HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

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Criminal Petition No.837 OF 2020

Between:

Rajesh Agarwal and another ... Petitioners

And

The State of Telangana
Rep. by its Public Prosecutor and others ... Respondents

DATE OF JUDGMENT PRONOUNCED: 11.07.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

1	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2	Whether the copies of judgment may be marked to Law Reporters/Journals	Yes/No
3	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRLP. No. 837 of 2020

% Dated 11.07.2023

Rajesh Agarwal and another … Appellant

And

$ The State of Telangana
Rep. by its Public Prosecutor and others … Respondent

! Counsel for the Appellant: Sri P.Pratap

^ Counsel for the Respondents: Public Prosecutor for R1

Sri A.Radhakrishna,
Sr. Standing Counsel for IT-R2

>HEAD NOTE:

? Cases referred

1 Criminal Appeal No.1377 of 1999 dated 23.03.2007

[2] (1997) 7 Supreme Court Cases 622

3 2023 SCC OnLine SC 269

[4] (2015) 14 Supreme Court Cases 186

[5]AIR 1979 Supreme Court 677

HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No. 837 of 2020

ORDER:

1. The petitioners are facing prosecution for the offences under Section 276-B r/w 278B(2) of Income Tax Act, 1961 (for short 'the Act') for belated payment of TDS into the Central Government Treasury.

2. According to the Deputy Commissioner of Income Tax, who filed complaint, A1 company had deducted at source on more than 2664 occasions. The said total amount of Rs.91,80,995/- had to be credited to the Central Government account within the stipulated time. However, the same was deposited with a time variation of 1 to 12 months.

3. According to the complaint, the assessee company after deducting tax under Section 192 to 194(c) of the Act failed to deposit the said amount, which is a default and willful attempt to evade tax punishable under Section 276C of the Act. Show-cause notice was issued on 18.01.2018 calling for explanation from the company and representatives, why proceedings

should not be launched under Section 276B of the Act. Since there was no response to the show-cause notice, petitioners who are Managing director and Director were made responsible along with the company for evasion of tax punishable under Section 276B, 278B(1) of the Act and complaint filed.

4. The said complaint was filed on 28.03.2018 and taken cognizance by the learned Special Judge for Economic Offences, Hyderabad.

5. Learned counsel appearing for the petitioners would submit that a notice was issued on 18.01.2018 in which it was mentioned that a total of Rs.91,80,995/- was deducted and deposited into the Central Government account with a default on 2 to 11 months. It was further mentioned that Rs.7,73,901/- was late payment interest. However, the company paid interest of Rs.4,67,670/- and late filing fee of TDS of Rs.1,73,970/- vide challan No.281 on 14.12.2017 itself. The said TDS amount, consequent interest and late filing fee were all paid even prior to the notice dated

18.01.2018. However, the complaint does not reflect that the said amounts were paid. In addition to the said ground, learned counsel submitted that the company was in liquidation and the NCLT, Hyderabad Bench had admitted Company Petition filed by SBI and commenced corporate insolvency resolution process. In the said circumstances, when the entire TDS along with applicable penal interest were already paid, prosecution cannot be maintained.

6. Learned counsel also filed reply to show-cause notice dated 18.01.2018 which was filed before the Deputy Commissioner of Income Tax. The said reply dated 01.02.2018 to the show-cause notice dated 18.01.2018 was received in the office of the Additional Commissioner of Income Tax on 01.02.2018. According to the acknowledgement in the reply, the case was adjourned to 18.02.2018. However, the said reply notice was not mentioned in the complaint dated 23.03.2018 and the sanction order dated 16.02.2018. For the said reasons, proceedings against the petitioners have to be quashed.

7. Learned Special Counsel for Income Tax submitted that there is no dispute regarding amount being paid on 14.12.2017 regarding interest of Rs.4,67,670/-, late filing fee of Rs.1,73,970/- and also the entire TDS amount of Rs.91,80,995/- prior to the notice dated 18.01.2018. Learned counsel further submitted that the reply was also filed on 01.02.2018, however, the same will not absolve criminal prosecution of the petitioners. Once there is a delay in remitting the TDS amount into the government treasury within the prescribed time, an offence is made out. He relied on the judgment in the case of **Madhumilan Syntex Limited v. Union of India**[1], wherein it was held as follows:

> "The next contention that since TDS had already been deposited to the account of the Central Government, there was no default and no prosecution can be ordered cannot be accepted. Mr. Ranjit Kumar invited our attention to a decision of the High Court of Calcutta in Vinar & Co. & Anr. v. Income Tax Officer & Ors., (1992) 193 ITR 300. Interpreting the provisions of Section 276B, a Single Judge of the High Court observed that "there is no provision in the Income Tax Act imposing criminal liability for delay in deduction or for non-payment in time. Under Section 276B, delay in payment of income tax is not an offence". According to the learned Judge, such a provision is subject to penalty under Section 201(1) of the Act.

[1] Criminal Appeal No.1377 of 1999 dated 23.03.2007

> We are unable to agree with the above view of the High Court. Once a statute requires to pay tax and stipulates period within which such payment is to be made, the payment must be made within that period. If the payment is not made within that period, there is default and an appropriate action can be taken under the Act. Interpretation canvassed by the learned counsel would make the provision relating to prosecution nugatory."

8. Learned counsel further submitted that under similar circumstances when the entire amount was already paid and deposited, the Hon'ble Supreme Court held that if the payments are not made within the prescribed period in the statute, prosecution can be launched. The Hon'ble Supreme Court did not find favour with the judgment of the Calcutta High Court wherein the proceedings were quashed for the reason of payment of the defaulted amount though belatedly. For the said reasons, prosecution has to go on and petitioners have to face trial before the Special Court.

9. The Commissioner of Income Tax (TDS), Hyderabad granted sanction for prosecution of the petitioners and the Company on 16.02.2018. In the said sanction order, it was mentioned that an amount of Rs.91,80,995/- was paid with a delay ranging from 2 to 11 months. In the said sanction order, it was mentioned that the petitioner was asked to present their

case on 01.02.2018. However, petitioners did not appear till the date of granting sanction and no application for compounding offence has been filed by the assessee.

10. It is an admitted fact that; i) payment of Rs.4,67,670/- interest; and 2) Late filing fee of TDS of Rs.1,73,970/-, were both paid on 14.12.2017 vide challan No.281; 3) Reply was filed on 01.02.2018 in the office of Additional Commissioner, Income Tax (TDS), Hyderabad and the case was adjourned to 18.02.2018.

11. The said payments made on 14.12.2017 are not mentioned in the sanction order dated 16.02.2018. Though the replies were received on 01.02.2018, they are also not mentioned in the sanction order. However it is mentioned that the petitioners have neither replied nor appeared.

12. A prosecution can be launched only on the basis of sanction of the Principal Commissioner or appropriate authority. Section 279(1) of the Act is extracted hereunder:

> "279. (1) A person shall not be proceeded against for an offence under section-276 or section-277 or section-278 except at the instance of the Commissioner. (2) The Commissioner may either before or after the institution of proceedings compound any such offence."

13. The intention of the legislature in introducing requirement of Sanction in Enactments to be accorded by the competent authority is for the purpose of affording protection from vexations prosecution and to safeguard the interest of the innocent persons. Before granting sanction, the competent authority has to go through all the relevant material placed before it and after assessing the facts of the case and if the competent authority deems it appropriate to grant sanction, accordingly sanction is given for prosecution.

14. The Hon'ble Supreme Court in several judgments held that the competent authority's sanction would be valid only when such competent authority applies its mind to the entire facts of the case and accords sanction. In the event of the sanction reflecting non-application of mind or not considering the relevant material or any kind of extraneous reasons, such grant of sanction was found to be invalid.

15. The Hon'ble Supreme Court in the case of **Mansukhlal Vithaldas Chauhan v. State of Gujarat**[2] held as follows:

> "17. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government Servants against frivolous prosecutions. (See: Mohd. Iqbal Ahmed vs. State of Andhra Pradesh, AIR 1979 SC 677). Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecutions and is a safeguard for the innocent but not a shield for the guilty.
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> 18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also: Jaswant Singh vs. The State of Punjab, 1958 SCR 762 = AIR 1958 SC 12; State of Bihar & Anr. vs. P.P. Sharma, 1991 Cr.L.J. 1438 (SC)).
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> 19. Since the validity of "Sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows, that the sanctioning authority has to apply its own independent mind for the generation of genuie satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be had for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

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[2] (1997) 7 Supreme Court Cases 622

16. The Hon'ble Supreme Court in the recent judgment in the case of **S.Athilakshmi v. State rep. by the Drug Inspector**[3] relying on the judgment of Mansukhlal's case held as follows:

> "The sanction for prosecution given in the present case appears, *prima facie*, to suffer from vice of non-application of mind. There is no reference to any of the documents, evidence or the submissions submitted by either of the parties, no reasons assigned or even an explanation pertaining to the delay which indicates it has been passed in a mechanical manner."

17. The Hon'ble Supreme Court in the case of **Nanjappa v. State of Karnataka**[4], held as follows:

> "23.5. The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning prosecution under Section 19(1). Failure of justice is, what the appellate or revisional Court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision.
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> 24. In the case at hand, the Special Court not only entertained the contention urged on behalf of the accused about the invalidity of the order of sanction but found that the authority issuing the said

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[3] 2023 SCC OnLine SC 269

[4] (2015) 14 Supreme Court Cases 186

> order was incompetent to grant sanction. The trial Court held that the authority who had issued the sanction was not competent to do so, a fact which has not been disputed before the High Court or before us. The only error which the trial Court, in our opinion, committed was that, having held the sanction to be invalid, it should have discharged the accused rather than recording an order of acquittal on the merit of the case. As observed by this Court in Baij Nath Prasad Tripathi's case (supra), the absence of a sanction order implied that the court was not competent to take cognizance or try the accused. Resultantly, the trial by an incompetent Court was bound to be invalid and non-est in law."

18. The Hon'ble Supreme Court in the case of **Mohd. Iqbal Ahmed v. State of Andhra Pradesh**[5] held that it is well settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void *ab initio*. Further, the prosecution launched without a valid sanction, it was held that the cognizance taken by the Special Judge was without jurisdiction and proceedings were quashed.

19. The sanction was granted without considering payment of Rs.4,67,670/- interest; and Late filing fee of TDS of Rs.1,73,970/-, on 14.12.2017 vide challan No.281. Further reply which was filed on 01.02.2018 in the office of Additional

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[5]AIR 1979 Supreme Court 677

Commissioner, Income Tax (TDS), Hyderabad is also not considered.

20. The competent authority not considering the same amounts to not considering the facts of the case and granting sanction which is invalid. Apparently sanction was sought by suppressing facts or deliberately omitted. It is not disputed that the Sanction mentioning that the penal interest not being paid and the petitioners not replying to show cause is apparently wrong. For the said reason of launching prosecution on the sanction, which according to this Court is invalid, the proceedings before the learned Special Court are liable to be quashed.

21. In the result, the proceedings against petitioners/A2 and A3 in C.C.No.77 of 2018 on the file of Special Judge for Economic Offences, City Criminal Courts, Hyderabad are hereby quashed.

22. Accordingly, the Criminal Petition is allowed. Consequently, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 11.07.2023
Note: LR copy to be marked.
B/o.kvs

HONOURABLE SRI JUSTICE K.SURENDER

Criminal Petition No.837 OF 2020

Date:11.07.2023

kvs