IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3237 OF 2019

Charanjit Attra And Ors.. ...Petitioners
Versus
Union Of India And Ors.. ...Respondents

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Mr. Ashok Mundargi Sr. Advocate a/w Mr. Manvendra Mishra a/w Mr. Sankalp Sharma a/w Ms. Meera Menon i/by Khaitan & Co., Advocate for the Petitioners.

Mr. Suresh Kumar a/w Ms. Mohinee Chougule, Advocate for Respondent No.2.

Mr. A. R. Patil, APP for the Respondent No.3 – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 6th SEPTEMBER, 2022.

PER COURT:

1. The petitioners are aggrieved by the prosecution initiated by respondent No.2 by filing Criminal Case No.805/SW/2018 before the Court of Additional Chief Metropolitan Magistrate, 38th Court, at Ballard Pier, Mumbai for offences punishable under Sections 276-B r/w 278-B of the Income Tax Act.

2. The case of the complainant is that the accused had deducted the TDS and did not deposit it in government account within prescribed period.

Corrected version of order dated 06.09.2022, pursuant to speaking to minutes of order dated 27.09.2022.

3. The contention of the petitioners is that the Company deposited entire TDS amount for the financial year 2012-13 along with government treasury and no amount is outstanding towards TDS collected by them. The alleged delay in depositing the TDS amount was on account of "reasonable cause". Show cause notice was issued under Section 279(1) of the Income Tax Act to the Company and respondent No.1 sought to initiate the prosecution for the aforesaid offences. The Company addressed the letter providing detailed submissions setting out valid justifications, legal exemptions and reasonable causes to show that no prosecution ought to be initiated. The inquiry initiated in respect to the Assessment Years 2015-16 and 2016-17 were dropped by the Income Tax Authorities.

4. The petitioners have filed additional affidavit. In the said affidavit it is stated that show cause notices under Section 279 (1) of the Income Tax Act is issued on 31st August, 2021, for delay in crediting TDS for the financial year 2014-15 and 2015-16. By letters dated 13.09.2021 and 27.09.2021 the company had urged the respondent to withdraw/drop the proceedings. The company had paid the interest on delayed payment along with TDS to the account of central government. On 19.01.2022 the company was

informed that proceedings under Section 276-B of Income Tax Act for financial year 2014-15 and 2015-16 were dropped. Currently proceedings for financial year 2012-13 under Section 276-B r/w Section 278-B of Income Tax Act are ongoing against the company and its directors through impugned complaint.

5. Learned counsel for Respondents on instructions submitted that the criminal prosecution which is under challenge in this petition may be presently quashed. The inquiry conducted by the Commissioner of Income Tax, (TDS), Mumbai with regards to the alleged lapse on the part of the accused would proceed and in the event the concerned authority comes to the conclusion that the petitioners are liable for prosecution, liberty be granted to the respondents to launch fresh prosecution against the petitioner. Statement is accepted.

ORDER

i. Writ Petition No. 3237 of 2019 is allowed;

ii. The impugned criminal proceedings initiated by respondents/Income Tax Authority vide Criminal Case No.805 of 2018 before the Court of Additional Chief Metropolitan Magistrate, 38th Court, at Ballard Pier, Mumbai along with order issuing process in the proceedings are quashed and set aside.

iii. In the event, the Commissioner of Income Tax, TDS, Mumbai before whom the adjudication proceedings are pending comes to the conclusion that there is violation on the part of the petitioners under the provisions of the Income Tax Act, liberty is granted to the respondents/complainant to launch fresh prosecution against the petitioners.

iv. Writ Petition is disposed off accordingly.

(PRAKASH D. NAIK, J.)