submits that the petitioner was not aware about the said criminal case, however, on 01.06.2017, the petitioner made an application before the learned Chief Commissioner of Income Tax, Ranchi for compounding of offences under 276(C)(2) and 277 of the Income Tax Act, 1961, pursuant to that the order dated 23.02.2017 was passed by the Principal Commissioner of Income Tax, by which, the prayer of the petitioner was rejected on the ground holding that after lapse of three years from the date of filing of the income tax, the petitioner has deposited the tax. He further submits that that has been done ignoring the guidelines dated 14.06.2019, issued by the Ministry of Finance, Government of India.

7. Learned counsel appearing for the petitioner submits that no case under the relevant Sections of the Income Tax Act is made out, as this is not a tax evasion case, as the only latches on the part of the petitioner is that he has deposited the tax after certain period. He further submits that there is no proceeding pending against the petitioner with regard to recovery of any due tax amount and in view of that no willful default of payment of tax on behalf of petitioner is made out. On these grounds, he submits that the entire criminal proceedings may kindly be quashed.

8. Learned counsel appearing for the petitioner submits that the case of the petitioner is fully covered in light of the judgment of this

court in the case of ***Pralay Pal Versus The State of Jharkhand & Ors.***, passed in **Cr.M.P. No. 2266 of 2017** decided on 23.08.2023 and also reported in **MANU/JH/1079/2023**. He refers to Paras-8 to 12 of the said judgment, which is quoted hereinbelow:-

> "*8. Looking into the aforesaid judgment, it transpires that a criminal prosecution for an offence under a special statute must not be initiated as a matter of course where the prosecution would involve intricate questions of interpretation of the Income Tax Act. The object of launching criminal prosecution for willful default in complying with the provisions of the Income Tax Act is to prevent evasion of tax.*
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> *9. The willful failure on the part of the defaulter and the nature of penalty was again the subject matter before the Hon'ble Supreme Court in the case of Gujrat Travancore Agency v. Commissioner of IncomeTax, Kerala; [(1989) 177 ITR 455]. Relevant paragraphs of the said judgment read as under:-*
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> *"Learned counsel for the assessee has addressed an exhaustive argument before us on the question whether a penal- ty imposed under s. 271(1)(a) of the Act involves the ele- ment of mens rea and in support of his submission that it does he has placed before us several cases decided by this Court and the High Courts in Order to demonstrate that the proceedings by way of penalty under s. 271(1)(a) of the Act are quasi criminal in nature and that therefore the element of mens rea is a mandatory requirement before a penalty can be imposed under s. 271(1)(a). We are relieved of the necessity of referring to all those decisions. Indeed, many of them were considered by the High Court and are referred to in the judgment under appeal. It is sufficient for us to refer to s. 271(1)(a), which provides that a penalty may be imposed if the Income Tax Officer is satisfied that any person has without*

reasonable cause failed to furnish the return of total income, and to s. 276C which provides that if a person wilfully fails to furnish in due time the return of income required under s. 139(1), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine. It is clear that in the former case what is intended is a civil obligation while in the latter what is imposed is a criminal sentence. There can be no dispute that having regard to the provisions of s. 276C, which speaks of wilful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element of mens rea is established. In most cases of criminal liability, the intention of the Legislature is that the penalty should serve as a deterrent. The creation of an offence by Statute proceeds on the assumption that society suffers injury by and the act or omission of the defaulter and that a deterrent must be imposed to dis- courage the repetition of the offence. In the case of a proceeding under s. 271(1)(a), however, it seems that the intention of the legislature is to emphasise the fact of loss of Revenue and to provide a remedy for such loss, although no doubt an element of coercion is present in the penalty. In this connection the terms in which the penalty falls to be measured is significant. Unless there is something in the language of the statute indicating the need of establish the element of mens tea it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in s. 271(1)(a) which requires that mens tea must be proved before penalty can be levied under that provision. We are supported by the statement in Corpus Juris Secundum, volume 85, page 580, paragraph 1023:

"A penalty imposed for a tax delinquency is a civil obligation, remedial

and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."

Accordingly, we hold that the element of mens rea was not required to be proved in the proceedings taken by the Income tax Officer under s. 271(1)(a) of the Income-tax Act against the assessee for the assessment years 1965-66 and 8 Cr.M.P. No. 2266 of 2017 1966-67."

10. Looking into the aforesaid judgment, it transpires that in most of the cases of criminal liability, the Hon'ble Supreme Court held that the intention of the Legislature is that the penalty should serve as a deterrent. In the case in hand, in view of the appellate order, penalty order is not there.

11. The willful failure of payment of tax was also the subject matter before the Andhra Pradesh High Court in the case of Income-Tax Officer v. Autofil & others; [(1990) 184 ITR 47 (AP)]. Relevant paragraph of the said judgment reads as under:-

"Therefore, wilfulness contemplates some element of evil motive and want to justification. In CIT v. Patram Dass Raja Ram Beri [1981] 132 ITR 671, a Full Bench of the Punjab and Haryana High Court, considering the term "wilful failure" occurring in section 276CC of the Income-tax Act, held that "willfulness certainly brings in the element of guilt" and thus the requirement of mens rea. Our Supreme Court in Gujarat Travancore Agency v. CIT, has observed that the creation of an offence by statute proceeds on the assumption that society suffers injury by the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence. It also observed that. In most cases of criminal liability, the intention of the Legislature is that the penalty should serve as a deterrent."

> *12. In the aforesaid judgment also, it has been held that the intention of the Legislature is that the penalty should serve as a deterrent."*

9. Relying on the above judgment of this court, he submits that the case of the petitioner is fully covered, as the said judgment has been passed considering the several judgments of the different High Courts. On these grounds, he submits that the entire criminal proceedings against the petitioner may kindly be quashed.

10. Per contra, Mr. Anurag Vijay, learned counsel appearing for the respondent-Income Tax Department submits that a counter affidavit has already been filed in this case, where in paras, 10, 11 and 12, it has been stated that entire the amount of tax / penalty has been paid by the petitioner neglecting the National Litigation Policy and in view of that a case of tax evasion is made out against the petitioner. He submits that petitioner has defaulted in payment of self-assessment of tax on his admitted income for the other years also. He further submits that the officer of the Income Tax Department has observed that the tax has not been paid that's why the criminal case is justified. He submits that in view of the judgment passed by the Hon'ble Supreme Court in the case of ***Radheshyam Kejriwal v. State of West Bengal and another***; reported in **[(2011) 3 SCC 437**], the criminal proceeding can go on. On these grounds, he submits that this writ petition may kindly be dismissed.

11. In view of the above submissions of the parties, the court has gone through the materials available on record and finds that admittedly the petitioner has submitted the income tax return pointing out the liability for the year 2011-12, however along with the return the tax liability was not deposited, which was deposited later on. Thus, it is crystal clear that the tax amount has already been deposited, however, after certain delay and that was deposited with interest in light of Section 240(A) of the Income Tax Act.

12. Admittedly, there is no proceeding pending with regard to recovery of tax or penalty against the petitioner. The willful demand of payment of tax was the subject matter before the Kolkata High Court in the case of ***Gopal Ji Shaw v. Income Tax Officer, Calcutta & others***; reported in **[(1988) 173 ITR 554 (Cal**)], which was considered by this court in para-7 of the judgment relied by the learned counsel appearing for the petitioner and the same was also considered in para-9 of the same judgment, which is already quoted hereinabove and other judgments are also considered in the said judgment and thereafter the proceeding was quashed.

13. Admittedly, in the case in hand, there was no penalty provision against the petitioner and in view of that it will be presumed that there is no concealment and quashing of prosecution under Section 276(C)(1) of the Income Tax Act is automatic. As such, the petitioner cannot be allowed to suffer and to face criminal trial and the same cannot sustain in the eyes of law.

14. There is no doubt that penalty proceeding and prosecution can go simultaneously in the facts and circumstances of the cases, however, in the case in hand, the penalty proceeding is not there and in view of the above judgments in the case of Pralay Pal (Supra), the case of the petitioner is fit to be allowed under Article 226 of the Constitution of India.

15. Accordingly, the entire criminal proceeding including the cognizance order dated 02.11.2017, by which, cognizance has been taken for the offence under Section 276(C)(2) and 277 of the Income Tax Act, 1961 against the petitioner, in connection with Complaint Case No. 544 of 2017, pending in the court of learned Special Judge, Economic Offences, Jamshedpur, are hereby, quashed.

16. This petition is allowed and disposed of.

(Sanjay Kumar Dwivedi, J.)

Amitesh/-

[A.F.R.]