

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. M. P. No. 1931 of 2016

S.M. Jain @ Shetan Mal Jain	...		Petitioner
Versus			
1. The State of Jharkhand			
2. The Union of India	...		Opp. Parties

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Petitioner	: Mr. Gulam Mustafa, Advocate
For the State	: Ms. Snehlika Bhagat, A.P.P.

Oral Order

05 / Dated : 10.04.2023

1. The instant criminal misc. petition has been filed for quashing the entire criminal proceeding including the order taking cognizance dated 05.10.2001 passed in Complaint Case No. 41 of 2001 whereby and whereunder, prima facie case has been found to be made out under Sections 276B read with 278B of Income Tax Act and Sections 409, 34 of IPC.

2. Prosecution case against this petitioner who was serving as Adviser Finance, and other officers of HEC is that TDS deductions were not remitted to Income Tax Department on time.

3. The complaint has been filed by the Union of India through Sebastian Kujur, Deputy Commissioner of Income Tax, Circle-II, Ranchi (In-charge of T.D.S). It is alleged that all the accused persons were responsible for deductions of tax from the payments of the contractors, employees and others of HEC, Ltd. It is alleged that deduction of tax was made by HEC, Ltd. from the payment of the contractors, employees and others during the financial years 1995-96, and thereafter on several occasions the accused persons have not deposited the deducted tax 2, within the stipulated period under the Income Tax Act, with the authority. A notice to that effect was issued to the accused. As per the complaint, the accused persons submitted a reply stating therein that there was a delay in remitting the TDS, as HEC was a sick organization. The explanation was rejected by the complainant and a penalty of Rs. 1,00,000/- was imposed under the Act. On this ground a complaint was filed alleging commission of offence under Sections 276-B read with Section 278 B of the Income Tax Act, and also under Section 409 read with Section 34 of the Indian Penal Code.

4. The learned Special Judge, Economics Offences, on receipt of the complaint, vide order dated 05.10.2001, had taken cognizance for offence under

Section 276-B read with Section 278 B of the Income Tax Act, and also under Section 409 read with Section 34 of the Indian Penal Code and issued summons to the petitioner and others.

5. Challenging the said order the petitioner has moved this Hon'ble Court.

6. The main ground taken by the petitioner is that he is neither an employee of HEC, Ltd., nor he is responsible for collection of tax, on behalf of the HEC, from any contractors, employees or others. He was a retainer and not a regular employee and not responsible for deducting tax from any one. It is also his case that he is not responsible for depositing any amount as tax on behalf of the HEC, Ltd. It has been submitted that the complaint petition clearly suggests that the petitioner is merely an advisor. It is submitted that the petitioner is an independent consultant hired by HEC, Ltd., on contractual retainer-ship basis, for the purpose of improving the system of finance and costing. It has been further submitted that in terms of the Income Tax Act, this petitioner can never be held responsible for the alleged offence committed by the company or its employees. He submits that on the aforesaid facts no offence under the provision of I.P.C is made out against the petitioner.

7. Offences under IPC will also not be made out, as the criminal intention can be imputed on his part in the delay in remittance of the TDS amount to HEC.

8. Lastly, learned counsel submits that, several cases of different transaction on account of delay/non-deposit of amount after tax deduction were pending before this Court and one of them, being Complaint Case No. 28 of 2001, was quashed vide order passed in Cr. M.P. No. 1570 of 2014 by this Hon'ble Court..

9. Landed APP has opposed the quashing petition. He further submits that this petitioner being the Advisor can definitely be held vicariously liable. Counsel for the department admitted the fact that this petitioner is not an employee of HEC, but has been hired for the purpose of improving the system of finance and costing.

10. After going through the records, I find that it is an admitted fact that the petitioner is not an employee of HEC, Ltd. The petitioner being not the employee of HEC, never had any control over the affairs of the company including the liability of deducting tax from the employees or the contractor and 4 depositing the same with the department.

11. The petitioner neither falls within the definition of “Assessee”, “Principal Officer” nor an “Employee”. He was also not part and parcel of the management of HEC. The complaint also does not specify any overt act against the petitioner

nor it has a single sentence to the effect that the petitioner is responsible for any of the acts which can attract any penal consequences nor it mentions that he was responsible for the daily affairs of the company.

12. Further, I find that this Court after taking into consideration all these aspects has quashed issuance of summons and process against the petitioner in Cr. M.P. No. 1570 of 2014. The facts and points involved in this case are similar to that of Cr. M.P. No. 1570 of 2014.

This Court finds that there is no material to summon the petitioner in the instant case by the Court below. Accordingly, the order taking cognizance dated 05.10.2001 passed in Complaint Case No. 41 of 2001 under Sections 276B read with 278B of Income Tax Act and Sections 409, 34 of IPC is quashed and set aside.

Instant Cr. Misc. Petition is allowed. Pending I.A., if any, is disposed of.

(Gautam Kumar Choudhary, J.)

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