IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 159 OF 2018

Income Tax Officer,
Ward-1, Ahmednagar Circle,
“Aaykar Bahvan”, Aurangabad Road,
Ahmednagar. ….Applicant

Versus

Krishnagopal Motilal Chandak
Age: 53 years, Occu.: Business,
Adat Bazar, Tal. & Dist.Ahmednagar. …..Respondent
(Original Accused)

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Advocate for Applicant : Ms.Kalpalata Bharaswadkar Patil (through VC)
Advocate for Respondent : Mr. Vijay B. Patil

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 12 FEBRUARY, 2024
PRONOUNCED ON : 21 FEBRUARY, 2024

ORDER :

1. This application is at the instance of original complainant, Income Tax Officer seeking leave to file appeal against judgment and order passed by the learned Judicial Magistrate First Class (JMFC), acquitting present respondent in RCC No.15 of 2011 vide judgment and order dated 22-01-2018.

2. Ms.Kalpalata Bharaswadkar Patil, learned Counsel for the applicant, who appeared through Video Conference, apprised this Court about the proceedings instituted against respondent for offence under Section 276(C) of the Income Tax Act. According to her, respondent was engaged in business of share trading. He has filed his annual return for the year 2006-2007 showing his total income as Rs.6,27,99,405/-. That further he declared short term capital gain to the tune of Rs.4,73,30,889/- and Rs.1,53,11,488/- towards long term capital gain. That as per provisions of the Income Tax Act, he was liable to pay Rs.53,17,680/- including interest for delayed payment. That inspite of several opportunities, he failed to deposit the amount due and therefore, tax authorities were required to attach bank account as well as demat account of respondent.

3. It is further submitted that after receiving grant of sanction for prosecution against accused for offence under Section 276(C) of the Income Tax Act, proceedings were instituted before the learned JMFC. However, learned JMFC has acquitted the respondent by order dated 22-01-2018.

4. After apprising the above factual findings behind the proceedings, learned Advocate for the applicant fairly conceded that in view of judgment and order of the Hon’ble Apex Court in the case of ***K.C.Builders and***

Others v. Assistant Commissioner of Income Tax, *(2004) 2 SCC 731*, which is also referred by the learned JMFC, there is correct appreciation by the learned JMFC and there is no merit in the instant appeal.

5. Learned Advocate for respondent was also present and he also justified and supported the judgment of the trial Court.

6. After considering the submissions of both the parties, though here leave is sought to question the impugned judgment, learned Advocate for the applicant has fairly conceded that there is no case on merit. Therefore, in view of said material, leave is refused. Accordingly, I proceed to pass following order :

ORDER

Application for Leave to Appeal By Private Party No.159 of 2018 stands rejected.

(**ABHAY S. WAGHWASE**)
JUDGE

SPT