IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3122 OF 2014

Mohammad Zaheeroddin S/o Mohammed Saifoddin, Age : 48 years, Occ: Business, R/o Plot No. 6, Nagsen Colony, Near Roshan Gate, Aurangabad, Ta. & Dist: Aurangabad ...Applicant

versus

Shaikh Feroz Shaikh Yousuf, Age: 46, Occu: Business, R/o Galli No. 20, Baijipura, Aurangabad, Ta. And Dist. Aurangabad. ...Respondents

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Mr. G.R. Syed, Advocate for Applicant
Mr. Sameer Patel, Advocate holding for
Mr. S.A.G. Qureshi,Advocate for respondent

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CORAM : A.I.S. CHEEMA, J.

DATED : 2nd MARCH, 2015

Order :-

1. Heard learned counsel for applicant. Advocate for respondent - accused is not present.

2. Learned counsel for applicant submitted that the respondent - accused had been acquitted in the proceedings under Section 138 of the Negotiable Instruments Act, on the

ground that the amount advanced did not reflect in income tax returns.

3. Learned counsel for applicant submitted that the trial Court relied on the judgment in the case of **Sanjay Mishra Vs. Ms. Kanishka Kapoor @ Niki and another, reported in 2009 Cri.L.J. 3777.** According to him, amount was not shown would not be a reason to acquit the accused.

4. Learned counsel for applicant relies on the cases **Krishna P. Morajkar S/o late Paras Morajkar Vs. Joe Ferrao S/o Domnic Ferrao and anr.**, **2013 ALL MR (CRI) 4129** and **Sunil Sidramappa Shete Vs. Raiskhan S/o Ghurukhan Pathan and anr**. **2013 ALL MR (CRI) 2749**.

5. Trial Court, *inter-alia*, found that applicant - complainant had taxable income but was neither paying tax, nor submitting returns or had shown name of accused in list of debtors. It found the transaction illegal.

6. I have gone through through the case laws cited. Considered the judgment in the matter of Sanjay Mishra

Vs. Ms. Kanishka Kapoor @ Niki and another(Supra) which has been followed in the matter of **Vijay Kundanlal Sharma Versus Satyawan Bhikaji Jadhav and ano. 2013 BCI (0) 800**. I have considered the provisions concerned from the Income Tax Act.

Section 40A of Income Tax Act is part of Chapter IV dealing with "Computation of Total Income." It deals with expenses of payments not deductible in circumstances mentioned. Sub-section (3) of Section 40A reads as under:

"(3) Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure."

. Chapter XX-B of the Income Tax Act deals with "Requirement as to mode of Acceptance, payment or Re-payment in Certain Cases to Counteract Evasion of Tax. "Section 269 SS reads as under:

"Mode of taking or accepting certain loans and deposits.

269SS. No person shall, after the 30th day of June, 1984, take or accept from any other person (hereinafter in this section referred to as the depositor), any loan or deposit otherwise than by an account payee cheque or account payee bank draft if,

(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit; or

(b) On the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more:”

Section 271D provides for penalty for failure to comply with the provisions of section 269 SS. The same reads as under:

> "271D.(1) If a person takes or accepts any loan or deposit in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted.

7. Considering the facts of the present matter and looking to the above provisions and object of the Income Tax Act which is to counteract evasion of tax, I find that view taken by trial Court is possible view. In order to counteract evasion of taxes, the Income Tax Act provides that loan exceeding Rs. 20,000/- or more cannot be taken except by cheque or draft. System of Courts cannot be used by such applicants - complainants who are avoiding taxes, not filing returns though liable and floating unaccounted money in market economy. No interference in the acquittal is called for.

8. As such, there is no substance in the application. The Criminal Application stands rejected.

Sd/-

(A.I.S. CHEEMA, J.)

MTK