IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.714 OF 2023

Assistant Director of Income Tax (Investigation), Akola **.Vs.** State of Maharashtra, through its PI, Khamgaon City and another

AND

CRIMINAL WRIT PETITION NO.715 OF 2023

Assistant Director of Income Tax (Investigation), Akola **.Vs.** State of Maharashtra, through its PI, Khamgaon City and another

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Mr. Anand Parchure, Adv. a/w Shri Bhushan Mohata, Adv. for petitioner.
Mr. A.G. Mate, A.P.P. for respondent/State.
Mr. M.G. Karmarkar, Advocate for respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : 05/03/2025

1. Heard.

2. The Assistant Director of Income Tax Department filed these two petitions. In Criminal Writ Petition No.714 of 2023, the challenge is raised to the rejection of the application of the petitioner-department for release of amount under Section 457 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC"), which was seized from the driver of respondent No.2 and according to the department, the same is unaccounted. The release of this amount was sought for the purpose of initiating the assessment process under the Income Tax Act, 1961. On rejection of such application, the

Criminal Revision Application No.52 of 22 was filed, which came to be dismissed by the Revisional Court vide its judgment and order dated 11.07.2023. Thus, both the orders namely the order passed by the learned Jt. Judicial Magistrate First Class, dated 17.10.2022 and the order passed by the Revisional Court dated 11.07.2023, are under challenge in this writ petition.

3. In another petition namely Criminal Writ Petition No.715 of 2023, the facts are that, the application moved by the respondent No.2 under Section 457 of the Cr.P.C. for release of amount in his favour which was seized from the driver of the respondent No.2 on 17.10.2022 by the learned Jt. Judicial Magistrate First Class, Khamgaon, Dist. Buldhana. Thereupon, the respondent No.2 filed Criminal Revision application No.47 of 2022 before the learned Additional Sessions Judge, Khamgaon, Dist. Buldhana. In the said revision application, on 11.07.2023 vide order below Exh.1, the learned Additional Sessions Judge, Khamgaon, Dist. Buldhana, directed the respondent No.2 to file the affidavits of Mayur Mangal Nannavare, Saurabh Rajkumar Rathi, Dipak Motiram Gurbani and Swapnil Sawroop Kumar Lunkad, for the proper adjudication of the said revision application. Thus, the order dated 11.07.2023, passed by the Revisional Court, allowing respondent No. 2 to file additional affidavits for the adjudication of the revision, is under challenge in this writ petition.

4. Shri Parchure, learned counsel for the petitioner-department submits that, the amount seized from the driver of the respondent No.2 is unaccounted and being Income Tax Department, the learned Magistrate ought to have released the amount in favour of the department to enable it to initiate the assessment proceedings against the respondent No.2. It is submitted that since prayer for release of amount made by the department has been denied, it is difficult to initiate the assessment proceedings against the respondent No.2.

5. It is further submitted that, in a revision application filed by the respondent No.2, he was permitted to file additional affidavits and if such affidavits are filed, the petitioner-department will not get opportunity to controvert the same.

6. It is further argued that, if the Revisional Court was of the opinion that the additional affidavits are required for the adjudication of revision application of the respondent No.2, the Revisional Court ought to have kept the revision application of the petitioner pending till filing of such affidavits, so as to decide both the revision applications together, after hearing both the parties and after giving sufficient opportunity to the department to submit its case on filing of such affidavits. Since such opportunity was denied, the order deciding the criminal revision filed by the department and further allowing the respondent No.2 to file additional affidavits in his revision application, is illegal and not sustainable in the eyes of law.

7. Shri Karmarkar, learned counsel for the respondent No.2 is not disputing this position that his revision application is pending and he has been permitted to file additional affidavits.

8. Considering the fact that both the parties i.e. the Income Tax Department as well as respondent No.2 have filed two separate applications for release of amount and both the applications came to be rejected and thereupon, both the parties filed separate revision applications, since both the matters are arising out of the same crime, the learned Revisional Court ought to have decided both the matters together to avoid possibility of conflicting orders or observations.

9. In the circumstances, considering the fact that the criminal revision application filed by the respondent No.2 is pending before the learned Revisional Court and since, he has been permitted to file additional affidavits, I am of the opinion that, the order passed by the learned

Revisional Court rejecting the revision application of the department needs to be quashed and set aside and further the matters is required to be remanded back to the Revisional Court for deciding both the revision application filed by the department and the respondent No.2, after giving sufficient opportunity to the department to submit its say on filing of such affidavits as directed to the respondent No.2. Accordingly, I pass the following order :-

A) The order dated 11.07.2023 passed in Criminal Revision Application No.52 of 2022 by the learned Additional Sessions Judge, Khamgaon and the order dated 11.07.2023 passed in Criminal Revision Application No.47 of 2022 by the learned Additional Sessions Judge, Khamgaon, are hereby quashed and set aside.

B) The Criminal Revision Application No.52 of 2022 filed by the department and Criminal Revision Application No.47 of 2022 filed by the respondent No.2, are hereby remanded back to the learned Additional Sessions Judge, Khamgaon, to decide the same together, after giving sufficient opportunity to the department to submit its say or by way of counter affidavit, if the department so desired, on filing of the additional affidavits as directed by the Revisional Court to the respondent No.2 in Criminal Revision Application No.47 of 2022.

Both the petitions are accordingly, **disposed of**, in above terms.

10. Considering the time period, if the revision application of the respondent No.2 is still pending, the learned Revisional Court is directed to decide both the revision applications within four months from the next fixed date of Criminal Revision Application No.47 of 2022.

11. The department shall appear on next fixed date of Criminal Revision Application No.47 of 2022. All the points are kept open.

JUDGE

C.L.Dhakate