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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: December 2, 2025***+ **CRL.M.C. 7461/2025 & CRL.M.A. 31225/2025**

DR MANOJ KHANNA

.....Petitioner

Through: Mr. Yogesh Jagia, Mr. Amit
Sood & Mr. Tarun Dev,
Advs.

versus

INCOME TAX OFFICE

.....Respondent

Through: Mr. Siddhartha Sinha, SSC

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition has been filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita ('BNSS'), read with Section 482 of the Code of Criminal Procedure ('CrPC') seeking quashing of the Complaint Case bearing No. 119/2024 initiated for the offences under section 276B read with section 278B and 278E of the Income Tax Act 1961 ('the Act') and the summoning order dated 21.10.2024 passed therein, *qua* the Petitioner.

2. Succinctly stated, a compliant under section 200 of the CrPC was filed by Deputy Commissioner of the Income Tax Department alleging that Accused no. 2/Sh. Sanjeev Mahajan and Accused no. 3/Petitioner- Dr. Manoj Khanna were the Principal Officers/Directors of the Accused no. 1/Company- M/s. Enhance Aesthetic & Cosmetics Studio Pvt. Ltd. & Ors., during the

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Financial Year 2017-18. Sh. Sanjeev was the wholetime director of the company and the Petitioner was the Managing Director.

3. It was stated that the Accused no. 1/Company is the holder of TAN No. DELE06583D and during the financial year 2017-18, the company had made payments to various persons and had deducted TDS. The total amount of TDS deducted by the accused persons was Rs. 2,09,13,002/- but the said amount of TDS was not deposited into the Government treasury within the stipulated time limit as per the Act.

4. Consequently, the DCIT, Circle - 74(1) issued notice of default dated 05.11.2019 intimating the accused regarding the default committed and the Show Cause Notice dated 09.12.2019 was also issued to Accused no. 2 and the Petitioner.

5. It is stated that Accused no. 2 filed the reply *vide* letters dated 10.12.2019 and 12.12.2019 wherein he admitted the delay in filing TDS. *Vide* Letter dated 20.12.2019, Accused no. 2 again admitted the delay in filing TDS.

6. *Vide* Orders dated 22.12.2019 and 13.01.2020, passed under section 2(35) of the Act, the DCIT, Circle - 74(1) held Sanjeev Mahajan and Petitioner/Manoj Khanna as Principal Officers/Responsible Officers of Accused no. 1/Company.

7. After the case was referred to CIT(TDS), several notices were issued and opportunity of being heard was granted the accused persons. Consequently, the CIT(TDS) after examining the documents on record passed the sanction order dated 18.05.2022 against all the accused for prosecution.

8. The learned Trial Court took cognizance of the complaint

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filed by the Respondent and passed impugned summoning order dated 21.10.2024, thereby summoning all the accused persons including the Petitioner herein.

9. Aggrieved, the Present petition has been filed seeking quashing of the complaint case as well as the summoning order.

10. The learned Counsel for the Petitioner submits that the Petitioner has been wrongly summoned in the present case and the complaint along with the consequential proceedings emanating therefrom are liable to be quashed.

11. He submits that the Accused No.2/Sanjeev Mahajan was the CEO and Director of the Company, and was solely responsible for managing affairs of the company and deducting and depositing TDS, which has been admitted by Accused No.2 in his contemporaneous replies placed on record.

12. He submits that the summons have been issued without appreciating that the Petitioner was not responsible for deduction of tax at source and deposit thereof.

13. He also submits that it is not a case where TDS has not been paid, rather the same has been paid belatedly.

14. *Per Contra*, the learned Counsel for Respondent vehemently opposes the grant of any relief to the Petitioner and submits that it is an admitted position that the Petitioner was the Managing Director of the accused Company and responsible for the day-to-day functions of the company.

15. He further submits that the Sanctioning Authority has passed a detailed Sanction Order after recording it's satisfaction that there existed sufficient material to establish commission of an



offence under the Act, and that the Petitioner, being in charge and responsible for the conduct of the business of the company, was liable to be prosecuted.

16. It is further stated that, without prejudice, the subsequent deposit of TDS after default does not extinguish criminal liability and all the factual defences taken by the Petitioner are matter of trial. Thus, it is prayed that the present petition be dismissed.

17. Submissions heard and record perused.

Analysis

18. At the outset, it is apposite to note that the petition has been filed invoking the inherent power and jurisdiction of this Court under Section 528 of BNSS (Section 482 Cr.P.C.) at a pre-trial stage, where questions of disputed fact, in absence of evidence of unimpeachable character to the contrary, cannot be inquired into or adjudicated upon. In this context, the Supreme Court in ***Rajiv Thapar and Ors. Vs. Madan Lal Kapoor, (2013) 3 SCC 330*** held as under: -

“ 29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent



jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.”

(emphasis supplied)

19. Hence it is well-settled that while exercising the power under Section 528 of the BNSS (Section 482 of the CrPC) to quash a complaint at the pre-trial stage, it is pertinent for this Court to examine whether the factual defence is of such impeachable nature that the entire allegations made in the complaint is disproved.

20. At the stage of cognizance, the Court is required only to examine whether *prima facie* ingredients of the offence are disclosed, and not to enter into a detailed scrutiny of sufficiency or reliability of evidence.



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21. In the present case, it is noteworthy that Section 276B criminalises failure to pay TDS deducted to the credit of the Central Government. The sanction order clearly records that tax was deducted but not deposited within time and these are foundational facts constituting the offence and their existence has not been disputed by the Petitioner.

22. A perusal of the record further reveals that it is undisputed that the Petitioner was a Managing Director, during the Financial Year 2017-18, when the total amount of TDS deducted by the accused persons in the sum of Rs. 2,09,13,002/- was not deposited into the Government treasury within the stipulated time limit as per the Act.

23. The main defence taken by the Petitioner is that as per the replies of the Accused No. 2/Sanjeev Mahajan, it stands admitted that Sanjeev Mahajan was the CEO and Director of the Company at the relevant time, and was solely responsible for managing affairs of the company and deducting and depositing TDS.

24. However, the Sanction order records that both the Accused No. 2 and the Petitioner were held as Principal Officers/Responsible Officers of the accused/Company and the Petitioner was also a holder of almost 99% of shares and also the responsible person during Financial Year 2017-18.

25. Pertinently, Accused No. 2 had also filed a separate reply, alleging that it was the Petitioner who was the Managing director-cum-chairman of the company and was responsible for all the financial activities of the company.

26. Significantly, neither the default in deposit has been



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disputed nor it has been disputed that the Petitioner was the Managing Director. Both the directors have merely accused each other for the default and none has provided any reason for the actual cause of delay in the TDS deposits.

27. Hence, in view of the above, the veracity of the allegations raised by both the directors and the liability of the Petitioner, becomes purely a factual issue, which can only be decided after due consideration of evidence at the time of trial.

28. It is also well-settled that subsequent payment does not obliterate criminal liability unless the statute so provides. The assessee cannot be granted immunity from prosecution merely on the ground that ultimately TDS was deposited in Govt. account albeit belatedly.

29. Further, Section 278B provides that every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to- be guilty of the offence and shall be liable to, be proceeded against and punished accordingly. Further Section 278E, raises a statutory presumption of culpable mental state. Hence, the presumption can be rebutted only at trial, upon leading evidence.

30. Even the explanation of financial difficulty or “*reasonable cause*”, leading to the delay in filing of the TDS, again becomes a triable defence, and cannot be adjudicated in the present proceedings.

31. To summarize, all the allegations raised, i.e. deduction of TDS by the company, delay in deposit of the deducted amounts



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into the Government account, the role of the petitioner as a person in charge and responsible for the conduct of the company's business, and the absence of any documentary material establishing a reasonable cause for delay, are disputed factual matters which must be tested at trial through evidence and cross-examination.

32. The Petition essentially invites this Court to appreciate the material and to sit in appeal over the satisfaction recorded by the sanctioning authority and the Trial Court's assessment at the stage of summoning. Interference for that purpose would amount to conducting a mini-trial at the threshold, which is impermissible. The Petitioner's contentions raise triable issues of fact and credibility which must be adjudicated in the course of a trial where oral and documentary evidence can be tested.

33. In such circumstances, at this stage, the petitioner cannot be said to have produced material of such sterling and unimpeachable quality that merits the quashing of the summoning orders and consequential proceedings thereof.

34. Needless to say, it will be open to the petitioner to justify the arguments taken by him during the course of the trial.

AMIT MAHAJAN, J

DECEMBER 2, 2025
"SS"