

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: September 17, 2013

Judgment Pronounced on: October 07, 2013

+ **Crl. M.C. No.420/2003**

LAXMI NARAIN SHARMA & ORS. Petitioners

Through: Ms. Avnish Ahlawat & Ms. Rashmi
Chopra, Advocates

versus

R.K.SANDHU Respondent

Through: Mr. N.P.Sahni, Senior Standing
Counsel and Mr. Ruchesh Sinha,
Standing Counsel for respondent-
Income Tax Department

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**

1. In a complaint under Section 276-AB of *Income Tax Act* r/w Section 278-B of *I.T.Act*, petitioners application under Section 245(2) of *Cr.P.C.* for dismissal of aforesaid complaint stands rejected vide impugned order of 17th December, 2002. Quashing of aforesaid impugned order is sought in this petition primarily on the ground that with effect from July 2002, the provisions of Chapter XX-C of *the Income Tax Act* are not to apply in relation to transfer of any immovable property effected with effect from 1st July, 2002.

2. The factual background as noted in the impugned order is as under:-

“Accused Rajasthan Patrika Ltd. and accused No.2 Laxmi Narain Sharma being its Director and Principal Officer are facing allegations punishable under section 276-AB of the Income Tax Act with the averments that a statement in Form No.37-I was received in the office of Appropriate Authority in Delhi in respect of property situated at 11, Hospital Road, Jaipur showing apparent consideration of Rs.25 Lakhs and signed by Sh. Jai Kishan Rastogi as transferor and authorized signatory of Rajasthan Patrika as transferee which was accompanied with agreement dated 07.03.1991 executed on stamp paper of Rs.3,11,655/- duly signed by signatory to the agreement and part payment of Rs.8,50,000/- was made by the transferee and accepted by transferor on 07.03.1991 when the transferor has also given actual possession of the property detailed in agreement towards part performance. As per the allegations, the information in the form of statement in Form 37-I was to be furnished atleast three months before the intended date of transfer as per section 269-UC(1) of the Income Tax Act and information was infact submitted after the transfer had actually taken place.”

3. At the hearing, various pleas were raised by learned counsel for the petitioners on merits but the legal plea raised, which goes to the root of the matter, was that in view of deletion of Chapter XX-C of *the Income Tax Act*, this provision is not to apply in relation to transfer of any immovable property especially when this transaction did not fructify. In support of this stand, reliance was placed on Apex Court's decision in *Kolhapur Canesugar Works Ltd. and another v. Union of India and others*, AIR 2000 SC 811.

4. Learned Senior Standing Counsel for respondent had, during the course of hearing, extensively argued this matter on merits and had relied upon the decision of Rajasthan High Court in *Rajasthan Patrika Ltd. v. Union of India*, (1995) 213 ITR 0443 wherein non grant of 'No Objection Certificate' in respect of transaction in question was the issue, and had also referred to Apex Court's order of 13th July, 1996 permitting petitioner to withdraw the Special Leave Petition arising out of aforesaid Rajasthan High Court decision to point out that Apex Court had permitted petitioner to withdraw Special Leave Petition regarding constitutionality of Chapter-XX C of *the Income Tax Act* and regarding grant of 'No Objection Certificate' under Chapter XX-C.

5. It was pointed out by learned Senior Standing Counsel for the respondent that under Section 276-AB of *the Income Tax Act* was left untouched by Apex Court with clarification that withdrawal of Special Leave Petition shall not prejudice the defence of petitioner herein in criminal case if and when it is launched.

6. During the course of hearing, much emphasis was laid by both the sides upon as to whether there was a part performance of Agreement to Sell in respect of transaction in question. However, on the legal plea raised on behalf of petitioners, all that was said by learned Senior Standing Counsel for respondent is as under:-

"It is further submitted that the another argument of the Petitioner that Chapter XX-C (Purchase by Central Government of Immovable Properties in Certain case of Transfer) of the Income Tax Act has been removed from the statue book and is no longer applicable and thus the Petitioner is not liable to be prosecuted, is not tenable in

the facts and circumstances of the instant case. The provisions of the said chapters were applicable when the transaction in respect of the property is executed and at the time when Form No.37-I was filed and amendment introduced w.e.f. 01.07.2002 is of no help. The conduct of the petitioners clearly violates the provisions of this chapter.”

7. Pertinently, learned Senior Standing Counsel for respondent had not addressed any meaningful argument on the legal plea raised nor any decision contrary to Apex Court decision in *Kolhapur (Supra)*, relied upon by petitioners’ counsel, was cited.

8. After having heard learned counsel for the parties and on perusal of the impugned order, material on record and the decision cited on the legal issue raised, I find that ratio of Apex Court decision in *Kolhapur (Supra)* clinches the legal issue raised. The continuance of pending proceedings upon repeal or omission of a provision in the statute depends upon savings clause applicable. The apt observations made by Apex Court in *Kolhapur (Supra)* on this aspect are as under:

"38. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in

Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision."

9. Since there is no saving provision in favour of pending proceedings upon repeal of Chapter XX-C of *the Income Tax Act*, therefore, all actions in respect of criminal proceeding launched just prior to repeal of Chapter XX-C must stop. Consequentially, impugned order as well as pending proceedings in criminal complaint No.269/2002 *R.K.Sandu v. Rajasthan Patrika Ltd.* are hereby quashed.

10. This petition is accordingly disposed of.

(SUNIL GAUR)
Judge

OCTOBER 07, 2013

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