IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No.2501 of 2024

Rajendra R Chaturvedi
(Member of AOP)
M/s Shreepati Castle,
Age: 63 years, adult, Indian
Inhabitant, 4th floor, Shreepati
Arcade premises No.1 & 2,
August Kranti Nana Chowk,
Mumbai. … Petitioner

Versus

1. Joint Commissioner of Income Tax (OSD),
Central Circle-2(3), Mumbai 8th Floor,
R.No.803, 8th floor, Prastishtha
Bhavan, Old CGO Bldg, Annex,
MK Road, Mumbai – 400020.

2. State of Maharashtra … Respondents

Mr Girish Kulkarni, Senior Advocate, along with Ms Mrunmai Kulkarni and Mr Sujay Shingade i/by Mrunmai Kulkarni, for the petitioner.
Mr Siddharth Chandrashekhar, for respondent No.1.
Mr VN Sagare, APP, for respondent No.2/ State.

Coram: R.N. Laddha, J.
Date: 1 April 2025.

P.C.:

The learned Senior Counsel for the petitioner seeks leave to amend the cause title of the petition to delete the name of the officer of respondent No.1 and correct the date of the impugned order in prayer clause (c). Leave granted as prayed for. The amendment shall be carried out forthwith.

2. The prosecution claims that the petitioner, serving as a member of the Association of Persons ('AOP'), Shreepati Castle, and managing its affairs, filed its return belatedly on 30 March 2016 for the assessment year 2014-2015. In this return, a total income of Rs.2,16,94,730/- was reported, alongside a tax liability of Rs.91,59,450/-. Although the AOP deposited Rs.9,15,945/-, the remaining balance of Rs. 82,43,505/- was left unpaid. Since this significant amount remained unsettled till the filing of the complaint, the petitioner faces accusations of evading tax payment. On 6 March 2018, respondent No.1 initiated prosecution, and on 13 August 2018, the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, in CC No.491/SW/2018, issued process under Sections 276C (2) and 278B of the Income Tax Act, 1961 ('IT Act'). Aggrieved, the petitioner approached this Court under Section 482 of the Code of Criminal Procedure, 1973.

3. Mr Girish Kulkarni, the learned Senior Counsel appearing on behalf of the petitioner, contends that the petitioner has

already settled the taxes, including the interest, in September 2023. On 2 February 2018, the petitioner responded to the show cause notices issued by respondent No.1 and addressed the issue of non-payment of taxes and shown his willingness to deposit the outstanding dues. He points out that the complaint lacks clear averments and does not assign any specific role to the petitioner. The learned Senior Counsel further argues that the learned Magistrate failed to consider that the petitioner did not wilfully attempt to avoid tax payments. He asserts that the impugned order of issuance of process is vague and lacks thoughtful consideration.

4. Conversely, Mr Siddharth Chandrasekhar, the learned Counsel appearing for respondent No.1, opposing the petitioner's request, argues that for the assessment year 2014-2015, the APO of which the petitioner is a member filed its return on 30 March 2016, after the prescribed due date. The members of the AOP, including the petitioner, were obligated to pay Rs.91,59,450/- towards taxes based on the declared income. However, the outstanding tax liability of Rs.82,43,505/- remained unsettled until the filing of the complaint. In light of the default, the office of respondent No.1 issued two show-cause notices on 7 March 2017 and 12 January 2018. The petitioner responded to these notices on 2

February 2018, providing an account of the circumstances surrounding the payment default, which notably did not include any mention of financial difficulties. Consequently, on 6 March 2018, prosecution was initiated against the petitioner for the offences punishable under Sections 276C read with 278B of the IT Act. Despite knowing of the failure to fulfil the tax obligations, the petitioner did not settle his tax dues until September 2023, after filing of the complaint on 6 March 2018, indicating a wilful attempt to evade the payment of taxes.

5. This Court has given anxious consideration to the rival submissions canvassed across the Bar and perused the records.

6. It is a settled position in law that the language of Sub-Section (1) of Section 276C and the use of terms such as 'wilful attempt' and 'to evade' make it evident that the provision seeks to penalise acts or omissions by the assessee specifically intended to evade tax liability rather than a mere failure to pay tax. The IT Act includes provisions to safeguard the revenue's interests by enabling recovery of unpaid tax along with the applicable interest and/or penalties when tax is not paid on time. The essence of the offence under Sub-Section (2) of Section 276C lies in the deliberate non-payment of tax, not in a

simple failure to make payment. A plain reading of the provision in Section 276C (2) does not suggest that a mere failure to pay the tax, interest, or penalty falls within its scope. Further, in cases of violation under Section 276C due to a taxpayer's wilful failure, it is necessary to establish *mens rea* to justify the imposition of a sentence. All these aspects are highlighted in *Prescon Realtors and Infrastructures Pvt Ltd v. Deputy Commissioner of Income Tax, Writ Petition No.59 of 2019 dated 22 January 2025 (Bombay), Ganga Devi Somani v. State of Gujarat, (2021) 437 ITR 323, and Gujarat Travancore Agency v. CIT, (1989) 3 SCC 52.*

7. In the present case, the undisputed facts are as follows: On 30 March 2016, Shreepati Castle, the petitioner's AOP, filed its returns for the assessment year 2014-2015 after a considerable delay. The AOP reported a total income of Rs.2,16,94,734/- and acknowledged a tax liability of Rs.97,29,971/-. Of this amount, Rs.5,70,521/- was set off against TDS, leaving an outstanding balance of Rs.91,59,450/-. While Rs.9,15,945/- was paid off, the remaining Rs.82,43,505/- was only settled in September 2023 after filing the complaint.

8. Upon reviewing the complaint, it appears that on 2 February 2018, the petitioner responded to the show cause

notices issued by respondent No.1 on 7 March 2017 and 12 January 2018, and did not pay the taxes. After responding to the notices, the petitioner did not clarify its inability to settle the tax liability. There is no material on record to suggest that the petitioner, who has been aware of his tax obligations since February 2018, has not wilfully neglected to fulfil his responsibility to pay the taxes owed. Admittedly, the petitioner received the show cause notices dated 7 March 2017 and 12 January 2018 and replied to them on 2 February 2018. As taxes remained unpaid, respondent No.2 lodged a complaint on 6 March 2018. The learned Magistrate took cognisance of the complaint on 13 August 2018 and issued process against the petitioner. According to the petitioner, as averred in paragraph 2 of the petition, the petitioner entered appearance before the trial Court on 19 December 2022. However, until 5 September 2023, he did not clear the outstanding tax dues, and strategically filed the present petition on 14 September 2023 contending that there is no deliberate and wilful non-payment of taxes. Notably, the petitioner did not remit the tax dues since 2018, nearly about six years after receiving the show cause notice and filing of the complaint, the dues were settled.

9. In light of the discussion above and the material on record, it *prima facie* appears that the petitioner deliberately

avoided the payment of taxes. The records reveal sufficient grounds exist to prosecute the petitioner under Sections 276C (2) read with 278B of the IT Act. In these circumstances, the petition stands dismissed accordingly.

(R.N. Laddha, J.)