



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2803 OF 2024

Dr. Clifton Zimmermann

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Kushal Mor a/w Mr. Kunal Kanungo, Ms. Rupa Shaw i/by S. Venkateshwar for the Petitioner.

Mr. Shrikant Yadav, APP for Respondent No.1-State.

Mr. Y. S. Bhate for Respondent Nos.2 & 3.

CORAM : Jitendra Jain, J.

DATED : 7 August 2025

PC.:-

1. This petition challenges the issuance of process and summons against the Petitioner in Criminal Case No.SW/3800068/2014 before the learned Metropolitan Magistrate 38th Court at Ballard Pier, Mumbai

2. In complaint, it is baldly averred that the Petitioner being a Director of the Company was responsible for deducting the tax at source and making the payment in time with the treasury. In the complaint, it is also baldly averred that the Petitioner is a principal officer responsible for deduction of tax at source. Except this bald averments, there is no other averment on the basis of which it can be said that the Petitioner was responsible in day-to-day conduct and affairs of the business of the Company. The Petitioner has filed Form No.32 to show that he is an Additional Independent and Non-Executive Director of the Company. This has not been rebutted by the Respondents. There is also no notice to the Petitioner for treating him as a principal officer.

3. The learned counsel for the Petitioner and Respondents submit that there was a delay in depositing the TDS, but the TDS has been deposited alongwith interest for the delay.

4. The issue of whether Non-Executive Director can be charged with the offence under Section 276B read with Section 278B of the Income Tax Act, 1961 had come up before this Court in the case of *Homi Phiroz Ranina vs. State of Maharashtra*¹. In my view, the facts of the present case are similar to the facts of present case in the case of *Homi Phiroz Ranina (supra)*. Furthermore, the process has been issued without due application of mind by only mentioning issue process. Therefore, on both these grounds, the impugned orders issuing process and summons dated 5 March 2014 and 6 July 2022 respectively are hereby quashed and set aside.

5. I clarify that the order passed in this petition is applicable only to the Petitioner (Accused No.5) before me and not to any other Accused in the criminal case filed by the Respondents which is a subject matter of the present petition.

6. The Petition is disposed of in above terms. No costs.

(Jitendra Jain, J.)

1 (2003) 3 Mah LJ 34