IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.A. (SJ) No.284 of 2019

Ramanand Ram @ Ramannand Ram … Appellant
Versus
The Union of India through C.B.I. ... Respondent
With
Cr.A. (SJ) No.444 of 2019

Md. Ilyas Hussain @ Md. Illiyas Hussain … Appellant
Versus
The Union of India through Central Bureau of Investigation
... Respondent
With
Cr.A. (SJ) No.458 of 2019

Dhudheshwar Nath Singh @ Dudheshwar Nath Singh
… Appellant
Versus
The Union of India through CBI/SPE/Ranchi ... Respondent
With
Cr.A. (SJ) No.469 of 2019

Md. Sahabuddin Baig & Others … Appellants
Versus
The Union of India through C.B.I./SPE, Ranchi
... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Appellants : Mr. Rajendra Krishna, Advocate
Mr. Jay Shankar Tiwary, Advocate
For the Respondents : Mr. Prashant Pallav, D.S.G.I.
Ms. Shivani Jaluka, AC to DSGI

Order No:-36 Dated:-18-10-2024

I.A. No.7404 of 2023 of Cr.A.(SJ) No.458 of 2019

Heard the parties.

This interlocutory application has been filed invoking the jurisdiction of this court under Section 391 of the Code of Criminal Procedure with a prayer for exhibiting the judgment passed by the Hon'ble Supreme Court of India in Civil Appeal (S) No.3738-3739 of 2023 in which the appellant of this case was also the appellant before the Hon'ble Supreme Court of India and the

Commissioner of Income Tax (Central), Patna and another were the respondents.

Learned counsel for the appellant submits that the Assessing Officer of the Income Tax Department after taking note of the scam for which the appellant has been convicted by the impugned judgment of this appeal, added the amount of Bitumen which was received by the appellant but not delivered by the appellant and thereby the appellant misappropriated bitumen amounting to 44213.1 MT; as the income of the appellant for the year 1995-96 but the Hon'ble Supreme Court of India taking into consideration the fact that the words "other valuable article" finding place in Section 69A of the Income Tax Act, 1961" does not include Bitumen, hence did not approve the addition of the value of Bitumen misappropriated by the appellant, as the income of the appellant in the said year, by observing thus in paragraph-79 of the said judgment sought to be read into evidence, which reads as under:-

> "***79.*** *Bitumen may be found in small quantities or large quantities. If the "article" is to be found "valuable", then in small quantity it must not just have some value but it must be "worth a good price" (see Black's Law Dictionary) or "worth a great deal of money" (see Concise Oxford English Dictionary) and not that it has "value". Section 69-A would then stand attracted. But if to treat it as "valuable article", it requires ownership in large quantity, in the sense that by multiplying the value in large quantity, a "good price" or "great deal of money" is arrived at then it would not be valuable article. Thus, this Court would conclude that "bitumen" as such cannot be treated as a "valuable article". In view of these findings, this Court need not pronounce on Points III and IV. The appeals are allowed. The impugned judgment [D.N. Singh v. CIT, 2009 SCC OnLine Pat 689 : (2010) 324 ITR 304] will stand set aside and though on different grounds, the order by the Commissioner, Appeals deleting the addition made on the aforesaid basis will stand restored." (Emphasis supplied)*

Learned counsel for the appellant next submits that in paragraph-9 of the said judgment, the appellate authority of the Assessing Officer of Income Tax Department, in the appeal carried out by the appellant has found merit in the case of the appellant that except two Junior Engineers, the other had accepted the delivery. Hence, addition of Rs.1,04,71,720/- as income of the appellant from the misappropriated 'Bitumen' was ordered to be deleted. Of course, the same was set aside by Income Tax Appellate Tribunal and ultimately the matter came of before the Hon'ble Supreme Court of India has the appellants challenged the judgment of Income Tax Appellate Tribunal, before the Hon'ble Supreme Court of India. It is then submitted that the Hon'ble Supreme Court of India noticed that the following four points arise as mentioned in paragraph-28 of the said judgment, which reads as under.

> "**28.** *Applying the provision to the facts of the case, it is noticed that the points that arise are as follows:*
> ***I.*** *The question would arise, as to whether the appellant could be treated as the owner of the bitumen;*
> ***II.*** *The further question would arise, as to whether bitumen could be treated as other valuable articles;*
> ***III.*** *Thirdly, the question arises, as to how the value of the bitumen is to be ascertained;*
> ***IV.*** *Whether ITAT erred in passing contradictory orders qua Assessment Years 1995-1996 and 1996-1997, by orders passed on the same day and whether the facts were the same?"*

It is then submitted that though the Hon'ble Supreme Court of India did not pronounce in finding on point Nos. III and IV but set aside the judgment of the Income Tax Appellate Tribunal impugned before it, of course, on different grounds, but by allowing the appeal, the Hon'ble Supreme Court of India, approved the reasoning of the appellate authority of the income tax Department, wherein the said appellate authority, took note of the fact that except engineers, rest of the engineers accepted delivery of Bitumen by the appellant and which absolves the appellant of the charges. Hence, it is submitted that the said judgment of the Hon'ble Supreme Court of India be taken in evidence in exercise of Section 391 of the Code of Criminal Procedure.

Learned counsel for the C.B.I. on the other hand vehemently opposes the prayer. Learned counsel for the C.B.I., drawing the attention of this Court to the written reply filed by the CBI, submits that the appellant has been convicted for having misappropriated with the bulk Bitumen entrusted to him for transportation and in the said judgment, sought to be brought in evidence, by the appellant in this appeal, Hon'ble the Supreme Court of India, has in no way uttered even a word, which will even remotely indicate that the Hon'ble Supreme Court of India, in any manner, has indicated that the appellant has not committed misappropriation of the Bitumen.

Relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Rambhau & Another vs. State of Maharasthra** reported in **AIR 2001 SC 2120**, learned counsel for the C.B.I. submits that the Hon'ble Supreme Court of

India has reiterated the settled principle of law in the said case that Section 391 of the Code of Criminal Procedure, 1973 forms an exception to the general rule that an appeal must be decided on the evidence which was before the trial court and the powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice.

Learned counsel for the appellant submits that the Hon'ble Suprme Court of India in Civil Appeal No.3738-3739 of 2023 has held that the Bitumen is not a valuable good as mentioned in Section 69A of the Income Tax Act, 1961 and further that the appellant is not the owner of Bitumen. Hence, the said judgment is no way necessary for disposal of this appeal. Accordingly, it is submitted that this interlocutory application, being without any merit, be dismissed.

Having heard the submissions made at the Bar and after carefully going through the materials available in the record, it is appropriate to refer to Section 69A of the Income Tax Act, 1961 which reads as under:-

> "***69-A. Unexplained money, etc.—****Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or <u>other valuable article</u> and such money, bullion, jewellery or <u>valuable article</u> is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery, or <u>other valuable article</u> may be deemed to be the income of the assessee for such financial year."* (Emphasis supplied)

It is also appropriate to refer to Section 391(I) of Cr.P.C., 1973 which reads as under:-

> "***391. Appellate Court may take further evidence or direct it to be taken.—(1)*** *In dealing with any appeal under this Chapter, the Appellate Court, <u>if it thinks additional evidence to be necessary</u>, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate."* (Emphasis supplied)

The plain reading of section 391 of the Code of Criminal Procedure makes it abundantly clear that the condition precedent for exercising the said power by the appellate court is that; the court must think that the additional evidence sought to be adduced is necessary. Now coming to the facts of the case as already discussed above, the Hon'ble Supreme Court of India has set aside the judgment of Income Tax Appellate Tribunal not on any finding as to whether the appellant has misappropriated the Bitumen entrusted to him or not. Rather, the Hon'ble Supreme Court of India has set aside the judgment of Income Tax Appellate Tribunal on the different grounds that as Bitumen does not come under "the other valuable article" as finds place under Section 69A of the Income Tax Act, 1961, hence, the value of misappropriated Bitumen, by the appellant cannot be added as income of the appellant. In paragraph-63 of the said judgment, the Hon'ble Supreme Court of India has observed that the possession of the appellant at best is a shade better than that of a thief as the possession had its origin under a contract of bailment; so, the appellant could not have stated to be in possession of the Bitumen in his own right. Hence, in the considered opinion of this court in the said judgment, the Hon'ble Supreme Court of India has nowhere arrived at any finding as to whether the appellant misappropriated the Bitumen or not. Therefore, in the considered opinion of this Court, the judgment sought to be adduced as further evidence in terms of Section 391 of Cr.P.C., is not necessary for disposal of this appeal.

Accordingly, this interlocutory application, being without any merit, is rejected.

(Anil Kumar Choudhary, J.)

<u>Cr.A. (SJ) No.284 of 2019, Cr.A. (SJ) No.444 of 2019, Cr.A. (SJ) No.458 of 2019 and Cr.A. (SJ) No.469 of 2019</u>

List these appeals after a week.

(Anil Kumar Choudhary, J.)

AFR-Saroj/