

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

CRMC No. 205/2015, IA No. 01/2015

Date of order: 28.09.2018

Arun Arya

Vs.

Income Tax Officer

Coram:

Hon'ble Mr. Justice Sanjay Kumar Gupta

Appearing counsel:

For the Petitioner(s) : Mr. Sunil Sethi, Sr. Advocate with
Mr. Sumit Nayyar, Advocate

For the Respondent(s): None.

- i) Whether to be reported in Digest/Journal : Yes/No.
- ii) Whether approved for reporting in Press/Media : Yes/No.

1. In the instant petition, filed under Section 561-A of the Code of Criminal Procedure (hereinafter for short, Cr.P.C), petitioner seeks the following reliefs:-

“(a) Complaint titled Income Tax Officer Vs. ArunArya under Section 276-C/277 of the Income Tax Act, 1961 for commission of offences punishable under Section 271(1) (C) of the Income Tax Act, pending trial before the Court of Ld. Special Mobile Magistrate Railway Jammu.

(b) Order dated 31.03.2009 passed by the Court of Ld. Special Mobile Magistrate, Railway, Jammu whereby cognizance of the afore-titled complaint has been taken and process against the petitioner issued;

(c) Proceedings being conducted against the petitioner in the aforementioned complaint, being totally illegal and abuse of process of law.”

2. The petitioner claims to be running a Finance Company under the name and Style of M/s Samridhi Finance Company at Rehari Colony, Jammu.

3. The factual matrix of the case is that on 29th July, 1999, a survey was conducted by the Income Tax Department under Section 133-A of the Income Tax Act, in the premises of the aforesaid Finance Company of the petitioner and case was taken up for scrutiny where after on 26.02.2001 notices were issued to the petitioner under Section 143 (2) of the Income Tax Act. In the said proceedings, the income of the petitioner was assessed to be Rs.20,20,420/- on the ground that the petitioner has not participated in the proceedings vide Assessment Order dated 25.03.2003 passed under Section 144 of the Income tax Act.
4. Being aggrieved of the aforesaid Assessment Order dated 25.03.2003, petitioner filed a statutory appeal before the Commissioner of Income Tax (Appeals) Jammu Headquarters at Amritsar under the Income Tax Act, and the same was dismissed vide order dated 16.12.2003. The penalty imposed upon the petitioner was to the tune of Rs.6,21,020/- under Section 271(1) (C) of the Income Tax Act, which petitioner claims to have already paid. On 26.11.2008 a complaint under Section 276(C)/277 of the Income Tax Act was filed by the respondent before the Court of Chief Judicial Magistrate, Jammu, which came to be transferred for disposal under law to the Court of Special Mobile Magistrate, Railways, Jammu. Thereafter, vide order impugned dated 31.03.2009, the Court of Special Mobile Magistrate, Railways, Jammu took cognizance of the aforementioned complaint against the petitioner and issued process against him.
5. The petitioner challenges the impugned order dated 31.03.2009, passed by the Court of Special Mobile Magistrate, Railways, Jammu on the grounds that the impugned complaint, impugned order dated 31.03.2009 and the impugned proceedings being conducted against

the petitioner are totally illegal and contrary to the provisions of law, therefore, the same deserve to be quashed; that mere imposition of penalty under the provisions of the Income tax Act does not mean that the petitioner has committed the offence as defined under Sections 276(C) /277 of the Income Tax Act; that for constituting an offence under Section 276(C)/277 of the Income Tax Act, it is primarily to be established that the conduct of the petitioner is “willful’ to conceal the accounts and records from the Income Tax Department; that the learned Magistrate while passing the order impugned dated 31.03.2009, has not at all recorded his satisfaction as to the committal of alleged crime by the petitioner which is sine-qua-non for maintaining the complaint; that the learned Magistrate while passing the order impugned has not clearly discussed the reasons on the basis of which he has formed his opinion regarding taking cognizance of the complaint; that none of the ingredients of Sections 276(C) /277 of the Income Tax Act are coming forth from the perusal of the complaint; that the learned Magistrate before taking the cognizance of the matter ought to have recorded his satisfaction in the order of taking cognizance, which has not been done in the instant case, which renders the order impugned totally vitiated and the complaint together with the order impugned deserves to be quashed.

6. I have considered the contentions of petitioners.
7. From the perusal of order impugned, it is evident that a complaint u/s 276(C)/277 of I.T. Act was filed by Income Tax Officer against petitioner being Proprietor of M/S Samridhi Finance Company for willful attempt to conceal the particulars of income with a view to evade the payment of Tax for assessment year 2000-2001.
8. Section 276-C of the Income Tax Act, reads as under:-

“276C. Wilful attempt to evade tax, etc.

(1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,-

(i) in a case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

Explanation.- For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person-

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(ii) makes or causes to be made any false entry or statement in such books of account or other documents; or

(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.]”

Section 277 of the Income Tax Act, reads as under:-

“277. False statement in verification, etc. If a person makes a statement in any verification under this Act or under any rule made there under, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable,-

(i) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.”

9. Section 276-C provides for punishment in the case of willful attempt to evade tax, penalty or interest or under-reporting of income. As per

section 276-C if a person willfully attempts to evade tax, penalty or interest or under-reports his income, then he shall be punished as provided under this section. Similarly, section 277 of I.T Act provides punishment for making false statement and verification in account.

10. Under the Income-Tax Act, 1961 there are various provisions for compliance with taxing provisions and the collection of taxes. The Income-tax Act seeks to enforce tax compliance in a three fold manner; namely 1) Imposition of interests 2) Imposition of penalties and 3) Prosecutions. In the fight against tax evasion, monetary penalties are not enough. When a calculating tax dodger finds it a profitable proposition to carry on evading taxes over the years, if the only risk to which he is exposed is a monetary penalty in the year in which he happens to be caught. The public in general also tends to lose faith and confidence in tax administration when a tax evader is caught, but the administration lets him get away lightly after paying only a monetary penalty- when money is no longer a major consideration with him if it serves his business interest. The sections dealing with offences and prosecution proceedings are included in Chapter XXII of the Income-tax Act, 1961 i.e. S. 275A to S. 280D of the Act. The provisions of the said Code are to be followed relating to all offences under the Income-tax Act, unless the contrary is specially provided for by the Act. The concept of *mens rea* is integral to criminal jurisprudence. An offence cannot be committed unintentionally. Generally a guilty mind is a *sine qua non* for an offence to be committed. However, The Taxation Laws S. 278E has carved out an exception to this rule. The said Section places the burden of proving the absence of *mens rea* upon the accused and also provides that such absence needs to be proved not only to the basic

threshold of ‘preponderance of probability’ but ‘beyond reasonable doubt’. In every prosecution case, the Court shall always presume culpable mental state and it is for the accused to prove the contrary beyond reasonable doubt. No doubt, this presumption is a rebuttable one.

11. In present case, as is evident from complaint, there is definite finding under section 144 of Income Tax Act that accused/petitioner had Rs.20,20,420/- income in assessment year 2000-2001; Even appeal preferred by petitioner has been dismissed. The ground taken that there was no wilful default on behalf of petitioner in concealing the income is not tenable, because it is factual defence, which is to be proved during course of trial. The criminal court has to judge the case independently on the evidence placed before it. So complaint lodged by respondent and process issued thereon against petitioner does not suffer from any infirmity of law.
12. In view of above, this petition is **dismissed**. Stay, if any, is vacated. Copy of this order be sent to Income Tax Department and one copy to Court below for compliance.

(Sanjay Kumar Gupta)
Judge

Jammu,
28.09.2018
Bir