

ITEM NO.23

COURT NO.5

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 5834/2019

(Arising out of impugned final judgment and order dated 05-07-2018 in CRLWP No. 2143/2018 passed by the High Court Of Judicature At Bombay)

ASSISTANT DIRECTOR OF INCOME TAX (INV)

Petitioner(s)

VERSUS

YASHOVARDHAN BIRLA & ANR.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.29871/2019-CONDONATION OF DELAY IN FILING)

Date : 02-12-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI

HON'BLE MR. JUSTICE A.S. BOPANNA

For Petitioner(s) Mr. A.N.S. Nadkarni, ASG
Mr. Sibbo Sankar Mishra, Adv.
Mr. S.S. Ray, Adv.
Mrs. Anil Katiyar, AOR

For Respondent(s) Mr. Siddhartha Dave, Sr. Adv.
Mr. Rahul Gupta, AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Being aggrieved by order passed by the High Court of Judicature at Bombay in Criminal Writ Petition No.2143 of 2018 dated 05.07.2018, the Assistant Director of Income Tax has preferred this special leave petition.

We have heard Mr. A.N.S. Nadkarni, learned Additional Solicitor General appearing for the petitioner-Department and Mr. Siddhartha Dave, learned senior counsel appearing for the respondent.

In the criminal case initiated against the respondent for the offences punishable under Sections 181, 186, 191 & 193 I.P.C. and

Section 277 of the Income Tax Act, 1961, the petitioner-Department filed an application on 09.04.2018 before the 38th Additional Chief Metropolitan Magistrate seeking to issue letter of request to the competent authority of Bailiwick of Guernsey requesting them to carry out specific investigation in respect of the entities from which the respondent was alleged to have transferred the funds/assets based in States of Guernsey and for further relief. The Trial Court Vide Order dated 12.04.2018 allowed the said application filed by the petitioner-Department and on 13.04.2018 signed the Letter of Request.

Being aggrieved, the respondent filed writ petition before the High Court. The High Court vide Order dated 05.07.2018 observed that the respondent ought to have been given an opportunity before passing such an order by the Trial Court and allowed the writ petition giving following directions:

(i) Writ Petition is partly allowed.

(ii) Impugned order dated 12th April, 2018 and order issuing Letter of Request dated 13th April, 2018 are hereby set aside. The matter is remanded back to the trial court for hearing the application preferred by the respondent afresh. The petitioner be afforded an opportunity of hearing the application preferred by the respondent no.1.

(iii) In the meantime, without prejudice to the rights/objections of both the parties and subject to the decision of the trial court in the application preferred by the respondent NO.1, the amount in the entities which is subject matter of the application preferred by the respondent no.1 may not be transferred to any other account;

(iv) All points raised in this petition are kept open;

(v) It is clarified that this Court has not made any observations on merits of the case and the trial Court shall decide the proceedings in accordance with law;

(vi) The parties through their counsel to appear before the trial Court on 1st August, 2018. The application be decided expeditiously;"

When the special leave petition came up for hearing on 04.07.2019, it was clarified by this Court that in the interim order passed by the High Court on 05.7.2018 in para (8)(iii) the words "may not be transferred to any other account" shall be read as "shall not be transferred to any other account".

Learned counsel for the parties have submitted that the above clarification, as ordered by this Court by Order dated 04.07.2019 shall be treated to be continued and the parties be granted liberty to go before the Trial Court.

Having regard to the submissions made at the Bar, the special leave petition is disposed of giving liberty to the parties to raise all the contentions before the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai.

In the meanwhile, the clarification made by this Court on 04.07.2019, as above, shall remain continued till the disposal of the application by the concerned Trial Court.

It is made clear that the Trial Court shall consider the matter without being influenced by any of the views expressed by the High Court.

Pending applications, if any, shall also stand disposed of.

(MAHABIR SINGH)
COURT MASTER

(BEENA JOLLY)
BRANCH OFFICER