IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 8545 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8369 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8373 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8376 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8412 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8374 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8385 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8371 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8382 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8375 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8494 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8380 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8469 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8410 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8407 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8471 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 13762 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8551 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8368 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8470 of 2022
With
R/CRIMINAL MISC.APPLICATION NO. 8473 of 2022

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NAVRATNA ORGANISERS AND DEVELOPERS PVT. LTD. THRO MURLIDHAR M. TRIVEDI

Versus
STATE OF GUJARAT & ANR.

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Appearance:
MS VAIBHAVI K PARIKH(3238) for the Applicant(s) No. 1
MR.VARUN K.PATEL(3802) for the Respondent(s) No. 2
PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**

Date : 09/09/2024

COMMON ORAL ORDER

1. In this group of petitions, the petitioners have prayed to quash the proceedings of the Criminal Case, for the offence punishable under Section 276(CC) of the Income Tax Act, 1961.

2. The revenue lodged a complaint for non-filing of income tax return in a stipulated time, but filed belatedly. The revenue raised the contention that, whether there was willfulness in not filing returns on time, is a matter of fact, which could be ascertained only through appreciation of evidence, because there is statutory presumption prescribed under Section 278(E) of the Income Tax Act and it is incumbent on the part of the trial court to presume the existence of culpable mental state. Thus, the revenue opposed the petitions mainly on the ground that, the factual aspect about explanation of delay etc., cannot be dealt with by the High Court and it is a matter of trial.

3. On earlier occasion, when this Court assigned with the roster of quashing, these petitions were heard at length. Meanwhile, all the matters were listed again before this court for clarification on issue of law and posted for final order.

4. When matters were called out, this Court has drew the attention of learned counsel for the respective parties about the pendency of the identical issue before the Apex Court. In case of **D.M. Kathir Anand Vs. N.S. Phanidharan, Asstt. CIT (2023) 154, taxmann.com 52, Madras**, the Bench of the Madras High Court, considering the presumption clause as discussed above, inclined to quash the criminal complaint filed by the revenue. Against which, the petitioner D.M. Kathir preferred SLP Appeal (Cri.). No.9567 of 2023 (2023) 155 taxmann.com235(SC). The Apex Court while issuing notice, stayed the further proceedings of the criminal complaint filed by the revenue. The order of the Apex reads thus:

> “1. Mr. S. Ganesh and Mr. P. Wilson, learned senior counsel make submissions on behalf of the petitioner (assessee). They contend that the petitioner on his own volition had filed his return for the assessment year 2013-14, albeit delayed return, well before the assessment order dated 24th March, 2016 along with the payable tax. In fact the assessment order dated 24th March, 2016 (Annexure P-3) corresponds precisely to the self assessed tax and also the interest which

> the assessee had already remitted on late filing of the return.
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> 2. Yet the department has accorded sanction for prosecution of the assessee with the observation that there is a statutory presumption against him under Section 278E of the IT Act.
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> 3. It is submitted that there is no mens rea / intention to evade tax as the return and the payable tax with interest, was paid well before the assessment order and the return furnished by the assessee, was also accepted by the assessing officer.
>
> 4. Issue notice, returnable in four weeks.
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> 5. In the meantime, further proceedings are stayed."

5. In view of the pendency of the identical issue before the Supreme Court, learned Senior Counsel Mr. Hemani, requested that the matters may be adjourned till final disposal of SLP pending before the Supreme Court.

6. In view of the issue involved in the petitions and pendency of SLP on the identical issue, Registry is directed to list the matters after 6 months before the Bench having regular roster. This Court has not treated these matters as part-heard. Interim relief, if any, stands continue till then.

(ILESH J. VORA,J)

P.S. JOSH