HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.R.C.No. 2818 of 2018

JUDGMENT:-

This Criminal Revision Case arises out of the order dated 17.09.2018 in Crl.M.P.No. 1521 of 2018 in C.C.No. 153 of 2017 passed by the Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad.

The Revision Petitioners are Accused Nos.2 and 3 in C.C.No. 153 of 2017. They have filed a petition under Section 245 Cr.P.C. to discharge them from the offence under Section 276-C of Income-Tax Act, 1961 (for brevity "the Act"). The allegation made against them was that they have failed to pay tax to the credit of the Central Government under Chapter XVIIB for the financial year 2009-2010.

The case of the petitioners is that there was a reconstitution of deed of partnership executed between the 1st petitioner – A2 (10% sharing ratio) and one Mahamood Abdul Shaik (90% sharing ratio) for carrying on the business in the partnership of M/s.R.R.Movie Makers (A1 firm) and in the said deed, the 2nd petitioner-A3 has expressed his willingness to retire and he has retired from the partnership business with effect from 20.10.2012. It is further case of the petitioners that it was mentioned in the said deed that the retiring partner is not at all responsible for any past or future liabilities, losses, rates, taxes, penalties, etc. of the firm, and hence, the 2nd petitioner / A3 is no way concerned with A1-firm. The 1st petitioner – A2 has a liability to the extent of 10% only and prosecuting A2 leaving his partner of 90% liability is against the principles of natural justice.

The learned Public Prosecutor for Income-Tax appearing on behalf of the respondent has filed counter before the trial Court stating that the reconstitution deed cannot be looked into or relied upon as the said deed was not registered and there was a bar under Section 69 of the Partnership Act. The complaint is filed for the offences committed during the financial year 2009-2010 and the petitioners were responsible and in-charge for day to day affairs of A1-firm, and therefore, the prosecution against them was maintainable.

The learned VIII Additional Metropolitan Sessions Judge, Hyderabad, has dismissed the petition on consideration of the evidence of Income-Tax Officer, who was examined as PW1 and filed Exs.P1 to P9 and held that charges can be framed against the petitioners.

Heard the arguments of the learned counsel for the petitioners and perused the material placed on record.

The learned counsel for the petitioners has referred to the provision under Section 276-B of the Act and submits that if a person fails to pay tax to the credit of Central

Government under Chapter XIID or XVIIB, he shall be punished with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine. The learned counsel submits that the said provision is meant for those who have evaded to pay the tax. The petitioners have paid the tax subsequently, and therefore, they are not punishable for the offence under Section 276-B. The learned counsel has also referred to a provision under Section 278-AA of the Act and submits that punishment shall not be imposed in certain cases. No person shall be punishable for any failure referred to in the said provisions if he proves that there was reasonable cause for such failure. The learned counsel for the petitioners submits that the offence is compoundable and the petitioners are willing to compound the offence. Since the petitioners have already paid the tax to the credit of the Central Government, they are not liable for punishment under Section 276-B of the Act. The learned counsel further submits that the petitioners may be given an opportunity to move an application before the authority concerned for compounding the offence.

The order passed by the trial Court does not suffer from any infirmity or illegality, therefore, there are no grounds for entertaining this Criminal Revision Case. However, in view of the submissions made by the learned counsel for the petitioners, the petitioners may make a representation to the authority concerned if the offence is compoundable in nature for getting the same compounded.

With these observations, the Criminal Revision Case is disposed of.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

GUDISEVA SHYAM PRASAD,J

06.12.2018

bcj