2018:DHC:5254

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 20th August, 2018

\+ CRL. M.C. 4666/2015 & CRL. 16736/2015

ADITYA SHARMA ..... Petitioner
Through: Mr. R.K. Handoo & Ms. Aditya Chaudhary, Advs.

versus

INCOME TAX DEPARTMENT ..... Respondent
Through: Mr. Zoheb Hossain, Sr. Standing counsel for Income Tax Department.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the criminal complaint (CC No. 96/2004) dated 27.01.2015 of the respondent, the petitioner was summoned as (second) accused by the Additional Chief Metropolitan Magistrate (ACMM), by his order dated 30.01.2015, the other (first) accused being Moin Akhtar Quereshi. The criminal complaint was filed, *inter alia,* on the strength of sanction for prosecution under Section 279 of Income Tax Act, 1961 accorded by the Director of Income Tax (Investigation) - 02, Delhi on 09.01.2015.

2. The background facts, as set out in the criminal complaint, would reveal that a search and seizure action was carried out in the premises of both the accused (including the petitioner) and certain others (connected with "AMQ Group") on 15.02.2014 with due

authorization. The investigation conducted during searches revealed existence of a number of safe deposit lockers, some of them being operational in the name of the petitioner. Statements, including that of the petitioner, were recorded on 15.02.2014. The searches of the lockers revealed large amount of unaccounted cash and other valuables including jewellery and documents. It is alleged that the statement of first accused before income tax authority indicated that these lockers were opened and operated, *inter alia,* by the petitioner (second accused) on his instructions. While the acts of commission constituting offences punishable under Sections 277 (i) of Income Tax Act, 1961 and under Sections 181, 177, 193, 196, 120-B read with Section 34 of Indian Penal Code, 1860 (IPC) have been attributed to the first accused, it has been alleged in the complaint that the petitioner had given false statements and had also abetted the first accused and having indulged in certain acts of commission constituting offences punishable under Sections 271 (i), 278 of Income Tax Act, 1961 and under Sections 181, 177, 193, 196, 120-B read with Section 34 IPC.

3. Since the complaint was presented by the respondent in the capacity of a public servant in discharge of his official duties, the ACMM dispensed with his examination under Section 200 of Code of Criminal Procedure, 1973 (Cr.P.C.). Having taken cognizance, he found grounds made out and accordingly issued summons to both the accused by order dated 30.01.2015.

4. The petition at hand was filed invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C. to seek quashing of the

proceedings in the criminal case against the petitioner on the ground that it is an abuse of the process of law.

5. The prime argument raised is with reference to the provision contained in Section 245-D of Income Tax Act, 1961. It is submitted that the petitioner, and certain others (including M/s AMQ Agro India Pvt. Ltd. and the first accused), had approached the Income Tax Settlement Commission (for short, Settlement Commission), by applications dated 26.12.2014, under Section 245-C (1) of Income Tax Act, 1961 on which, by order dated 07.01.2015, the Settlement Commission had passed order allowing the said settlement applications " *to be proceeded with further*". It is the submission of the petitioner that, upon such application for settlement being entertained by the Settlement Commission, and the order under Section 245-D (1) of the Income Tax Act, 1961 being passed thereupon allowing such applications " *to be proceeded with further*", by virtue of the provision contained in Section 245-F, the other income-tax authorities were rendered "*functus officio*" and, therefore, the grant of sanction for prosecution on 09.01.2015, and the filing of the criminal complaint on 27.01.2015, were impermissible and bad in law; this, in the submission of the petitioner, rendering the summoning order vitiated and the consequent proceedings in the criminal case an abuse of the process of court. Reliance is placed by the petitioner on decisions of learned single Judges of this Court and of the High Court of Punjab & Haryana reported as *Dr. Mrs. Geeta Gupta vs. Inspecting Assistant Commissioner of Income Tax (Assessment), Range XIV, New*

Delhi & Anr. (1986) ILR 1 Delhi 521, and *R.I. Chadha & ors. vs. Income Tax Officer (1987) 681 ITR 591 (P& H).*

6. *Per contra,* the learned counsel representing the respondent (complainant) placed reliance on the ruling of the Supreme Court in *Ashirvad Enterprises & Ors. vs. State of Bihar & Anr. (2004) 3 SCC 624* to argue that there is no merit in the contention raised, in view of the fact that no order granting immunity from prosecution was applied for, or granted, in the course of proceedings arising out of the settlement applications which, in the submission of the counsel, even otherwise, have since been dismissed.

7. Chapter XIX-A captioned as "*settlement of cases*" was inserted in the Income Tax Act, 1961 by Taxation Laws (Amendment) Act, 1975, w.e.f. 01.04.1976. Section 245-B confers upon the Central Government, the power to constitute the Income Tax Settlement Commission " *for the settlement of cases*" under the said chapter. The jurisdiction and powers of Settlement Commission are delineated by detailed provision contained in Section 245-BA. The application for settlement of cases is made under Section 245-C which, to the extent necessary, may be quoted as under:-

> "*An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived, the additional amount of income- tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such*

application shall be disposed of in the manner hereinafter provided ..."

(emphasis supplied)

8. The initial scrutiny by the Settlement Commission results in an order as envisaged in Section 245-D (1) which, to the extent relevant, may be quoted as under:

> "*(1) On receipt of an application under section 245C, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant requiring him to explain as to why the application made by him be allowed to be proceeded with, and on hearing the applicant, the Settlement Commission shall, within a period of fourteen days from the date of the application, by an order in writing, reject the application or allow the application to be proceeded with:"*

(emphasis supplied)

9. The afore-mentioned provision of Section 245-D contains detailed guidelines as to the further procedure to be followed in the wake of initial order of the Commission allowing the "*application to be proceeded with"*.

10. The prime argument raised by the petitioner is with reference to the provision contained in Section 245-F ("*powers and procedures of Settlement Commission*") which, to the extent relevant, reads thus:-

> *"(1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in an income-tax authority under this Act.*
>
> *(2) Where an application made under section 245C has been allowed to be proceeded with under section 245D,*

> *the Settlement Commission shall, until an order is passed under sub-section (4) of section 245D, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an income-tax authority under this Act in relation to the case :*
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> (emphasis supplied)

11. It is pointed out by the counsel for the petitioner that once the Settlement Commission permits a settlement application "*to be proceeded with*" in terms of its jurisdiction under Section 245-D, so long as the matter remains pending with the said Commission (till passing of the final order), it exercises all "*powers*" and performs all "*functions*" of income tax authority under the Income Tax Act, 1961 "*in relation to*" such case, the jurisdiction of the Settlement Commission to do so being "*exclusive*". The submission of the counsel for the petitioner is that since the applications for settlement, including of the petitioner, had been submitted on 26.12.2014 and the Settlement Commission had permitted such applications "*to be proceeded with"* in exercise of its jurisdiction under Section 245-D(1), by order dated 07.01.2015, the jurisdiction and powers of the income tax authorities had come to a standstill, the power and jurisdiction to issue any orders in relation to such case consequently vesting only in "*exclusive jurisdiction*" of the Settlement Commission. It is the argument of the petitioner that, from this perspective, grant of sanction on 09.01.2015 and the filing of the criminal complaint against the petitioner and other accused on 27.01.2015 by authorities other than the Settlement Commission, were in the nature of such acts as were not authorized by law.

12. The submissions of the petitioner founded essentially on the principle of "*immunity*" are mis-conceived for the simple reason there is no concept of "*absolute immunity*". The provision contained in Section 245-H relates to the "*power of Settlement Commission to grant immunity from prosecution and penalty*", The said provision, to the extent necessary, may be taken note of as under:-

> *"(1)The Settlement Commission may, if it is satisfied that any person who made the application for settlement under* Section 245C *has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, subject to such conditions as it may think fit to impose [for the reasons to be recorded in writing], immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force and also (either wholly or in part) from the imposition of any penalty under this Act, with respect to the case covered by the settlement :"*
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> (emphasis supplied)

13. As would be noted from the above, whether or not the applicant before the Settlement Commission is to be granted immunity from prosecution and penalty, is a matter that is required to be considered and decided by the Settlement Commission this, having regard to his conduct *vis-à-vis* the expectation of "*full and true disclosure*" and co-operation with the proceedings before the Commission. From this, it naturally follows that merely the order under Section 245-D (1) allowing the application for settlement "*to be proceeded with*" cannot

be equated with an order granting immunity from prosecution. Having regard to the scheme of the law, necessarily the order granting or declining "*immunity*" and, if there is an order granting immunity specifying the conditions attached thereto, would be a directive that would come later in sequence and chronology to the order allowing the settlement application "*to be proceeded with*". It is not correct to contend that merely because, by virtue of Section 245-F, the powers to deal with the case in question by the income tax authorities stand taken away or the same vest in the Settlement Commission so long as the matter remains pending with it, the power, by law, vested in the income-tax authorities to initiate criminal prosecution is also taken away. If the law were to be interpreted in the manner canvassed, it would virtually result in simultaneous and automatic grant of immunity consequent upon the order of the Settlement Commission allowing the application "*to be proceeded with*" rendering the provision contained in Section 245-H a dead letter. The provision contained in Section 245-H therefore, must be construed and understood to be conveying that the powers and functions of the income tax authorities with regard to assessment or realization/recovery of the revenue, come to a standstill upon the matter reaching the Settlement Commission but it does not *ipso facto* take away their power to initiate criminal action which operates in a different sphere.

14. As was conceded by the counsel for the petitioner at the hearing, no application was even made before the Settlement Commission, nor any order to such effect accorded *suo motu* by the

Settlement Commission under Section 245-H of Income Tax Act, 1961 granting immunity – temporary or otherwise – from prosecution to the petitioner in relation to the case in question. It was also conceded that the settlement applications have subsequently been dismissed.

15. The fact that the Settlement Commission receives, entertains, accepts or takes on board an application for settlement cannot result in the other process getting frozen. The order of the Commission allowing the application for settlement "*to be proceeded with*" cannot by itself result in an action legitimately initiated under the law being set at naught.

16. In these circumstances, the arguments to the above effect raised *vis-à-vis* the criminal complaint which was filed on 27.01.2015 leading to the summoning order being passed by the Additional Chief Metropolitan Magistrate on 30.01.2015 and, of course, in relation to the sanction for prosecution which was granted on 09.01.2015, cannot be accepted. The same are, thus, repelled.

17. It was further the argument of the petitioner that the criminal complaint is founded on false accusations and facts, certain material facts having been suppressed.

18. It will have to be remembered that the petition has been filed invoking the inherent power and jurisdiction of this Court under Section 482 Cr.P.C. where questions of fact cannot ordinarily and in absence of evidence of unimpeachable character to the contrary be properly inquired into or adjudicated upon. In this context, the following observations of the Supreme Court in *Rajiv Thapar and*

Ors. Vs. Madan Lal Kapoor, (2013) 3 SCC 330 need to be borne in mind:-

> *"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. On the foregoing facts and in the circumstances, there is no case made out for any interference by this Court in the ongoing criminal prosecution of the petitioner on the complaint of the respondent.

20. The petition and the pending application are dismissed.

R.K.GAUBA, J.

AUGUST 20, 2018
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