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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 30th July, 2018

\+ CRL.M.C. 3002/2015 and Crl. MA 10720/2015

SURESH CHAND GOYAL ..... Petitioner

Through: Mr. Vijay Aggarwal and Mr. Mudit Jain, Advocates

versus

STATE & ANR ..... Respondents

Through: Mr. Ravi Nayak, APP for the State Mr. Puneet Rai, Standing Counsel, Income Tax

\+ CRL.M.C. 3016/2015 and Crl. MA 10741/2015

GOYAL GASES P.LTD. ..... Petitioner

Through: Mr. Vijay Aggarwal and Mr. Mudit Jain, Advocates

versus

STATE & ANR. ..... Respondents

Through: Mr. Ravi Nayak, APP for the State Mr. Puneet Rai, Standing Counsel, Income Tax

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. A prosecution launched by the second respondent in 1993 alleging offences punishable under Sections 276 C (1) and 277 of Income Tax Act, 1961 continues to hang fire on the file of the

Additional Chief Metropolitan Magistrate (ACMM) till date, the petitions at hand, besides others, also being the cause for delay. Three persons were shown in the array in the criminal complaint case wherein allegations were made of willful attempt to evade tax – Section 276 C (1) – and false statement in verification having been made in the returns and false statement of accounts delivered – Section 277 – in relation to assessment year 1989-1990, the said accused including M/s. Goyal Gases P. Ltd. (petitioner in Crl. M.C. 3016/2015) and its managing director, Suresh Chand Goyal (petitioner in Crl. M.C. 3002/2015) besides Smt. Sudha Jain, described as director in the aforementioned company, she statedly having since passed away. The ACMM considered the criminal complaint and the material filed therewith by the public servant and issued process by his order dated 27.04.1993. It may be mentioned here that the summoning order and some of the proceedings recorded in its wake were challenged by another criminal revision petition (Crl.MC-1686/2009) which remained pending till date, the petitioners not having prosecuted it diligently, it having been withdrawn and dismissed accordingly, by a separate order of even date.

2. The case before the ACMM is being tried as a warrant trial case based on a complaint and thus the trial court called upon the complainant to lead pre-charge evidence. The pre-charge evidence having been led, he proceeded to consider the question as to whether charge is made out or not. By order dated 23.01.2015, the trial court has found a case made out for putting the petitioners on trial on the

charge for the aforementioned offences. Formal charge was framed on 23.01.2015 itself and the pleas of the petitioners were recorded.

3. Aggrieved by the aforementioned order, the petitioners and the third accused Sudha Jain, since deceased, approached the court of Sessions invoking its revisional jurisdiction by filing petitions (CR nos.01-03/2015). The revisoinal court, by a very detailed order, passed on 15.07.2015 found no merit in the contentions raised and thus dismissed the challenge to the order framing charge.

4. The petitioners have approached this court seeking to invoke its inherent jurisdiction under Section 482 Cr. PC to bring yet another challenge to the order framing charge.

5. Against the above backdrop, question arose as to whether the petitioner having availed of the remedy of revision should be allowed to have recourse to the petition at hand as a substitute for virtually a second revisional challenge or scrutiny which is clearly barred under Section 397 (3) Cr.P.C.

6. This Court in an almost similar fact-situation, taking note of the decisions of the Supreme Court reported as *Krishnan Vs. Krishnaveni, (*1997*) 4 SCC 241; Rajinder Prasad Vs. Bashir, (2001) 8 SCC 522* and *Kailash Verma vs. Punjab State Civil Supplies Corporation & Anr., (2005) 2 SCC 571* and following similar view taken by a learned single Judge of this Court in *Surender Kumar Jain vs. State & Anr., ILR (2012) 3 Del 99* in absence of a special case being made has earlier declined to interfere by the ruling (dated 03.07.2018) in Crl.M.C. 164/2018 *Ajay Maini vs. The State Govt. of NCT of Delhi &*

Ors. in exercise of extraordinary jurisdiction under Section 482 Cr.P.C.

7. There are no special circumstances made out in the case at hand for the revisional court's view to be disturbed.

8. The petition and the applications filed therewith are dismissed.

R.K.GAUBA, J.

July 30, 2018
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