IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 880 OF 1998

Union of India … **Appellant.**
Versus
Ghanshyamdas Biyani & Anr. ... **Respondents.**

None for the Appellant.
None for Respondent No.1.
Mrs.G.P.Mulekar, A.P.P. for Respondent No.2-State.

CORAM : S.B. SHUKRE, J.

DATED : 17TH JUNE, 2016.

P.C. :

1] This is an appeal preferred against the judgment and order dated 31st March, 1997 rendered in case No.885/S/1991 by the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, thereby acquitting the respondent No.1 of the offence punishable under Section 276-DD of the Income Tax Act.

2] Nobody is present on behalf of the appellant. This case is very old and therefore, as per the mandate of Section 386 of the Code of Criminal Procedure (CrPC), I am proceeding to dispose of this case on merits after hearing the learned APP for respondent No.2, who is present in this Court. Nobody appears on behalf of the respondent No.1. I have carefully gone through the record including the impugned judgment and order.

3] It is seen from the record that the respondent No.1 was prosecuted on the allegation that he had contravened the provisions of Section 269-SS of the Income Tax Act. This section requires a income tax payee to obtain any loan or deposit exceeding Rs.10,000/- only through an account payee cheque or an account payee bank draft in any circumstances. It was alleged that the respondent No.1, a Share Broker and a Income Tax Payee, obtained loan of Rs.35,000/- by cash, which was evident from the entry made in that regard in the books of account maintained by the respondent No.1.

4] On perusal, the evidence of the complainant PW-1 Kadavan Ramchandran Laxminarayanan, discloses that he filed a complaint on the basis of his taking of inspection of the books of account maintained by the respondent No.1. However, in his evidence he did not produce any certified copy of the extract of the books of account showing the relevant entry. Only its photocopy was produced in evidence and that too without seeking leave of the Court, and it was marked as Exh.P-2. But the fact remains that no certified copy of the relevant entry was produced in evidence and therefore, an entry produced by way of secondary evidence without fulfilling the requisite conditions, cannot be read in evidence.

5] Except for the said entry, there was no other evidence to support the prosecution case. Therefore, learned Magistrate rightly held that the appellant could not prove its case beyond reasonable doubt against the respondent No.1.

6] The learned Magistrate also found that under the provisions of Section 269-SS, it was necessary that an opportunity of hearing was given to the respondent No.1, in view of the law laid down in the case of ***Income Tax Officer and Another Verses Abdul Razak and Others of Andhra Pradesh High Court reported in 182 of Income Tax Reports page 414 and also in the case of C.B.Gautam***

Vs. Union of India reported in 190 of Income Tax Reports page 530. No such opportunity was given to the respondent No.1. The learned Magistrate also found that Section 276-DD which provides for punishment for contravention of Section 269-SS of Income Tax Act itself has been omitted and as the prosecution was launched after omission of Section 276-DD from statute book, the complaint was not maintainble in view of the law laid down by the Hon'ble Apex Court in the case of ***M/s. Rayala Corporation (P) Ltd. Vs. The Director of Enforcement reported in AIR 1970, Supreme Court-494***. The view so taken by the learned Magistrate is consistent with the law of the land and therefore, I do not see any reason to interfere with the impugned judgment and order.

7] In the circumstances, I find that this appeal deserves to be dismissed and it stands dismissed, accordingly.

(S.B. SHUKRE, J.)