NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1962 of 2019

1. Ramesh Kumar Agrawal S/o Late Shri Hariram Agrawal Aged About 56 Years.

2. Liladhar Agrawal S/o Late Shri Hariram Agrawal Aged About 63 Years.

3. Ashish Agrawal S/o Late Shri Vinod Kumar Agrawal Aged About 38 Years.

   All are Directors in M/s Shri Shyam Warehousing & Powers Private Limited, Village Banari, Naila, Janjgir, District Janjgir Champa, Chhattisgarh.

4. M/s Shri Shyam Warehousing and Power Private Limited Village Banari Naila Janjgir, District Janjgir Champa Chhattisgarh.

---- Applicants

Versus

1. Union of India, Ministry of Finance, Department of Revenue Through Assistant Commissioner of Income Tax Circle - 2(1) Bilaspur, Chhattisgarh.

---- Respondent

For Applicant(s)	:-	Shri N.K. Malaviya, Advocate.
For Respondent	:-	Ms. Naushina Afrin Ali & Shri Ajay Kumrani, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

07/11/2019

1. Heard learned counsel for the parties.

2. This petition under Section 482 of the Cr.P.C. has been preferred for recalling/modifying the order dated 27.06.2019

passed in CRMP No.1379/2019 whereby this Court has allowed the non-applicant's (for brevity 'the Revenue') petition under Section 482 of the Cr.P.C. to quash the order passed by the Sessions Judge, Bilaspur, in Criminal Revision No.89/2019, which, in turn, arose out of order passed by the Chief Judicial Magistrate, Bilaspur on 23.01.2019 in an unregistered complaint filed by the Revenue.

3. The Chief Judicial Magistrate and the Sessions Judge, Bilaspur, have refused to register the complaint preferred by the Revenue for the reason that the Court at Janjgir-Champa, would have jurisdiction for trial of the offence, therefore, the complaint is not maintainable at Bilaspur.

4. The complaint was filed alleging commission of offence under Sections 276 and 277 of the Income Tax Act, 1961 (for brevity 'the Act, 1961) on the allegation that the assessee falsified his statement and did not disclose his true income in his statement during survey proceeding under 133A of the Act, 1961.

5. The applicants' (Respondents in CRMP No.1379/2019) business premises is situated at Janjgir-Champa. The courts below refused to take cognizance of the complaint at Bilaspur, however, in the petition filed by the Revenue

before this Court it was found that statement of the Director(s) was also recorded on 07.03.2018 during his attendance at Bilaspur, therefore, part of the survey was also conducted at Bilaspur, in addition to search of his business premises at Janjgir-Champa. On the said basis this Court observed that the Court at Bilaspur would jurisdiction to deal with the subject complaint/prosecution by the Income Tax Department for the alleged offence under Sections 276 and 277 of the Act, 1961.

6. Shri N.K. Malaviya, learned counsel appearing for the applicants, would submit that the Revenue has made false averment in Para-8 of the memo of Revision filed before the Sessions Court inasmuch as it was stated therein that statement of the Director(s), Applicants No.1-3 herein were recorded at Bilaspur whereas, in fact, statement of only of the Director was recorded. Shri Malaviya would further argue that the applicants herein were not noticed before passing the order dated 27.06.2019 in CRMP No.1379/2019, therefore, there is violation of principles of natural justice.

7. The issue dealt with by this Court in the earlier CRMP was about jurisdiction of the Court at Bilaspur or at Janjgir-Champa. No adverse order has been passed against the applicants inasmuch as if as per the applicants' saying the

complaint is maintainable at Janjgir-Champa then also they will have to face the trial at Janjgir-Champa whereas under the order passed in CRMP the applicants are required to undergo trial at Bilaspur. The distance between both the places is about 70 kms. The projected inconvenience or expenditure in attending the Court at Bilaspur is mentioned only to be rejected for the reason that as per the statement made by the learned counsel for the Revenue the post survey assessment proceedings are pending at Bilaspur. It is also stated that the applicants themselves are making prayer for transfer of the said proceedings to Raipur.

8. Ms. Naushina Ali, learned counsel for the Revenue, would also submit that in a recent pronouncement rendered by the Supreme Court in **State of Madhya Pradesh vs Man Singh** (CRA No.410/2011, decided on 04.11.2019) it has been held that the High Court has no jurisdiction to review or recall or modify its order passed in exercise of powers under Section 482 of the Cr.P.C.

9. The Supreme Court in **Man Singh** (supra) held thus at Para-5 :

> “5. It is well settled law that the High Court has no jurisdiction to review its order either under Section 362 or under Section 482 of Cr.P.C. The inherent power under Section 482 Cr.P.C. cannot be used by the High Court to reopen or alter an order disposing of a petition decided

> on merits. After disposing of a case on merits, the Court becomes *functus officio* and Section 362 Cr.P.C. expressly bars review and specifically provides that no Court after it has signed its judgment shall alter or review the same except to correct a clerical or arithmetical error. Recall of judgment would amount to alteration or review of judgment which is not permissible under Section 362 Cr.P.C. It cannot be validated by the High Court invoking its inherent powers."

10. In view of the above, the instant petition under Section 482 of the Cr.P.C. for recalling/modifying the order dated 27.06.2019 passed in CRMP No.1379/2019, *sans substratum,* is liable to be and his hereby dismissed.

11. At this juncture, learned counsel for the Revenue would submit that due to subsequent developments the Department is required to file some more documents before the trial Court.

12. For the aforesaid purpose no separate order of this Court is necessary. If the Revenue desires to file any document and the law permits such filing it always remain open for both the parties to file documents in accordance with law.

Sd/-

(Prashant Kumar Mishra)
Judge

Gowri