

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CRM(M) No. 439/2022

CrIM No. 909/2022

Surinder Nath Jain and others

.....Appellant(s)/Petitioner(s)

Through: Mr. G. S. Thakur, Advocate.

vs

Income Tax Officer Jammu

..... Respondent(s)

Through: Mr. K. D. S. Kotwal, Advocate.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

30.12.2024

ORAL

1. In the instant petition, the petitioners herein have invoked the inherent power of this Court saved under Section 482 Cr. P.C. for quashing the complaint (For short 'impugned complaint') tilted as ***Income Tax Officer, Jammu vs Surinder Nath Jain and others*** pending before the court of Special Mobile Magistrate, Jammu (for short 'the trial court').
2. Facts giving rise to the filing of the instant petition would reveal that the respondent herein filed the impugned complaint against the petitioners herein for commission of offences under Section 276 C (1) read with Section 277 of the Income Tax Act 1961 (for short the Act of 1961'), alleging therein that the petitioners herein being owners in possession of plot of land measuring 2 Kanal 4 ½ Marlas situated at Akhnoor Road Jammu sold the same to one Mohini Devi W/o Sh. Amarnath Choudhary for sale consideration of Rs. 69,00,000/- vide sale deed dated 30.04.2012 registered before the Sub-Registrar,

Jammu, in which sale deed, reference have had been made to an agreement to sell dated 22.03.2012, claimed to have been entered into between the parties providing therein that an amount of Rs. 25,00,000/- stands paid as advance sale consideration by the purchasers to the seller of the land in furtherance of total sale consideration of Rs. 1.75 crores, whereupon, after identifying the said position, an enquiry was conducted and statements of the parties were recorded on oath after issuing summons to them under Section 131 of Act of 1961, whereafter, it surfaced that against the total sale consideration of land in question of Rs. 1.75 crores, only Rs. 69 lakhs were shown to be the actual sale consideration in the sale deed dated 30.04.2012 and the remaining amount of Rs. 1.06 crores was found to have been paid by the purchasers to the seller in cash and in the process having evaded capital gain tax, thus committing an offence under Section 276 C (1) read with Section 277 of the Act of 1961.

3. Upon presentation of the impugned complaint before the trial court in terms of impugned order dated 30.03.2013, the trial court took cognizance of the offences alleged to have been committed by the petitioners herein along with other accused persons and consequently summoned the accused persons including the petitioners herein after observing therein in the impugned order that the complainant being a public servant having been filed the complaint in discharge of his official duties, is not required to be examined on oath along with his witnesses warranted in terms of Section 202 (b) of the Code of Criminal Procedure.

4. The petitioners herein have maintained the instant petition, inter alia, on the following grounds:

- a) *Because the complaint and the proceedings initiated before the a court below are complete misuse of process of law from the perusal of the allegations made in the complaint even if are taken their face value and accepted in their entirety do not even prima facie constitute any offence or make out a case against the petitioners, as such liable to be quashed.*
- b) *Because the complaint and the proceedings initiated before the a court below are bad in the eyes of law, as the allegations made in the complaint are patently absurd and inheritably improbable on the basis of which no prudent person can reach a just conclusion that there are sufficient grounds for proceeding against the petitioners.*
- c) *Because the complaint and the proceedings initiated before the a court below are not sustainable in the eyes of law, the criminal proceedings initiated against the petitioners are manifestly attended with malafide and maliciously instituted with an ulterior motive for harassing the petitioners.*
- d) *Because the complaint and the proceedings initiated before the a court below are not sustainable in the eyes of law the continuance of proceedings on the basis of complaint against the petitioners is sheer abuse of process of law and the Hon'ble High Court in exercise of its inherent jurisdiction can prevent the same hence this petition.*
- e) *Because the complaint and the proceedings initiated before the a court below are not sustainable in the eyes of law, the launching of prosecution u/s 276 C (1) is premature for the reason that the income earned by the petitioners pertain to Financial year (2012-13) for which the Income Tax return is yet to be filed by them, the date of which has still not fallen due i.e. 31-07-2013. Even section 277 is not applicable to the petitioners as no statement or any verification made by the petitioners under the Income Tax Act or any rule made there under is false. All the submissions/statements made by the petitioners to the Income Tax Department are true.*
- f) *Because the complaint and the proceedings initiated before the a court below are not sustainable in the eyes of law, there are legal, valid and all justifiable reasons to quash the complaint impugned in the petition and charges levelled against the petitioners are liable to be quashed.*
- g) *Because the complaint and the proceedings initiated before the a court below are not sustainable in the eyes of law, the complaint impugned if allowed to sustain, shall wreak much*

of an unnecessary hardship and inconvenience upon the petitioners. Moreover, the complaint even does not stand good the litmus test of law and logic. In the given set of facts and circumstances given herein above as well as on law the present case is a fit case for intervention by this Hon'ble Court in exercise of its inherent jurisdiction and all enabling provisions to prevent the abuse of process of the law.

5. **Reply** to the petition has been filed by the respondent, wherein the petition is being opposed essentially on the same and similar grounds on which the prosecution has been launched in the impugned complaint against the petitioners herein. Besides, it is being stated in the reply that the petitioners, prior to filing of the instant petition, had filed a similar petition before this Court being CRMC No. 104/2013, which petition, however, came to be dismissed for non prosecution on 18.05.2022, whereafter the petitioners instituted the instant petition, which *per se* is not maintainable in view of the dismissal of the earlier petition.

Heard learned counsel for the parties and perused the record.

6. The core issue to be adverted to by this Court in the instant petition, having regard to the facts and circumstances of the case, would be as to whether the exercise of inherent power of this Court saved under Section 482 Cr. P.C. is warranted to be exercised in the instant case or not.
7. The ambit and scope of exercise of inherent power of this Court is no more *res integra* and stands settled by the Apex Court in a series of judgments including in case titled as “**M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharastra & Ors**” reported in **AIR 2021 SC 1918**, wherein it has been, *inter alia*, held that the power of quashing

should be exercised with circumspection in rarest of the rare cases (not to be confused with the formation in the context of death penalty) and while examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to reliability or genuineness or otherwise of the allegations made in the FIR/complaint and that the criminal proceedings ought not to be scuttled at the initial stage and that quashing of FIR/complaint should be an exception rather than an ordinary rule and that when the prayer for quashing of FIR/complaint is made by the accused and the Court when it exercise power under Section 482 Cr. P.C. only has to consider whether the allegations in the FIR/complaint disclose commission of a cognizable offence or not.

8. Keeping in mind the aforesaid position and principles of law and reverting back to the case in hand, the respondent herein in the impugned complaint has specifically alleged commission of offences by the petitioners herein under Sections 276 C (1) and 277 of the Act of 1961. Under Section 279 A of the Act of 1961, offence under Section 276 C (1) read with Section 277 alongwith other offences provided therein the said section have been deemed to be cognizable offences within the meaning of Code of Criminal Procedure.
9. Having regard to the aforesaid position of law, as has been noticed in the preceding paras as also that the respondent in the impugned complaint has specifically alleged that the accused persons/petitioners herein have committed cognizable offences under Section 276 C (1) read with Section 277 of the Act of 1961, both being cognizable offences under Section 279 A of the Act of 1961, the impugned

complaint cannot at this stage, in exercise of inherent power either be interfered with in the instant petition or else quashed at the infancy stage of prosecution launched against the petitioners herein, in view of the aforesaid principles of law laid down by the Apex Court in **M/s Neeharika Infrastructure Pvt. Ltd (Supra)**, in that, the grounds on which quashing of impugned complaint, proceedings initiated thereto including the impugned order is being sought by the petitioners herein, essentially is the defence, which the petitioners may set up in opposition to the impugned prosecution before the trial court and the same cannot be looked into at this Stage by this Court.

- 10.** For the foregoing reasons, this Court is not inclined to display indulgence and to exercise inherent power in the instant petition.
- 11. Resultantly, the instant petition fails and the same along with the connected application is dismissed.**

(JAVED IQBAL WANI)
JUDGE

Jammu
30.12.2024
Sahil Padha

Whether the order is speaking:	Yes/No.
Whether the order is reportable:	Yes/No.