R

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 16TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CRIMINAL PETITION NO. 201214 OF 2023

(482(Cr.PC)/528(BNSS))

C/W

CRIMINAL PETITION NO. 201213 OF 2023

CRIMINAL PETITION NO. 201215 OF 2023

CRIMINAL PETITION NO. 201216 OF 2023

IN CRL.P.NO.201214/2023:

BETWEEN:

RAJKUMAR AGARWAL S/O RAGHULAL AGARWAL,
AGE: 65 YEARS,
OCC: PROP. SAINATH STONE CRUSHER
VILLAGE GADGI,
R/O. H NO 6-3-45, CHANDRA NIVAS,
JAVAHAR BAZAR BIDAR-585401.

...PETITIONER

(BY SRI KADLOOR SATYANARAYANACHARYA, ADVOCATE)

AND:

INCOME TAX DEPARTMENT,
BY THE INCOME TAX OFFICER WARD-1,
BIDAR-585401.

...RESPONDENT

(BY SRI M. THIRUMALESH, ADVOCATE)

THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.2056/2019, REGISTERED AS AGAINST THE ACCUSED / PETITIONER FOR THE OFFENCE U/SEC. 276CC OF INCOME TAX ACT, PENDING ON THE FILE OF THE II ADDITIONAL CIVIL JUDGE AND JMFC BIDAR.

IN CRL.P.NO.201213/2023:

BETWEEN:

RAJKUMAR AGARWAL S/O RAGHULAL AGARWAL,
AGE: 65 YEARS, OCC:PROP. SAINATH STONE
CRUSHER VILLAGE GADGI,
R/O. H NO 6-3-45 CHANDRA NIVAS,
JAVAHAR BAZAR BIDAR-585401.

...PETITIONER

(BY SRI KADLOOR SATYANARAYANACHARYA, ADVOCATE)

AND:

INCOME TAX DEPARTMENT,
BY THE INCOME TAX OFFICER WARD-1,
BIDAR-585401.
(RPTD. BY ADDL. SPP HC KLB-585103.

...RESPONDENT

(BY SRI M.THIRUMALESH, ADVOCATE)

THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.2334/2019, REGISTERED AS AGAINST THE ACCUSED / PETITIONER FOR THE OFFENCE U/SEC. 276CC OF INCOME TAX ACT, PENDING ON THE FILE OF THE II ADDITIONAL CIVIL JUDGE AND JMFC-II BIDAR.

IN CRL.P.NO.201215/2023:

BETWEEN:

RAJKUMAR AGARWAL S/O RAGHULAL AGARWAL,
AGE: 65 YEARS, OCC: SAINATH STONE CRUSHER
VILLAGE GADGI,
R/O. H NO 6-3-45 CHANDRA NIVAS,
JAVAHAR BAZAR, BIDAR-585401.

...PETITIONER

(BY SRI KADLOOR SATYANARAYANACHARYA, ADVOCATE)

AND:

INCOME TAX DEPARTMENT,
BY THE INCOME TAX OFFICER WARD-1,
BIDAR- 585401.
(RPTD. BY ADDL. SPP HC KLB-585103.)

...RESPONDENT

(BY SRI M. THIRUMALESH, ADVOCATE)

THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.2333/2019, REGISTERED AS AGAINST THE ACCUSED / PETITIONER FOR THE OFFENCE U/SEC. 276CC OF INCOME TAX ACT, PENDING ON THE FILE OF THE II ADDITIONAL CIVIL JUDGE AND JMFC-II BIDAR.

IN CRL.P.NO.201216/2023:

BETWEEN:

RAJKUMAR AGARWAL S/O RAGHULAL AGARWAL,
AGE: 65 YEARS, OCC: PROP. SAINATH STONE
CRUSHER VILLAGE GADGI,
R/O. H NO 6-3-45 CHANDRA NIVAS,
JAVAHAR BAZAR, BIDAR-585401.

...PETITIONER

(BY SRI KADLOOR SATYANARAYANACHARYA, ADVOCATE)

AND:

INCOME TAX DEPARTMENT,
BY THE INCOME TAX OFFICER WARD-1,
BIDAR-585401.
(RPTD. BY ADDL. SPP HC KLB-585103.)

…RESPONDENT

(BY SRI M. THIRUMALESH, ADVOCATE)

THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.2332/2019, REGISTERED AS AGAINST THE ACCUSED / PETITIONER FOR THE OFFENCE U/SEC. 276CC OF INCOME TAX ACT, PENDING ON THE FILE OF THE II ADDITIONAL CIVIL JUDGE AND JMFC-II BIDAR.

THESE PETITIONS, COMING ON FOR ADMISSIONS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

ORAL ORDER

(PER: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY)

1. These petitions under section 482 of Cr.P.C are filed by the petitioner-assessee assailing the impugned criminal proceedings pending before the court of II Addl. Civil Judge & JMFC-II, Bidar in C.C.No.2056/2019, C.C.No.2334/2019, C.C.No.2333/2019 and C.C.No.2332/2019 registered against the petitioner for

offence punishable under section 276CC of Income Tax Act.

2. Heard the learned counsel for the petitioner and learned counsel for the respondent-Department.

3. The respondent had filed four separate private complaints under section 200 of Cr.P.C against the petitioner herein for offence punishable under section 276CC of Income Tax Act 1961 (herein after referred to as the 'Act of 1961'), after obtaining necessary sanction orders from the Competent Authority to prosecute the petitioner for the aforesaid offence. Allegation against the petitioner is that, he had willfully failed to submit his income tax returns in time for the Assessment Years 2012-13 to 2015-16 and thereby committed the alleged offence.

4. The learned Magistrate, having taken cognizance of the alleged offence, had issued summons to the petitioner-accused. Being aggrieved by the same, the petitioner is before this court.

5. Learned counsel for the petitioner having reiterated the grounds urged in the petition submits that, on receipt of notice under section 139 of the Act of 1961, petitioner had submitted his income tax returns for the assessment years 2012-13 to 2015-16. Since there was a delay in filing the returns, penalty was levied on the assessee which was paid by him. Therefore there was no occasion for the respondent-Department to initiate criminal prosecution as against the petitioner for the alleged offence. He submits that petitioner was not granted an opportunity by the competent authority before issuing the sanction order. Petitioner had not willfully delayed the filing of the returns and the delay was beyond the control of the petitioner since his brothers had died during the relevant period. In support of his arguments, he has placed reliance on the judgment of this Court in the case of ***C.P Yogeshwara Vs the Income Tax Department*** **(Crl.P.No.1998/2016** disposed of on 04.01.2017). Accordingly, he prays to allow the petition.

6. Per contra, learned counsel appearing for the respondent has opposed the petition. He submits that undisputedly there was a delay in filing the income tax returns for the period from 2012-13 to 2015-16. Merely for the reason that, the petitioner had submitted the income tax returns, it will not exonerate him from criminal prosecution. There is a presumption against the petitioner available under section 278E of the Income Tax act which is required to be rebutted by the petitioner in accordance with law before the learned Magistrate. Therefore, there is no illegality or irregularity in the impugned criminal proceedings. In support of his arguments, he has placed reliance on the judgments of the Hon'ble Supreme Court in the case of ***Sasi Enterprises vs. Assistant Commissioner of Income Tax (2014) 361 ITR 163 (SC)*** and also in the case of ***V.P.Punj vs. Assistant Commissioner of Income Tax and Another*** reported in (***2002) 253 ITR 369 (Delhi)***.

7. It is not in dispute that there was a delay on the part of the petitioner assessee in submitting his income tax returns for the assessment years 2012-13 to 2015-16. It is not in dispute since there was a delay in submitting the income tax returns, penalty was levied on the petitioner and the said penalty was paid by the petitioner. The offence under Section 276CC is attracted on failure to comply with the provisions of Section 139(1) or failure to respond to the notice issued under Section 142 or Section 148 of the Act, within the time specified therein. Section 276CC takes in sub-section 1 of Section 139, Section 142(1)(i) and Section 148 of the Act. But the proviso to Section 276 CC takes in only sub-section 1 of Section 139 of the Act and the provisions of Section 142(1)(i) or Section 148 are conspicuously absent. Consequently, the benefit of the proviso is available only to voluntary filing of the return as required under Section 139(1) of the Act. In other words, the proviso would not apply after detection of the failure to file the return and after a notice under

Section 142(1)(i) or Section 148 of the Act, is issued calling for filing of the return of the income. The proviso, therefore, envisages the filing of even belated return before detection of discovery of the failure and issuance of notice under Section 142 or Section 148 of the Act.

8. The power to levy penalty for delayed filing of the income tax returns can be traced under Chapter 21 of the Income Tax Act, while Chapter 22 of the Income Tax act provides for offences and prosecutions. A reading of the aforesaid two chapters would make it very clear that delay in filing of the income tax returns would not only result in payment of penalty, but it also results in prosecution as provided under Chapter 22 of the Act. Therefore, merely for the reason that petitioner has paid the penalty levied by the Competent Authority for the delay in filing of the returns, the same does not exonerate the petitioner from being prosecuted as provided under Chapter 22 of the Act of 1961.

9. Section 276CC reads as follows:

"If a person wilfully fails to furnish in due time [the return of fringe benefits which he is required to furnish under sub-section (1) of section 115WD or by notice given under sub-section (2) of the said section or section 115WH or) the return of income which he is required to furnish under sub-section (1) of section 139 or by notice given under [clause (1) of sub-section (1) of section 142] or section 148 [or section 153A], he shall be punishable,-

*(i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered*5, exceeds #6[twenty-five] 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 imprisonment for a term which shall not be less than three months but which may extend to [two] years and with fine:

Provided that a person shall not be proceeded against under this section for failure to furnish in due time the [return of fringe benefits under sub-section (1) of section 115WD or] return of income under sub-section (1) of section 139-

(i) for any assessment year commencing prior to the 1st day of April, 1975; or

(ii) for any assessment year commencing on or after the 1st day of April, 1975, if-

(a) the return is furnished by him before the expiry of the assessment year 88a [or a return is furnished by him under sub-section (8A) of section 139 within the time provided in that sub-section]; or

[(b) the tax payable by such person, not being a company, on the total income determined on regular assessment, as reduced by the advance tax or self-assessment tax, if any, paid before the expiry of the assessment year, and any tax deducted or collected at source, does not exceed ten thousand rupees.]]

Section 278E of the Act of 1961 reads as follows:

"(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation - In this sub-section, "culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability."

10. From a reading of Section 278E of the Act, it is apparent that there is a presumption available as against the accused and the Court before which proceedings are initiated for offence punishable under section 276CC is required to raise a presumption against the accused and it is for the accused assessee to successfully rebut the said presumption by producing necessary material before the said court, failing which he shall be liable to be punished.

11. It is not in dispute that there was a delay in submitting the Income Tax Returns by the petitioner-assessee and it is also not in dispute that the delayed returns filed on behalf of the petitioner-assessee was

accepted by the Department on payment of penalty imposed on the petitioner. The question before the Trial Court is whether there was a willful and deliberate delay on the part of the petitioner-assessee in submitting the Income Tax Returns and in view of the said presumption under Section 278E, it is for the accused to prove before the Trial Court that he had no such mental state and rebut the presumption. In the statement of objection filed on behalf of the respondent, it has been specifically stated that the sanctioning Authority namely Principal Commissioner of Income Tax before according sanction as provided under Section 279(1) of the Act of 1961 had issued Show Cause Notice to the petitioner-assessee granting an opportunity to file his objection and there after objections filed by the petitioner were considered and disposed of by a Speaking Order. Therefore, there is no merit in the contentions urged on behalf of the petitioner that he was not heard by the Competent Authority before

issuing the sanction order to prosecute him for alleged offence.

12. The Hon'ble Supreme Court in the case of ***Sasi Enterprises*** at Para No.30 has observed as follows:

> *"30. Section 278E deals with the presumption as to culpable mental state, which was inserted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986. The question is on whom the burden lies, either on the prosecution or the assessee, under Section 278E to prove whether the assessee has or has not committed willful default in filing the returns. Court in a prosecution of offence, like Section 276CC has to presume the existence of mens rea and it is for the accused to prove the contrary and that too beyond reasonable doubt. Resultantly, the appellants have to prove the circumstances which prevented them from filing the returns as per Section 139(1) or in response to notices under Sections 142 and 148 of the Act."*

13. In the case of ***V.P Punj,*** the High Court of Delhi has observed that in view of Section 278E of the Income Tax Act, in any prosecution for offence under the act, the court has to presume the existence of *mens rea* and it is for the

accused to prove the contrary and that too beyond reasonable doubt. Prosecution for offence punishable under section 276CC of the Act of 1961 can be initiated against an accused for willful and deliberate delay in filing the returns and since there is a presumption available under section 278E of the act with regard to the culpable mental status of the accused, it is for the accused to rebut the said presumption in accordance with law.

14. Under the circumstances, the explanation sought to be offered on behalf of the petitioner before this Court cannot be accepted and it is for the petitioner to lead evidence and produce necessary material before the learned Magistrate in support of his defence and rebutt the presumption available against him under Section 278E of the Act. In the case of ***C.P Yogeshwara***, the Co-ordinate bench of this Court had quashed the proceedings initiated against the assessee for offence punishable under Section 276CC of Act of 1961, for the reason that the assessee had filed his returns as on the date of order of sanction by

the Competent Authority which had gone unnoticed. Therefore the Department had erred in initiating proceedings. In the said case, this Court has not taken notice of the presumption that was available under section 278E of the Act and therefore the order passed in Crl.P.No.1998/2016 cannot be of any assistance to the petitioners, more so in view of the judgment of the Hon'ble Supreme Court in the case of ***Sasi Enterprises***.

15. Under the circumstances, I am of the opinion that the petitions lack merit and they are liable to be dismissed with liberty to the petitioner to raise all such grounds before the learned Magistrate in support of his defence. Accordingly, the following order:

ORDER

The criminal petitions are dismissed.

Sd/-
(S.VISHWAJITH SHETTY)
JUDGE

DHA
List No.: 1 Sl No.: 29