2024:BHC-GOA:1396

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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVIEW APPLICATION NO.1 OF 2024
IN
CRIMINAL WRIT PETITION NO.45 OF 2024

WATERWAYS SHIPYARD PVT.LTD., REP.
BY ITS AUTH. REPRESENTATIVE
RAMCHANDRA SHRIPAD SHIRODKAR AND
ANR ... APPLICANTS

Versus

THE INCOME TAX DEPARTMENT, REP. BY
THE DEPUTY COMMISSIONER OF INCOME
TAX ... RESPONDENT

Mr. Parag Rao(through VC) with Mr. Ajay Menon, Advocates for the Applicants.

Ms. Susan Linhares, Standing Counsel for the Respondent.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 26th August, 2024

P.C.:

1. Heard Mr. Rao, learned Counsel for the Applicants and Ms. Linhares, learned Standing Counsel for the Respondent.

2. The present application is filed for review of the order dated 03.07.2024 in WPCR No. 45 of 2024.

3. By the said order, Petition filed by the Applicants was disposed of with liberty to the Applicants to approach the Trial Court for filing the

discharge application.

4. Mr. Rao, learned Counsel for the Applicants now submits that the complaint filed before the learned Magistrate is not the chargesheet, but it is treated as the complaint under Section 200 filed by the officer of the Income Tax Department. He submits that Section 258 of Cr.P.C. is not applicable to such a complaint and therefore, Applicants will not be able to file any discharge application. In this respect, he places reliance on Unique Trading Company and others V/s Income Tax Officer, 2024, SCC OnLine 417.

5. Ms. Linhares, learned Standing Counsel for Respondent would submit that notice was not issued to the Respondent in WPCR No. 45/2024. However, the Petition was disposed of by granting an opportunity to the Petitioner to approach the Trial Court. She submits that a case is made out for taking cognizance, since Income Tax was not paid within time and even the interest was not deposited.

6. The question before this Court is only with regard to order granting liberty to the Applicant to approach the learned Trial Court seeking discharge.

7. Mr. Rao has now pointed out that complaint being a private complaint, provisions of Section 258 of the Cr.P.C. are not applicable. Said Contention is supported by the decision of this Court in Unique

Trading Company (Supra).

8. Accordingly, order dated 03.07.2024 in WPCR No. 45 of 2024 is required to be recalled/varied.

9. Application for review is therefore disposed of in above terms.

10. WPCR No. 45/2024 is restored. Ms Linhares waives notice on behalf of the Income Tax Department. Mr. Menon, learned Counsel for the Applicants undertakes to furnish copy of the petition along with the documents to Ms. Linhares.

11. WPCR No. 45 of 2024 is now posted for further consideration on 19.09.2024. Review application is accordingly, disposed of.

BHARAT P. DESHPANDE, J.