

Court No. - 28

Case :- APPLICATION U/S 482 No. - 10125 of 2023

Applicant :- M/S Clara Swain Hospital (J.V.) Mission Compound, Thru. Its Manager Mr. Harshul Singh Yadav

Opposite Party :- Union Of India, Thru. Secy. Ministry Of Finance, New Delhi And Others

Counsel for Applicant :- Shachindra Pratap Singh, Neeraj Kumar Rai

Counsel for Opposite Party :- Kushagra Dikshit

Hon'ble Shree Prakash Singh, J.

Heard Sri Shachindra Pratap Singh, learned counsel for the applicant, Sri Neerav Chitravanshi and Sri Kushagra Dikshit, learned counsels for the opposite party no.2 & 3.

None has appeared for the Union of India.

Instant application has been filed with the prayer to set aside the impugned summoning order dated 28.02.2023 and entire criminal proceedings arising out of Complaint Case No.160 of 2017, CNR No.UPLKO4-003899 of 2017 (Union of India through Mirza Md. Kalb Abbas Vs. M/S Clara Swain Hospital (J.V.) and others), pending in the court of learned Special Chief Judicial Magistrate (Custom), Lucknow.

Factual matrix of the case is that during the financial year 2014-15, tax of an amount of Rs.64,49,754/- was deducted and same was deposited to the credit of the Central Government as per the provision of Chapter XVII of the Income Tax Act, 1961 (hereinafter referred to as 'the Act 1961') read with Rule 30 of the Income Tax Rule, 1961, with some delay. Further on 6.9.2016, two separate show cause notices under Section 279 (1) of the Act 1961 were issued, out of which, one was issued to Sri Adya Shankar Prasad, who, at that point of time, was Head of Accounts Department and also in-charge and responsible for conduct of business of the deductor Joint Venture (J.V.)/Association of Persons (AOP). Second show cause notice was issued to the applicant. Thereafter, reply was submitted by Adya Shankar Prasad and the delay was explained. On 20.1.2017, the prosecution sanction was granted and, thereafter, Complaint Case No.160 of 2017 was instituted under Section 276-B, read with Section 278-B of the Act 1961, thereupon the trial court took cognizance on 28.02.2023 and issued summons against the applicant which is under challenged before this Court.

Contention of the learned counsel for the applicant is that from

bare perusal of the summoning order dated 28.02..2023, it reveals that without recording any reason, cognizance has been taken and the present applicant has been summoned. He added that it has been settled law by the Apex Court in the case of **Anil Kumar Vs. M.K. Aiyappa, (2013) 10 SCC 705**, that 'mere the statement that the Magistrate has gone through the complaint, documents and heard the complainant, will not be sufficient to take cognizance and issue summons so far as the complaint case is concerned'. He referred para 11 of the Judgment, which is quoted as under:-

"11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."

Learned counsel has further placed reliance on the Judgment of this Court rendered in **Application U/S482 No.7244 of 2023, Dr. Shail Kumar Jain Vs. State of U.P. and another** decided on 27.7.2023 and referred paras 18 and 19 thereof, which are quoted as under:-

"18. I have also considered the contentions of the learned counsel for the applicant that no reason has been recorded while passing the order dated 19.07.2022, whereby the present applicant has been summoned. From bare perusal of the impugned order, it transpires that the reasons has not been recorded and it has only been mentioned that the Court has looked into the complaint as well as the record available before the same.

19. Time and again, the Hon'ble Apex Court has held that in the cases arising out of complaint case, the trial court while issuing summons, shall record detailed reasons, which should apparently show the application of mind and this duty of Magistrate cannot be marginalized."

Referring the aforesaid Judgments, he submits that the impugned summoning order dated 28.02.2023 passed by the Magistrate is erroneous and against the settled proposition of law and, thus, the same is liable to be set aside.

On the other hand, learned counsels for the opposite party no.2 & 3 jointly submit that in fact, there is an admission on the part of the present applicant and, therefore, the trial court while recording the fact that the trial court has gone into the complaint and have perused the records, took cognizance and issued the summons against the applicants and, therefore, the same is not against the law settled by the Apex Court, thus, no interference is warranted.

Considering the submissions of the learned counsel for the parties and after perusal of the record, it transpires that a dispute arose with respect to financial year 2014-15, where tax in question, i.e., Rs.64,49,754/- was not deposited well within the time prescribed and, thus, there was delay but the fact remains that the tax was paid along with the interest before the Income Tax Department.

When this Court examines the impugned summoning order dated 28.02.2023, it prima facie transpires that the trial court though has held that it has gone through the complaint and other records and on the basis thereof, it has reached to the conclusion, to take cognizance and issue summons against the applicant whereas it is settled law that in case of complaint cases, reasons must be recorded before taking cognizance, which is prima facie lacking in the impugned order.

In view of the aforesaid submissions and discussions, the contention of the learned counsel for the applicant finds force and thus, the impugned order dated 28.02.2023 passed by the trial court is hereby **set aside**.

The matter is remitted back to the trial court concerned to pass fresh order within thirty days from the date of the production of certified copy of this order.

The office is directed to communicate this order forth with to the respective parties.

With the aforesaid, the instant application is hereby **allowed**.

Order Date :- 16.10.2023

Manoj K.