THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.38017 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri P.Sridhar Reddy, learned counsel for the petitioner, and Sri B.Narasimha Sarma, learned Special Standing Counsel for the Income Tax Department appearing on behalf of the respondents and, with their consent, the Writ Petition is being disposed of at the stage of admission. The action of the second respondent, in not disposing of the application filed by the petitioner on 15.12.2014, for compounding of the offence, under Section 279 (2) of the Income Tax Act, 1961 (for brevity, 'the Act'), is questioned in this Writ Petition as arbitrary and illegal.

The petitioner is said to have filed his Income Tax returns, for the assessment year 2012-13, on 23.04.2013 i.e. after the end of the relevant assessment year. On the ground that the petitioner had wilfully evaded payment of tax, and was liable for punishment under Section 276 (CC) of the Act, C.C.No.105 of 2014 was filed by the third respondent before the Special Judge for Economic Offences at Hyderabad. The petitioner made an application to the second respondent on 15.12.2014 for compounding of the offence under Section 279 (2) of the Act. It is his case that, though the application was submitted as early as on 15.12.2014, the same has not been disposed of; and, though his application is still pending consideration before the second respondent, he is being made to undergo the ordeal of facing trial in C.C.No.105 of 2014. Learned counsel would request this Court to grant stay of the criminal case pending disposal of the application by the second respondent.

Sri B.Narasimha Sarma, learned Special Standing Counsel for the Income Tax Department, would submit that the application filed before the second respondent was belated; the petitioner had, therefore, filed an application to the first respondent to condone the delay in filing the application for compounding the offence; and it is only if the first respondent were to condone the delay, can the second respondent entertain the application for compounding of the offence.

An application, for compounding the offence, is required to be made within one year from the date of the complaint in the criminal case. Admittedly, in the present case, the application for compounding the offence was filed after the period of one year. It is for this reason that the petitioner is said to have made an application to the first respondent to condone the delay. It is only if the delay is condoned by the first respondent, can the second respondent consider the application for compounding the offence.

We consider it appropriate, in such circumstances, to direct the first respondent to dispose of the petitioner's application for condonation of delay within two months from the date of receipt of a copy of this order. The petitioner is permitted to furnish a copy of this order to the first respondent. In case the first respondent were to condone the delay, the second respondent shall, within one month thereafter, consider and pass orders on the petitioner's application for compounding the offence.

With regards the petitioner's request for grant of stay pending disposal of the petitioner's representation to the first respondent and his application, for compounding of the offence, to the second respondent, we cannot ignore the fact that the petitioner had, after filing the present Writ Petition, filed an application under Section 482 Cr.P.C. to quash the proceedings in C.C.No.105 of 2014. The petitioner's application in Criminal Petition No.13254 of 2015 was dismissed as withdrawn by order dated 16.12.2015 granting him liberty to urge all the points, raised in the Criminal Petition, before the trial

Court. As the liberty sought for, and granted by this Court, in Crl.P.No.13254 of 2015 dated 16.12.2015 is only to urge all the points raised in the petition before the trial Court, it would be wholly inappropriate for us to entertain the petitioner's application for stay of all further proceedings in C.C.No.105 of 2014 pending disposal of the petitioner's representation. Suffice it to make it clear that this order shall not preclude the petitioner, in compliance with the order passed in Crl.P.No.13254 of 2015 dated 16.12.2015, from raising all these contentions before the trial Court.

The Writ Petition is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

04th January, 2016.
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