

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.09.2015

Pronounced on : 04-11-2015

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos. 967, 1553 and 1554 of 2004

R. Rajagopal

Member-I, Appellate Authority

Income Tax Department

Chennai - 600 034

... Petitioner in all the Criminal
Revision Cases

Versus

Smt. S. Ramayamma

... Respondent in CrI.RC 967

1. Smt. N. Sasikala

2. Smt. J. Elavarasi

3. M/s. J.S. Housing Development

represented by its Partner

Smt. N. Sasikala

No.36, Poes Garden

Chennai - 600 086

... Respondents in CrI.RC 1553

1. V.N. Sudhakaran

2. M/s. Anjaneya Printers (P) Ltd.,

represented by its Chairman

Shri. V.N. Sudhakaran

Son of T.V. Vivekanandan

No.69, Habibullah Road

T. Nagar, Chennai - 600 017

... Respondents in CrI.RC 1554

CrI.R.C. No. 967 of 2004:- Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code praying to call for the records relating to EOCC No.239 of 1999 on the file of the Additional Chief Metropolitan Magistrate (EO-1), Egmore, Chennai - 600 008 and set aside the impugned order of discharge passed by the Additional Chief Metropolitan Magistrate (EO-1), Egmore, Chennai - 600 008 on 12.03.2004 in CrI.M.P. No. 770 of 2001 in EOCC No. 239 of 1999.

CrI.R.C. No. 1553 of 2004:- Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code praying to call for the records relating to EOCC No.239 of 1999 on the file of the Additional Chief Metropolitan Magistrate (EO-1), Egmore, Chennai - 600 008 and set aside the impugned order of discharge passed by the Additional Chief Metropolitan

Magistrate (EO-1), Egmore, Chennai - 600 008 on 12.03.2004 in Crl.M.P. No. 2806 of 2003 in EOCC No. 239 of 1999.

Crl.R.C. No. 1554 of 2004:- Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code praying to call for the records relating to EOCC No.239 of 1999 on the file of the Additional Chief Metropolitan Magistrate (EO-1), Egmore, Chennai - 600 008 and set aside the impugned order of discharge passed by the Additional Chief Metropolitan Magistrate (EO-1), Egmore, Chennai - 600 008 on 12.03.2004 in Crl.M.P. No. 206 of 2003 in EOCC No. 239 of 1999.

For Petitioner : Mr. K. Ramasamy
Senior Special Public Prosecutor
for Income Tax Cases
in all the Criminal Revision Cases

For Respondents : Mr. R. Muthukumarasamy, Senior Counsel
for Mr. Sandeep Bagmar in Crl.R.C. No. 967

Mr. B. Kumar, Senior Counsel
for Mr. S. Senthil in Crl.R.C. No. 1553/2004
Mr. B. Kumar, Senior Counsel
for Mr. G. Saravana Kumar for R1
in Crl.R.C. No. 1554 of 2004
Mr. S. Senthil for R2 in Crl.R.C.
No.1554/2004

COMMON ORDER

All these Criminal Revision Cases are filed by the Income Tax Department aggrieved by the common order dated 12.03.2014 passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai. By the said order dated 12.03.2004, the petitions filed by the respondents herein for discharging them from the purview of Criminal Prosecution has been allowed. As the criminal revision cases are filed against a common order and common argument has been advanced by counsel for both sides, these Criminal Revision Cases are taken up and are disposed of by this common order.

2.1 The case of the prosecution/revision petitioner/complainant is that one Ramayamma (in short "The Vendor") has sold the property situated at No.1/1, Luz Avenue, Chennai - 600 004 in favour of the respondents in Crl.R.C. Nos. 1553 and 1554 of 2004 (in short the purchasers) by executing six sale deeds during March 1995 in their favour thereby she transferred 1/6th of undivided share of the aforesaid property for a sale price of Rs.9,00,000/- each having a total sale consideration of Rs.54,00,000/-. It is claimed by the vendor that out of the sale price of Rs.54,00,000/-, a sum of Rs.44,00,000/- has been remitted to the account of Indian Bank to discharge the debt and the balance sum of Rs.10,00,000/- has

been received by her in cash. Thereafter, a search was conducted under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as "The Act") in the residence of the vendor. During the course of such raid, certain documents were said to have been seized by the department, based on which, the prosecution claimed that the sale value of the property sold by the vendor is nearly Rs.130 lakhs and it was grossly undervalued as Rs.54,00,000/- to evade payment of tax. Therefore, on 16.10.1996, a show cause notice was issued by the Department under Section 158 BCX of the Act calling upon the vendor to show cause as to why action should not be initiated under Section 276 AB of the Act for contravening the provisions of Section 269 UC of the Act for the transactions effected by her for the Assessment years 1987 to 1988 to 1996-1997. Similar notices have been issued to the purchasers/respondents herein on 22.10.1996 stating that no immovable property of the value exceeding Rs.10,00,000/- should be transferred without an agreement for transfer and by submitting Form 37-I and Rule 48 L of the Income Tax Rules, 1962. A reply was sent by the purchasers/respondents stating that each of them have only purchased 1/6th of undivided share of the property for a consideration of Rs.9,00,000/- and therefore there is no legal obligation cast on them to get the No Objection Certificate nor the appropriate authority could assume jurisdiction under the provisions of the Act.

2.2. Notwithstanding such explanation offered by the vendor as well as the purchasers, who are respondents herein, the Assistant Commissioner of Income Tax, Central Circle 11 (2), Chennai has passed an order of assessment dated 24.10.1997 assessing the total undisclosed income at Rs.96,38,355/- and arrived at the tax due @ 60% at Rs.57,83,013/-. Aggrieved by the order of assessment dated 24.10.1997, the Vendor has preferred an appeal on 17.11.1997 before the Income Tax Appellate Tribunal. When the statutory appeal preferred by the Vendor was pending, the Department has introduced a scheme called "Kar Vivad Samadhan Scheme - 1998" (hereinafter referred to as The Scheme) in exercise of powers conferred under Chapter IV of the Finance (No.2) Act, 1998. Therefore, without prejudice to the appeal preferred, the Vendor has chosen to avail the benefit of the scheme. Accordingly, on 30.01.1999, the Vendor has opted for the said scheme and filed her declaration in Form-1A before the Commissioner of Income Tax, Central Circle-II, Chennai. Such declaration filed by the vendor is in respect of the matters covered under the Assessment period from 01.04.1986 to 03.10.1996 against which the statutory appeal was filed and pending before the Income Tax Appellate Tribunal. The designated authority under the Scheme issued a Certificate of Intimation dated 18.02.1999 in Form 1A determining the amount payable by the vendor towards full and final settlement of the tax arrears for the block period of assessment from 01.04.1986 to 03.10.1996 quantifying the arrears as Rs.47,83,018/- and the vendor also paid the tax due at Rs.31,88,675/-. On receipt of such payment, the

designated authority under the scheme issued an immunity certificate dated 24.03.1999 in favour of the vendor towards full and final settlement of tax arrears.

2.3. Thereafter, on 25.11.1999, after eight months of issuance of immunity certificate in favour of the vendor, the Department launched prosecution against the vendors as well as the purchasers by filing a Complaint in E.O.C.C. No. 239 of 1999 for the offence punishable under Section 269 UC and 276 AB of the Act. According to the complainant/department, the vendor as well as the purchasers have failed to file the statement in Form 37-I in respect of the sale transaction effected between them and thereby they have contravend the provisions of Section 269 UC of the Act, which is an offence punishable under Section 276 AB of the Act.

2.4. Aggrieved by the filing of the complaint by the Department, the vendor has filed WP No. 20364 of 1999 before this Court praying to quash the proceedings in E.O.C.C. No.239 of 1999 and to issue a consequential direction directing the department not to proceed against her in any manner in respect of Form -3 issued under the Scheme. According to the vendor, the immunity certificate issued under the scheme was not taken into account by the Department and that the offence alleged against her is not made out by the department especially when she has paid the entire tax arrears and later immunity certificate was given in respect of all matters. By an order dated 23.02.2001, this Court disposed of WP No. 20364 of 1999 with a direction to the trial Court to permit the vendor to make an application to drop the proceedings initiated against her on the ground that she had been granted immunity by the department itself under the scheme. The trial Court was further directed to afford an opportunity of hearing to the vendor to raise her objection and thereafter to decide whether the immunity already granted to her under the scheme was the subject matter of the complaint on its file or not.

2.5 Before the trial court, the purchasers have filed a separate petition under Section 258 of Code of Criminal Procedure contending that Section 269 UC of the Act does not place any obligation on their part to obtain any clearance from any of the authorities of the Income Tax Department and they have nothing to do with the obligation to seek permission before purchasing the property in question.

2.6 A reply was filed by the Department contending inter alia that the petition filed by the vendor shall not be decided along with the petition filed by the purchasers as the Department would be left with no option to put forth their case against the purchasers. Notwithstanding such objection, the trial court rejected the prayer of the Department. Aggrieved by such procedure adopted by the trial Court, the department filed Crl.OP No. 6067 of 2004 and 6068 of 2004 against Crl.M.P. Nos. 2806 of 2003 and 206 of 2004 in EOCC No. 239 of 1999 to

quash the petition filed by the vendor as well as the purchasers under Section 258 of Cr.P.C. This Court, by an order dated 23.02.2014 directed the trial Court to pass an order on the petition filed by the purchaser as well as vendor within a period of three weeks, however, the main petitions in CrI.OP Nos. 6067 and 6068 of 2004 were kept pending. As directed by this Court, arguments have been advanced by both sides and on 12.03.2004, the impugned orders were passed discharging the vendor as well as the purchasers from the purview of prosecution. As against the same, the present Criminal Revision Cases are filed.

2.7. One more factor to be noted is that when the present Criminal Revision Cases are pending, this Court, by an order dated 28.10.2004, dismissed CrI.OP Nos. 6067 and 6068 of 2004 filed by the Department on the ground that the relief sought for therein have become infructuous. Aggrieved by the same, a Special Leave Petition No. 6072 and 6073 of 2005 have been preferred by the Department before the Honourable Supreme Court and they were dismissed by an order dated 21.11.2005 on the ground that as against the order of discharge passed by the trial Court, the present Criminal Revision Cases are pending before this Court and therefore, no relief could be granted. Accordingly, the Criminal Original Petitions were dismissed as having become infructuous.

3.1. The learned senior Special Public Prosecutor for Income Tax Cases, appearing for the petitioner mainly argued that the order dated 23.02.2001 passed by this Court in WP No. 20364 of 1999 filed by the vendor, directing the trial Court to take note of the immunity certificate granted to her and to pass an order afresh, cannot be made applicable to the purchasers herein. Even to the vendor, the immunity certificate granted by the Department under the scheme will not enure to her benefit to get discharged from the criminal prosecution as the criminal prosecution is launched for non-filing of Form 37-I, which is a statutory obligation as contemplated under Section 269 of the Act. The criminal prosecution launched against the vendor and the purchasers is a separate proceeding inasmuch as the vendor as well as the purchasers have contravened the provisions contained in the Act and Rules. Even assuming without admitting that immunity certificate was granted to the vendor under the scheme, it has nothing to do with the violation committed by her in not filing the declaration under Form 37-I of the Act. It is also not the case of the purchasers that this Court issued any direction to them to file appropriate petition for dropping the proceedings against them, as in the case of the vendor, therefore, the benefits of the scheme availed by the vendor cannot be made applicable to the purchasers herein. According to the learned Senior Public Prosecutor, the filing of declaration is very important and the immunity certificate obtained by the vendor has nothing to do with the filing of declaration. It is his contention that the provisions under Section 276 AB does not

speak about any tax at all and the failure to file the declaration under Form 37 I is an offence punishable under the provisions of the Act. Section 276C, 276CC and 276CCC of the Act clearly indicate that there is a premitive right on the part of the Central Government to take away the property of any assessee for non filing of Form 37-I of the Act. Therefore, as contemplated under Section 269 UA2 (3) of the Act, the person interested has to be taken note of.

3.2 The learned Senior Special Public Prosecutor would contend that the compliance of provisions under Chapter 20-L is not an assessment at all. When the vendor does not disclose the execution of agreement and not filed Form 37-I of the Act, it gives a right for the department to purchase the property and it has nothing to do with the payment of tax arrears. Even as per the scheme availed by the vendor, the filing of Form 37-I is mandatory, but she did not do so. The learned Senior Special Public Prosecutor has placed reliance on the decision of the Honourable Supreme Court in the cases of (i) (M/s. Jannaprasad Kanhaiyalal vs. Commissioner of Income Tax, M.P., Bhopal) (1981) 3 Supreme Court Cases 441 and (ii) (Income Tax Officer, New Delhi and others vs. Rattan Lal and others) reported in (1986) (Supp) Supreme Court Cases 370 to contend that the voluntary declaration of the tax due under a particular scheme or the immunity certificate obtained thereon will only confer to the declararant and not to the crediting firm or any other person. In such circumstance, the Department is justified in launching prosecution against them to investigate the true nature and source of the cash credits and to assess the firm under Section 68 of the Act.

3.3 The learned Senior Special Public Prosecutor further placed reliance on the decision of the Honourable Supreme Court in the case of (John Thomas vs. Dr. K. Jagadeesan) reported in (2001) AIR SCW 2529 to contend that Section 258 of Cr.P.C. is included in Chapter 20 of the Code in the form of an exception to the normal progress chart of the trial in summon cases. The power under Section 258 to discharge an accused at midway stage is restricted to those cases instituted otherwise than on complaints wherein no material witness was examined at all. Placing reliance on this decision, it is contended by the learned Senior Special Public Prosecutor that the prosecution has made out a prima facie case for proceeding against the accused by producing documentary evidence while so, the trial Court is not justified in discharging them. The assessee was proceeded with only on the basis of the materials seized during the raid and it is for the assessee to rebut the material evidence during the course of trial. It is vehemently contended by the learned Senior Special Public Prosecutor that the vendor as well as the purchasers have wantonly splitted the property in to six components, and executed six separate sale deeds only to suppress the value of the property and to make it as if they have no obligation to pay tax. Therefore, the learned Senior

Special Public Prosecutor for the department prayed for allowing the Criminal Revision Cases.

4. On the contrary, the learned Senior counsel appearing for the respondents in Crl.R.C. No. 1353 of 2004 and the first respondent in Crl.R.C. No. 1354 of 2004 would contend that the prosecution initiated against the purchasers is without authority of law and there is no jurisdiction to launch prosecution against the purchasers. Chapter 20-C and Section 269 U of the Act was pressed into service by the Act on 13.05.1986 and it came into force on 01.10.1986 and it was repealed with effect from 01.07.2000 by bringing in amendments to Section 269 of the Act. Therefore, even as per the Act, the purchasers have no obligation under the Act to obtain clearance or No objection from the Department prior to purchasing the property. This is more so that the value of the property purchased by the respective purchaser does not exceed Rs.10,00,000/- and therefore it is in accordance with Section 259 UC of the Act which contemplates that if any immovable property is purchased having value exceeding Rs.10 lakhs, then it should be disclosed by Form 37-I of the Act before the appropriate authority. In any event, the vendor has availed the benefits under the Scheme and settled all the tax dues and obtained an immunity certificate. In such circumstances, the launch of prosecution against the purchasers is unnecessary.

5. The learned Senior counsel appearing for the purchasers/respondents would rely on the decision of the Calcutta High Court in the case of (MOI Engineering Limited and another vs. Appropriate Authority and others) Volume 198 Income Tax Reports Page No.270 to contend that the appropriate authority in exercise of his powers under Section 269UD of the Act does not have the jurisdiction to adjudicate on the legality of the transaction proposed to be entered into by the applicant. The only order that could be passed under Section 269 UD of the Act is an order of purchase.

6. The learned Senior counsel appearing for the sole respondent in Crl.R.C. No. 967 of 2004, who is the vendor, would contend that the vendor has availed the benefit of the Scheme introduced by the Department. On the application of the vendor, under the scheme, the sum payable by her was determined and it has become conclusive with respect to the matters stated therein. The vendor also obtained an immunity certificate from the Department which duly covers the sale transaction made by her with the purchasers. Further, after issuing immunity certificate to her, the department, for the reasons best known, waited for eight months to launch prosecution for the alleged non-filing of declaration in Form 37-I of the Act. When the immunity certificate was obtained, the vendor has no obligation to file the declaration form. Even other wise, the non-filing of such declaration form will not entitle the department to launch prosecution against the vendor. Having issued the immunity certificate, the department virtually foreclosed their

right to further proceed against the vendor especially when the vendor paid the tax amount and availed the benefits under the scheme during the pendency of statutory appeal filed by her before the Income Tax Appellate Tribunal. The immunity certificate issued in favour of the vendor duly protects her from launch of any prosecution by the department for the relevant assessment year which is duly covered under the immunity certificate. Further, the Department has not proceeded further to set aside the sale made by the vendor in favour of the purchasers but only contend that the amount mentioned therein has been under-valued. The department failed to take note of the fact that the property was sold by the vendor for Rs.9 lakhs each to six different purchasers by executing six separate sale deeds. While so, there is no obligation on the part of the vendor to submit Form 37-I before the Income Tax Authorities. Further, the vendor has already intimated the sale of the property to the department as per Section 239-A of the Act and obtained a No Objection certificate thereon. When the vendor availed the benefits of the scheme, there is no bar for dropping all further proceedings against her as also against the purchasers. The trial Court, in exercise of power conferred upon it, has rightly assessed the materials placed by department and rightly discharged the vendor.

7. In this context, reliance was placed on the decision in the case of (Hira Lal Hari Lal Bhagwati vs. Central Bureau of Investigation, New Delhi) reported in (2003) (3) CTC 356 = 262 ITR 466 (SC) wherein it was held that when the immunity certificate obtained under a particular scheme and it is referable to or related to the tax due payable towards a particular assessment scheme, the immunity certificate obtained will enure to the benefit of the assessee and the prosecution launched against the assessee is not maintainable.

8. It is further submitted by the learned Senior counsel for the vendor that there is no restriction either in the Transfer of Property Act or any other enactment to sell a portion of the property and to execute sale deeds thereof in favour of more number of persons. It is the desire and interest of the parties to enter into sale transaction to dispose of the entire building or a portion of the building and such sale will not in any manner be construed as an offence under any of the enactments. Under Section 269 UA (2) (e) of The Act, immovable property is defined and includes a part of the building. When there is no restriction on the part of the vendor or the purchaser to enter into a sale transaction to purchase the entire property or a portion thereof, the contention of the prosecution that six sale deeds have been executed only to evade tax liability is unsustainable.

9. I heard the counsel for both sides and perused the materials placed on record. It is seen from the Certificate issued in favour of the vendor under the Kar Vivad Samadhan

Scheme Rules in Form -3 that a sum of Rs.31,88,675/- has been paid by the vendor towards tax due which fell during the block assessment period 01.04.1986 to 03.10.1986. The relevant portion of the form of certificate for full and final settlement of tax arrears under Section 90 (2) read with Section 81 of the Finance (No.2) Act, 1988 in respect of the scheme issued to the vendor herein reads as follows:-

"And whereas, the designated authority, by order dated 18.02.1999 determined the amount of Rs.31,88,675/- rupees payable by the declarant in accordance with the provisions of the scheme and granted a certificate setting forth therein the particulars of the tax arrears and the sum payable after such determination towards full and final settlement of tax arrears as per details given below:-

IT Act, 1961 Block	01.04.1986 to 03.10.1996
Tax	Rs.47,83,013/-
Amount payable	Rs.31,88,675/-.

And whereas the declarant has paid Rupees Thirty One Lakhs being the sum determined by the designated authority.

And whereas the declarant had declared in the declaration made under Section 88 that no writ petition or appeal or reference before any High Court or the Supreme Court against any order in respect of the tax arrears has been filed by such declarant.

Now therefore in exercise of the powers conferred by sub-section (2) of Section 90 read with Section 91 of the Finance (No.2) Act, 1988, the designated authority hereby issues this certificate to the said declarant

(i) Certifying the receipt of payment from the declarant towards full and final settlement of tax arrears determined in the order dated 18.02.1999 on the declaration made by the aforesaid declarant

(ii) granting immunity subject to the provisions contained in the Scheme from instituting any proceeding for prosecution for any offence under Income Tax Act, 1961 or from the imposition of penalty under said enactment in respect of matters covered in the aforesaid declaration made by the applicant.

10. It is clear from the above certificate issued under the Scheme that such certificate was issued for the tax amount which fell due during the assessment year 01.04.1986 to 03.10.1986. In the present case, the prosecution came to be launched against the vendor and the purchasers in connection with the sale transaction took place during March 1995 and it

is duly covered by the certificate issued in favour of the vendor. As rightly pointed out, having received the tax amount due from the vendor, the prosecution came to be launched against the vendor as well as the purchasers after eight months from the date on which such certificate has been issued in favour of the vendor.

11. It is further seen from Form of Declaration under Section 89 of the Finance (No.2) Act, 1988 in respect of the Scheme that column (e) thereof relates to tax arrear outstanding as on 31.03.1998 to the tune of Rs.52,83,013/-. Similarly, column (f) relates to amount of tax arrear as on the date of making the declaration under Section 88, against which, a sum of Rs.35,91,194/- is indicated. In the declaration form, there is a separate column for "verification" which reads as under:-

"I, S. Ramayamma (name in block letters) son/daughter/of Shri. Shambu Prasad, solemnly declare that to the best of my knowledge and belief

(a) the information given in this declaration, statements and annexures accompanying it is correct and complete and amount of tax arrears and other particulars shown therein are truly stated and relate to the previous years relevant to the assessment years indicated in this declaration.

(b) I am not disqualified in any manner from making a declaration under the scheme with reference to the provisions of Section 95 of Finance (No.2) Act, 1988..."

12. This declaration was made by the vendor on 30.01.1999. A perusal of the declaration would indicate that the alleged disputed quantum of tax amount and the actual rate of tax payable by the vendor has been duly mentioned. Further, the declaration states that it is referable to the previous years relevant to the assessment years indicated in this declaration. When the vendor has made such declaration and also made the tax arrears, the prosecution launched against her and the purchasers is unnecessary. Thus, what has been declared by the vendor in the declaration form is inclusive of the sale of the property during March 1995 in favour of the purchasers. This declaration also covers the value assessed by the Department at Rs.130 lakhs and only after analysing the same, the dispute was settled between the vendor and the department by availing the benefits of a scheme mooted by the department. Therefore the prosecution can be lodged for an action, which is not covered under the declaration by the department is not at all correct. The declaration clearly says about the tax due taking into consideration the entire sale consideration of all the sale deeds, including of the alleged excess payment.

13. The learned Senior counsel for the Department relied on the decision in the case of (Appropriate Authority and Commissioner of Income Tax vs. Varshaben Bharatbhai Shah (Smt) and others) reported in (2001) 4 Supreme Court Cases page No.1 wherein the Honourable Supreme Court had an occasion to consider that the transferors were co-owners and agreed to transfer their undivided share in the immovable property. In that context, it was held that what has to be seen for the purpose of attracting Chapter XX-C is that the property, which is the subject matter of transfer and what is apparent consideration for such transfer. This has to be seen in a real light with due regard to the object of the chapter and not in an artificial or technical manner. In that case before the Honourable Supreme Court, the parties to the transaction filed Form 37-I with the appropriate authority and the total apparent sale consideration of immovable property was Rs.47 lakhs. Therefore, it was held by the Honourable Supreme Court that the question of sale of share of individual rights does not arise and the sale consideration was to be taken as Rs.47 lakhs. This decision will not lend support to the facts of this case. In this case, a raid was conducted in the residence of the vendor and the department has assessed the total tax due. Against the assessment of tax, the vendor has filed an appeal. During the pendency of statutory appeal, the vendor has availed the benefits of the scheme introduced by the Department and obtained a certificate thereof. While so, it cannot be said that the non-filing of Form 37-I of the Act will entitle the department to launch prosecution either against the vendor or the purchasers after issuance of immunity certificate in favour of the vendor. Admittedly, in this case, form 37-I was not filed by the vendor as according to her, it is not required at all. The subject matter in that case before the Honourable Supreme Court is totally different, especially in this case, a portion of the undivided property has alone be sold in favour of the vendors.

14. Before proceeding further, let us have a look into the provisions of Section 269UC and 279 AB of the Act, which reads as follows:-

"269 UC. Restrictions on transfer of immovable property - Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882) or in any other law for the time being in force, no transfer of any immovable property in such area and of such value exceeding five lakhs, as may be prescribed shall be effected except after an agreement for transfer is entered into between the person who intends transferring the immovable property (hereinafter referred to as the transferor) and the person to whom it is proposed to be transferred (hereinafter referred to as the transferee) in accordance with the provisions of sub-section (2) at least four months before the intended date of transfer.

(2) The agreement referred to in sub-section (1) shall be reduced to writing in the form of a statement by each of the parties to such transfer or by any of the parties to such transfer acting on behalf of himself and on behalf of the other parties.

(3) Every statement referred to in sub-section (2) shall-

- (i) be in the prescribed form
- (ii) set forth such particulars as may be prescribed; and
- (iii) be verified in the prescribed manner

and shall be furnished to the appropriate authority in such manner and within such time as may be prescribed by each of the parties to such transaction or by any of the parties to such transaction acting on behalf of himself and on behalf of the other parties

(4) Where it is found that the statement referred to in sub-section (2) is defective, the appropriate authority may intimate the defect to the parties concerned and give them an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period which on an application made in this behalf, the appropriate authority may, in the discretion, allow and if the defect is not rectified within the said period of fifteen days or as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this chapter, the statement shall be deemed never to have been furnished."

"As per Rule 48K of the Income Tax Rules where the value of the sale deed exceeds Rs.10 lakhs only, form 37-I has to be filed in so far as City of Madras is concerned upto 31.07.1995. From 01.08.1995, it was increased to Rs.25 lakhs."

279 AB - Power of Principal Commissioner or Commissioner to grant immunity from prosecution.

(1) A person may make an application to the principal Commissioner or Commissioner for granting immunity from prosecution, if he has made an application for settlement under Section 245C and the proceedings for settlement have abated under Section 245HA

(2) The application to the Principal Commissioner or commissioner under sub-section (1) shall not be made after institution of the prosecution proceedings after abatement.

(3) The principal commissioner or commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from prosecution for any offence under this Act, if he is satisfied that the person has, after the abatement, co-operated with the income tax authority in the proceedings before him and has made a full and true disclosure of his income and the manner in which such income has been derived.

Provided that where the application for settlement under section 245C had been made before the 1st day of June 2007 the principal commissioner or commissioner may grant immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1980) or under any other Central Act for the time being in force.

(4) The immunity granted to a person under sub-section (3) shall stand withdrawn, if such person fails to comply with any conditions subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(5) The immunity granted to a person under sub-section (3) may, at any time, be withdrawn by the principal commissioner or commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, conceded any particulars material to the assessment from the income-tax authority or had given false evidence and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the proceedings."

15. As per the provisions of Section 279AB of the Act, immunity was granted by the department in favour of the vendor in respect of "any proceedings". Let me now consider the scope and ambit of the word "any proceedings" indicated in the declaration made by the vendor. The term "any proceeding" under the Act should in the normal nomenclature also includes any action to be taken for contravention of any of the provisions of the Act and Rules in respect of a transaction, in the present case, the alleged sale transaction. The further

action as contemplated under Section 269 UC of the Act is non-filing of Form 37-I of the Act which was originally started in the year 1996 itself by issuing a show cause notice. A reply was also given by the respondents herein and subsequent assessment was made in favour of the vendor. Therefore, the term "any proceeding" in the facts and circumstances of the case, will also include the proceedings contemplated under Sections 269 UC and 276 AB of the Act. While so, the department is not justified in initiating separate action either against the vendor or purchasers because submission of form 37-I of the Act is not required to be submitted by them. As far as the purchasers are concerned, they are only required to jointly sign with the vendor. The vendor has to submit form 37-I of the Act. What applies to the vendor will equally apply to the purchasers. When the vendor was issued with an immunity certificate in respect of the very same action itself, can the purchasers be made to suffer on the alleged non-filing of Form 37-I, which according to the department it is only a joint declaration. Further, in this case, as discussed earlier, the vendor has already obtained No Objection Certificate from the department for execution of six different sale deeds in favour of six different purchasers. Therefore, there is no obligation at all for the purchasers to even think of filing form 37-I. The department was very well aware of the six different sale deeds executed by the vendor and that is the reason why the department gave the No Objection Certificate to the vendor for execution of the sale deeds.

16. The learned Senior Counsel appearing for the Department also relied on the decision of the Honourable Supreme Court in the case of (Appropriate Authority (IT Deptt) and others vs. M. Arifulla and others) (2002) 10 Supreme Court Cases 342 to contend that vendor is only a co-owner and value of the each of the property sold by her has to be determined bearing in mind the provisions of Section 269 UC of the Act.

17. The learned Senior counsel for the Department also relied on (Killick Nixon Limited, Mumbai vs. Deputy Commissioner of Income Tax, Mumbai and others) (2003) 1 Supreme Court Cases 145 to contend that immunity from prosecution cannot be restricted only for the offences covered therein and that the scheme is to cut short litigations pertaining to taxes which were frittering away the energy of the Revenue Department and to encourage litigants to come forward and pay up a reasonable amount of tax in accordance with the scheme after declaration made thereunder.

18. Yet another point for consideration is that soon after prosecution was launched, the vendor has approached this Court and filed Writ Petition No. 20364 of 1999 to quash the proceedings initiated against her in E.O.C.C. No. 239 of 1999 and to direct the department not to proceed against her in any manner by taking into account Form No.3 issued in her favour under the Scheme. This Court, by order dated 23.02.2001

directed the trial Court to consider the request of the petitioner to drop the prosecution against her in the light of the immunity certificate issued in her favour. This Court also directed the trial Court to consider whether the immunity certificate granted to the vendor also covers the period during which the sale transaction took place. On the basis of such clear direction issued by this Court, the vendor has filed a petition in CrI.M.P. No. 770 of 2001 to drop all further proceedings against her and it was contested by the department. The trial Court, after analysing the entire evidence on record, held that the immunity granted to the vendor is for the vendor and also the purchasers as a whole and therefore, they are entitled for protection against the criminal prosecution.

19. On the other hand, the Department has approached this Court by filing Criminal Original Petition Nos. 6067 and 6068 of 2004 against the order passed by the trial Court refusing to hear the application filed by the vendor and the purchaser separately. This Court, by the order dated 23.02.2004 directed the trial Court to pass orders on the petition filed by the vendor as well as the purchaser within three weeks and kept the Criminal Original Petitions pending. Pursuant to such direction issued by this Court, the orders, which are impugned in these Criminal Revision Cases came to be passed. It is seen from the orders passed by the trial Court that it had taken into account the clear direction issued by this Court to dispose of the petitions on merits by independently analysing the evidence made available to discharge the vendor as well as the purchasers from the purview of prosecution. Thus, the Department was given opportunity to contest the applications to drop the criminal prosecution against the vendor and purchasers and only thereafter, the lower Court has passed the orders after a detailed analysis of the submissions made on both sides. In view of the order passed by the trial Court, this Court dismissed the Criminal Original Petition Nos. 6067 and 6068 of 2004 filed by the Department as infructuous. The Department again contended that the Criminal Original Petition Nos. 6067 and 6068 of 2004 should not have been dismissed and raised a plea before the Honourable Supreme Court. The Special Leave Petitions filed thereagainst were also dismissed by the Honourable Supreme Court on merits. Thus, identical arguments raised by the Department has been considered by this Court twice and pursuance to such directions issued by this Court, the impugned orders have been passed by the trial Court, which was also confirmed by the Supreme Court.

20. It is the specific case of the prosecution that the property owned by one person namely the vendor herein and she has wantonly and wilfully sold the undivided share of the property by executing six sale deeds. In other words, a single transaction was split in to six transaction only to ensure that there is no tax liability on the part of the vendor as well as the purchaser. Further, the vendor did not submit Form 37 and

therefore, the launch of prosecution against the vendor as well as the purchasers is justifiable and in accordance with law. Such a contention of the learned Senior Special Public Prosecutor cannot be countenanced. There is no embargo or bar under the provisions of Transfer of Property Act or the Income Tax Act for sale of the property in to pieces in favour of more than one purchaser. Even assuming that there is some tax liability on the part of the vendor to cumulatively disclose the entire sale transaction, there is no obligation on the part of the purchasers who have purchased the properties individually by means of separate sale deeds. Each of the sale deeds disclose the value of the property covered therein at Rs.9 lakhs and therefore it is also not barred or hit by the provisions of Section 259 UC of the Act which contemplates that if any immovable property is purchased having value exceeding Rs.10 lakhs, then it should be disclosed by Form 37-I of the Act before the appropriate authority. Therefore also, the contentions urged by the learned Senior Special Public Prosecutor for the department cannot be sustained and it has to be rejected.

21. The Department has given a clean chit in favour of the vendor by issuing the immunity certificate. The immunity certificate covers all the past transactions, including the disputed sale transaction. By reason of such certificate, the department accepted the value of the sale transaction mentioned in the six sale deeds executed by the vendor. It is also to be mentioned that the vendor has intimated the department regarding each of the sale of the property in favour of the purchasers. At that point of time, the department did not object to the sale transaction. When intimation was given by the vendor, the buyer cannot be expected to obtain any clearance from the income tax department, especially when the sale price covered under each of the sale deed is only Rs.9 lakhs. Therefore, there is no obligation on the part of the buyers to either intimate the department regarding the purchase or the value mentioned thereon. Further, the seller has obtained certificate under the then existing Section 234-A for no objection to sell the property by executing six sale deeds. When the sale is supported by certificate issued by the Department, the question of submitting form 37-I by the vendor does not arise. The purchasers also bonafide purchased the property for a valuable sale consideration under the impression that they need not submit form 37-I of the Act.

22. As regards the obligation on the part of the vendor to file Form 37-I, it is seen from the Form 37-I that the total apparent sale consideration for transfer of the immovable property has to be disclosed. In the present case, the value of the property has been truly disclosed by the vendor in the application filed by her under the scheme mooted by the department and it was also duly accepted and acknowledged by the department by issuing a certificate

thereof. The immunity certificate issued by the Department covers the sale transaction in question, which took place during March 1995. Therefore, the non-filing of Form 37-I by the vendor will not entitle the department to launch prosecution against her.

23. A careful perusal of the judgment passed by the trial court discharging the respondents herein and the submission of the learned Public Prosecutor appearing for the department, it has to be held that mere splitting up of the property in to several components thereof to suit the convenience of the purchaser or vendor as the case may be may not take away the right of the department to proceed against them in case of violation of any of the Act and Rules. In the present case, unfortunately, the provisions of the Act which were alleged to have been violated by the vendor or purchasers have been repealed long back but it was not taken note of by the department. Therefore also, at this stage, the action sought to be taken by the department against the vendor and purchasers is unnecessary.

24. It is seen from the orders passed by the trial Court that it has taken note of the entire documentary evidence made available before it for consideration. It is stated by the trial court that even in the complaint, it is averred that out of the sale amount of Rs.54 lakhs, Rs.44 lakhs was directly paid by the purchasers into the loan account of the brother of the vendor in the Indian Bank and the balance Rs.10 lakhs was received by the vendor in cash. The trial court further pointed out that on payment of Rs.44 lakhs, the equitable mortgage executed in favour of brother of the vendor was relieved. The trial Court, on appreciation of para-10 of the complaint concluded that the total sale consideration received by the vendor is only Rs.54 lakhs and the whole property is sold to the purchasers by executing six separate sale deeds and not for Rs.1,30,00,000/- as averred by the department. Therefore, the trial Court concluded that even assuming the property was sold for more value, the obligation on the part of the vendor and purchasers to file Form 37-I arises only when sale deed is executed above Rs.10 lakhs as contemplated under Section 269UC of the Act. Therefore, the trial Court held that there is no legal obligation on the part of the vendor and purchasers to file Form 37-I and consequently, they are entitled to be discharged from the purview of prosecution for the offences under Section 269UC punishable under Section 276AB of the Act. I do not find any reason to interfere with such a conclusion arrived at by the trial Court as it is based on materials placed on record and reasons were given by the trial court thereof.

25. Further, it is important to note that the offence complained of against the vendor and the purchasers is a compoundable offence. The argument of the Department is that the present charge relates to non-filing of Form 37-I of the

Act and it is totally different from the tax due. The filing of the declaration and the consequential payment of tax due will not enure to the benefit of the accused to get discharged from the purview of prosecution. Such an argument raised by the department cannot be countenanced. In the declaration, what was stated by the vendor is the outcome of the sale and the consequences thereof. Further, the declaration grants immunity to the vendor from the purview of prosecution, which includes the non-filing of Form 37-I of the Act. Even as admitted by the Department, the offence complained of against the respondents herein is a compoundable offence. Further, the requirement to file Form 37-I will arise only if the sale transaction is more than Rs.10 lakhs. In the present case, as mentioned supra, each of the sale deed has been executed for a value of Rs.9 lakhs besides that the vendor has intimated the Income Tax Department prior to alienating the property in favour of the purchasers. While so, I hold that non-filing of Form 37-I by the vendor, in the present facts and circumstances, will not enure to the benefit of the Department to launch prosecution against the vendor and the purchasers. Consequently, I hold that the vendor as well as the purchasers/respondents in these Criminal Revision Cases, did not contravene the provisions contained under Section 269 UC of the Act.

26. It is also very clear from the immunity certificate granted to the vendor that it is in respect of any proceedings to which matter is covered under the declaration. As we have discussed earlier, matters covered in the declaration includes the alleged assessment of the value of the property at Rs.1,30,00,000/- which the vendor sold for Rs.54,00,000 in favour of the purchasers. Further, at this juncture, it is very pertinent to note that the department issued a show cause notice on 16.10.1996 itself under Section 158 BCX of the Act to the vendor. In that notice, specifically the vendor was called upon to explain as to why action should not be initiated against her under Section 276 AB of the Act for contravening the provisions of Section 269 UC of the Act for the transactions effected by her for the Assessment years 1987 to 1988 to 1996-1997. The very same show cause notices were also issued to the purchasers/respondents herein on 22.10.1996 wherein they were called upon to show cause as to why action should not be taken against them for having purchased property having value of more than Rs.10 lakhs without an agreement for transfer and without submitting form 37-I and Rule 48 L of the Income Tax Rules, 1962. A reply was sent by the vendor as well as the purchasers stating that each of the sale deed was executed in respect of the 1/6th of undivided share of the property for a consideration of Rs.9,00,000/-. When the property purchased under each of the sale deed is Rs.9 lakhs and it is less than Rs.10 lakhs, they are not having any legal obligation to submit form 37-I of the Act. Conveniently, the department has not taken any action on the basis of the reply submitted by the vendor as well as the purchasers to the show

cause notices issued by the department till a certificate was issued to the vendor under the scheme. After eight months from the date of issuing the immunity certificate, prosecution came to be launched against the vendor and the purchasers. Therefore, it is very clear that the declaration, which has been filed by the vendor was in connection with and inclusive of the complaint complained in the show cause notice, which emanated in the assessment proceedings, subsequent to the raid. When once the vendor submitted her application under the scheme and availed the benefits thereof, including obtaining an immunity certificate, it also include the violation which has been complained in the show cause notice relating the the provisions contained under Section 269 UC of the Act. While so, is it not now open for the department, at this stage, to say that the declaration is only pursuant to the order of assessment or payment of tax component and it does not form part of the declaration in so far as it relates to the violation under Section 269 UC of the Act.

27. This Court, in the writ petition filed by the vendor, has issued direction to the trial court to consider whether the immunity already granted to the vendor under the scheme was the subject matter of the complaint on its file or not. On such direction, the trial Court rightly concluded that the immunity granted to the vendor covers the past transaction relating to the sale made by her which was the subject matter of the complaint before it. Further, this Court once again directed the trial Court by the order dated 23.02.2014 in the Criminal Original Petition Nos. 6067 of 2004 and 6068 of 2004 once again directed the lower court to consider the petition filed by the respondents herein and to pass orders. Taking into consideration such direction issued by this Court, the trial court passed the order under the direction and authority of this Court. In any event, the trial Court has rightly considered the issue as to whether the declaration also includes the proceedings contemplated under Sections 269 UC and 276 AB of the Act and held in the affirmative. I do not find any reason to interfere with such well considered order passed by the trial Court.

28 For all the above said reasons, the Criminal Revision Cases are dismissed.

sd/
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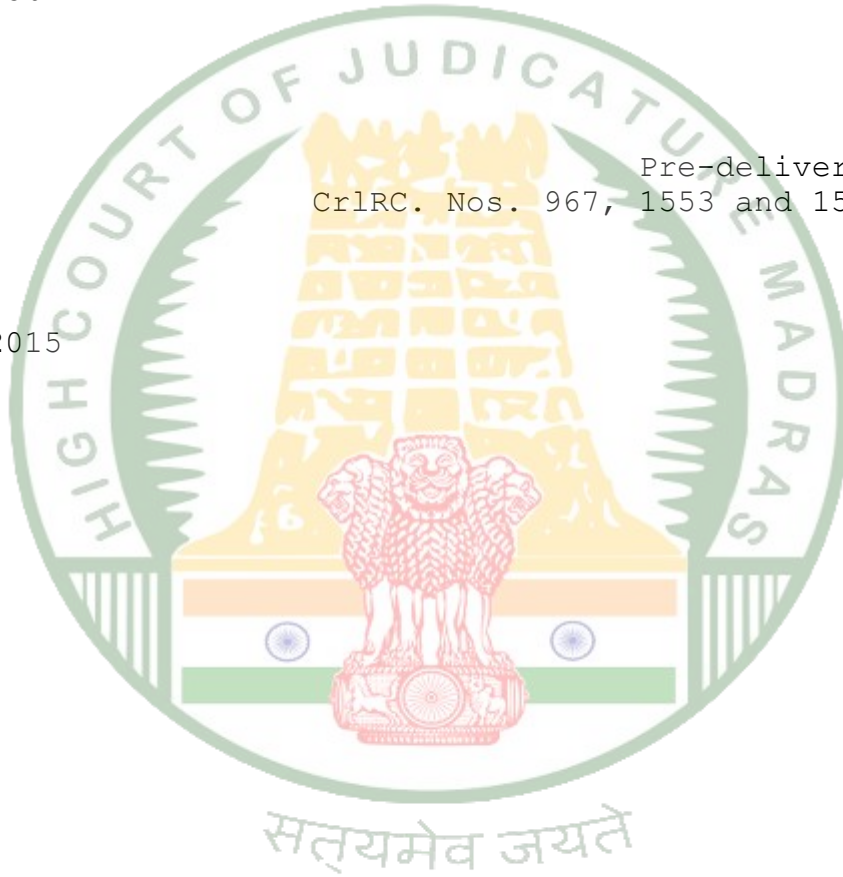
To

The Additional Chief Metropolitan Magistrate
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+1 CC to MR.R.Anbukarasu Advocate. SR.NO. 61507
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Pre-delivery Order in
CrlRC. Nos. 967, 1553 and 1554 of 2004

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