IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 348 OF 2024

Palakkad Ramaiyer Balan .... Petitioner
v/s.
The State of Maharashtra and anr. .... Respondents

Mr. Vikram Sutaria a/w. Mr. Parag Khandhor and Mr. Tapan Radkar i/b. DSK Legal for the Petitioner.
Dr. D.S. Krishnaiyer, APP for the State.
Mr. Suresh Kumar for Respondent No.2.

CORAM : SHYAM C. CHANDAK, J.

DATED : 06th SEPTEMBER, 2024

P.C. :-

. Present Petition seeks for quashing and setting aside of Complaint bearing C.C.No.165/SW/2018 and proceedings therein, qua the Petitioner. Presently, the said case is pending before the 38th Court of Metropolitan Magistrate, Ballard Pier, Mumbai.

2) Heard Mr. Sutaria, learned Advocate for the Petitioner, Ms. Krishnaiyer, learned APP for the State and Mr. Sureshkumar, learned Advocate for Respondent No.2. Perused the Petition.

3) Rule. Rule is made returnable forthwith and taken up for final hearing with consent of parties. The aforesaid case has been filed by Respondent No.2 against 05 accused persons alleging the offence of Section 276 CC, punishable under Section 278 (B) of the Income Tax Act, 1961. The Petitioner is original accused No.2. It is alleged that, the said accused failed to submit the income-tax returns of the accused No.1-

Company till the last date i.e., 30th September, 2014 for the financial year 2013-2014.

4) Learned Advocate for the Petitioner submits that, the Petitioner/original accused No.2 has resigned from the Directorship of the accused No.1-Company on 08th January, 2014. As a result, the Petitioner was replaced by another Director. Said fact was notified to the ROC by accused No.1 by uploading form no.32 online. Learned Advocate for Respondent No.2 concedes the aforesaid fact.

5) In view of the resignation by the Petitioner on 08th January 2014, the Respondent No.2 sought opinion from the learned Special PP and Respondent No.2 is reviewing the matter. This fact indicates that, Respondent No.2 intends to drop the Petitioner from the array of the accused persons as it was the responsibility of accused No.1-Company and other Directors in existence to file the income tax returns for the financial year 2013-2014 on time i.e., on or before 30th September, 2014.

6) Conspectus of the above discussion is that, directly or indirectly, the criminal liability for the alleged offence cannot be fastened against the Petitioner as he had already resigned much before the last date to submit the income-tax returns. Secondly, for he was substituted by a new Director. Therefore, the accused No.1-Company could have filed the said returns with the help of other Directors who were responsible for conduct of the business of the Company at the relevant time.

7) In view thereof, the said criminal case and the proceedings

therein deserves to be quashed and set-aside, qua the Petitioner. The Petition succeeds thus. Hence, following Order :-

(a) Writ Petition No.348 of 2024 is allowed.

(b) C.C.No.165/SW/2018 and proceedings therein, pending before 38th Court of Metropolitan Magistrate, Ballard Pier, Mumbai, is quashed and set-aside qua the Petitioner.

8) Petition stands disposed of in above terms. Rule is made absolute.

(SHYAM C. CHANDAK, J.)

PREETI HEERO JAYANI Digitally signed by PREETI HEERO JAYANI Date: 2024.09.12 14:01:04 +0530