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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.881 OF 1998

Union of India	]	..	Appellant
vs.			
Ghanshyamdas Biyani & Anr.	]	..	Respondents

None for Appellant.
Mr.Arfan Sait, APP for Respondent No.2.

CORAM : PRASANNA B. VARALE & N.R.BORKAR, JJ.

DATE : 12TH JULY, 2021

JUDGMENT : (PER : N.R.BORKAR, J)

1] This appeal takes an exception to the judgment and order dated 31st March, 1997 passed by the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai in Criminal Case No.886/S/91.

2] The appellant- Assistant Commissioner of Income Tax had filed a complaint case against the respondent No.1 for the offence punishable under Section 276 DD of the Income Tax Act (for short “the Act”).

3] The case of the appellant before the learned trial Court was that in the course of the examination of books of accounts of the respondent No.1, it was found by the Assessing Income Tax Officer that the Respondent No.1 (assessee) had taken loan/deposits exceeding Rs.10,000/- from two different parties, not by an account payee cheque or account payee draft, as required under Section 269 SS of the Act, but by either bearer cheque or cash. It is alleged that the respondent No.1 was under legal obligation under Section 269 SS of the Act to accept from other person any loan or deposit exceeding Rs.10,000/- by account payee cheque or account payee bank draft and not by cash or bearer cheque.

4] It is alleged that on 27th August, 1984 respondent No.1 took a loan/deposit of Rs.1,80,000/- from Ramesh Trading Company by cash and not by account payee cheque or bank draft as required under Section 269 SS of the Act. It is stated that the respondent No.1 thus committed an offence punishable under section 276 DD of the Act.

5] The respondent No.1 was tried for the aforesaid offences. By the impugned Judgment and order, the trial Court acquitted the respondent No.1 of all the charges.

6] The trial Court has inter alia held that Section 276 DD was omitted from the Act with effect from 1st April 1989 and thus the complaint filed thereafter in the year 1991 was not maintainable.

7] We have perused the record and proceedings of the case and grounds raised in the appeal memo.

8] Perusal of the record shows that the appellant had filed complaint case on 30th March, 1991 for the offence punishable under

Section 276 DD of the Act for contravention of Section 269 SS of the Act, whereas Section 276 DD of the Act was omitted by Direct Tax Law (Amendment) Act, 1987 with effect from 1st April, 1989.

9] The issue in the present case is squarely covered in the Judgment of the Hon'ble Supreme Court in the case of **M/s. Rayala corporation (P) Ltd. & Anr. v/s. The Director of Enforcement, New Delhi** reported in AIR 1970 494.

In the above-said case the complaint was filed on 17th March, 1968 for the contravention of Sections 4(1) , 5(1) (e) and 9 of the Foreign Exchange Regulation Act punishable under Section 23(1)(b) and Rule 132-A (2) of the Defence of India Rules punishable under Rule 132-A (4) of the said Rules. Rule 132-A (4) was omitted with effect from 30th March, 1965. The complaint case was filed on 17th March, 1968 i.e. after Rule 132-A (4) of the Defence of India Rules was omitted.

The Hon'ble Supreme Court in above circumstances has held :

> *"The argument of Mr. Sen was that, even if there was a contravention of Rule 132A(2) by the accused when that Rule was in force, the act of contravention cannot be held to be a "thing done or omitted to be done under that rule," so that, after that rule has been omitted, no prosecution in respect of that contravention can be instituted. He conceded the possibility that, if a prosecution had already been started while Rule 132A was in force, that prosecution might have been competently continued. Once the Rule was omitted altogether, no new proceeding by way of prosecution could be initiated even though it might be in respect of an offence committed earlier during the period that the rule was in force. We are inclined to agree with the submission of Mr. Sen that the language contained in clause 2 of the Defence of India (Amendment) Rules, 1965 can only afford protection to action already taken while the rule was in force, but cannot justify initiation of a new proceeding which will not be a thing done or omitted to be done under the rule but a new act of initiating a*

> *proceeding after the rule had ceased to exist. On this interpretation, the complaint made for the offence under Rule 132A(4) of the D.I. Rs., after 1st April, 1965 when the rule was omitted, has to be held invalid".*

10] In the present case also, the appellant had filed the complaint for the offence punishable under Section 276 DD of the Act after the said section was omitted. The complaint was, thus, not maintainable. Hence, no interference is called for in the impugned Judgment and order.

11] In the result, Appeal stands dismissed.

[N.R.BORKAR, J] **[PRASANNA B. VARALE, J]**