



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 27TH DAY OF MARCH, 2026
BEFORE
THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR
CRIMINAL REVISION PETITION NO.100189 OF 2024
(397 OF Cr.PC/438 OF BNSS)

BETWEEN:

SMT. RAJANI W/O. LATE ASHOK LAD,
AGE: 49 YEARS,
PROP. VSL TRANSPORT COMPANY,
HOUSE OF LADS, PALACE ROAD,
SANDUR, BELLARY DISTRICT-583119.

...PETITIONER

(BY SRI CHIDANAND URS, ADV. FOR
SRI SHASHANK S HEGDE, ADVOCATE)

AND:

THE ASSISTANT COMMISSIONER OF
INCOME TAX, CIRCLE -1, BELLARY-583101.

RESPONDENT

(BY SRI THIRUMALESH, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED U/S.397 R/W.401 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO EXAMINE THE ORDER PASSED BY II ADDITIONAL CIVIL JUDGE AND JMFC, BALLARI ON APPLICATION FILED BY THE PETITIONER UNDER SECTION 227, 239 R/W. SECTION 245(2) OF CR.P.C. IN C.C.NO.246/2015 DATED 29TH FEBRUARY, 2024 FOR THE OFFENCE U/S.276 C OF INCOME TAX ACT AND CONSEQUENTLY SET ASIDE VIDE ANNEXURE-G BY ALLOWING THIS PETITION AND ETC.

THIS PETITION COMING ON FOR DICTATING ORDERS,
THIS DAY ORDER WAS MADE THEREIN AS UNDER:



CORAM: THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

ORAL ORDER

This criminal revision petition is filed under Section 397 of Code of Criminal Procedure (Cr.P.C.)/438 of the Bharatiya Nagarika Suraksha Sanhita, 2023 (BNSS), praying to set aside the order as per the prayer made in the petition as follows:

"PRAYER

Wherefore, the petitioner prays that this honourable court be pleased to:

- A. Examine the order passed by II Addl. Civil Judge & JMFC, Ballari on application filed by the petitioner under Section 227/239 R/W. Section 245(2) of Cr.P.C. in CC.No.246/2015 dated 29th February, 2024 for the offence under Section 276 C of Income Tax Act and consequently set aside vide Annexure – G by allowing this Petition,*
- B. To pass such other orders as may be deemed expedient in the circumstances of the case and in the interest of justice.*

2. The respondent/department herein has initiated criminal proceedings under Section 276C(2) of the Income Tax Act, 1961 (IT Act, 1961) before the II Additional Civil Judge and JMFC, Ballari, on the ground that the



petitioner/assessee should have paid self-assessment tax of Rs.33,77,654/-, which is her admitted income in her income tax returns filed for the assessment year 2009-10, before filing the income tax returns as per Section 140A of the IT Act, 1961. After scrutinizing the assessment under Section 143(2) of the IT Act, 1961, the tax payable was re-determined at Rs.51,90,530/- and the same was communicated to the petitioner/assessee, but the petitioner failed to respond to the show cause notice. Hence, the criminal proceedings were initiated for the offence under Section 276C(2) of the IT Act, 1961.

3. Thereafter, the petitioner/assessee has paid the differential amount of tax and rectified the mistake and the respondent/department had also issued a certificate of clearance stating that the petitioner has paid entire tax amount and no tax was due for the assessment year 2009-10; therefore, the complainant/petitioner has filed an application for discharge under Sections 227/239 read with



Section 245(2) of the Cr.P.C., but the same was dismissed. Hence, the petitioner/assessee has preferred this criminal revision petition.

4. Heard the arguments from both the learned counsel appearing for the parties and perused the materials available at this stage.

5. Learned counsel appearing on behalf of the petitioner/assessee submitted that the petitioner/assessee has paid the balance tax amount as determined by the respondent/department and has also issued a certificate of clearance on 13.04.2022 and no tax amount was due so as to proceed with the trial. Hence, prays to quash the proceedings. Further submitted that there is no culpable mental status on the part of the petitioner/assessee to evade of tax. Therefore, when the petitioner/assessee has paid entire tax amount as determined by the respondent/department after the petitioner/assessee had



determined herself, there is no question of trial on culpable mental status. Therefore, prays to quash the proceedings.

6. On the other hand, learned counsel for the respondent/department submitted that though the petitioner/assessee has paid the entire tax amount due as per the determination made by the respondent/department, still the petitioner/assessee had an element of mental status for avoiding payment of tax, which amounts to evasion of tax and for this, trial is necessary. Hence, prays to dismiss the petition.

7. The petitioner/assessee has determined herself and has made self-assessment tax of Rs.33,77,654/-, which is her admitted income in her income tax returns filed for the assessment year 2009-10 before filing the income tax returns as per Section 140A of the IT Act, 1961. Thereafter, upon scrutinizing the assessment under Section 143(2) of the IT Act, 1961, the respondent/department, upon re-determination of the tax payable, assessed at



Rs.51,90,530/- and therefore, issued a show cause notice to the petitioner/assessee. But the petitioner/assessee had not responded to the said show cause notice, therefore, the respondent/department initiated proceedings under Section 276C(2) of the IT Act, 1961. The said criminal proceedings challenged in Crl.p.No.101499/2017 between Smt. Rajani w/o. Ashok Lad Vs. The Assistant Commissioner under Section 482 of Cr.P.C. before this Court, but this Court dismissed the said petition.

8. After dismissal of the said petition, the petitioner/assessee has rectified herself and paid the difference amount of tax to the respondent/department. Thereafter, the petitioner/assessee has paid net tax amount of Rs.46,47,187/- to the respondent/department and the respondent/department has issued a clearance certificate in this regard. Accordingly, the respondent/department has issued a certificate of rectification under Section 154 of the



IT Act, 1961, and as per this, the net tax amount payable by the petitioner/assessee for the year 2009-10 is nil.

9. When this being the fact, the petitioner/assessee has paid the entire tax amount and there is no tax payable amount due to the respondent/department. Hence, the petitioner has filed an application under Section 239/227 of Cr.P.C. for discharge, but is dismissed. It is under challenge in this petition.

10. The only thing remains to be considered here is regarding the culpable mental status. Just because there is a difference in payment of tax that alone cannot always be termed as the petitioner/assessee having culpable mental status. This Court, in the case of ***CONFIDENT PROJECTS (INDIA) PVT. LTD. AND OTHERS VS. INCOME-TAX DEPARTMENT***¹ has observed at Paragraph Nos.10, 10.1, 10.2 and 10.3 as follows:

¹ (2021) 433 ITR 147 (Kar)



"10. Answer to point No. 3 : Whether the delayed payment of Income-tax would amount to evasion of tax or not ?

10.1 This question is no longer res integra inasmuch as this Court in Crl. P. No. 4891 of 2014 (Vyalikaval's case) has held that delayed payment of Income-tax would not amount to evasion of tax. Applying the same principle to the present fact situation, the delay caused by the petitioner-company in making payment of the Income-tax cannot be said to be evasion.

10.2 The fact remains that Income-tax has been paid and the authorities have received the necessary taxes. If at all, for the said delay, there could be an interest component which could have been levied.

10.3 Hence, I answer point No. 3 by holding that delayed payment of Income-tax would not amount to evasion of tax, so long as there is payment of tax, more so far the reason that in the returns filed there is an acknowledgment of tax due to be paid."

11. Therefore, the delayed payment of tax would not amount to evasion of tax unless it is attended by culpable mental status. In the present case, the petitioner/assessee has paid the entire tax amount to the extent determined by the respondent/department.



12. Further, this Court in the case of **VYALIKAVAL HOUSE BUILDING CO-OPERATIVE SOCIETY LTD. AND OTHERS VS. INCOME-TAX DEPARTMENT**² has observed at Paragraph Nos.9 and 10 as follows:

9. *"In the instant case, the only circumstance relied on by the respondent in support of the charge leveled against the petitioners is that, even though the accused filed the returns, yet, it failed to pay the self-assessment tax along with the returns. This circumstance even if accepted as true, the same does not constitute the offence under section 276C(2) of the Act. The act of filing the returns by itself cannot be construed as an attempt to evade tax, rather the submission of the returns would suggest that petitioner No. 1 had voluntarily declared his intention to pay tax. The act of submitting returns is not connected with the evasion of tax. It is only an act which is closely connected with the intended crime, that can be construed as an act in attempt of the intended offence. In the backdrop of this legal principle, the hon'ble Supreme Court in the case of Prem Dass v. ITO [1999] 236 ITR 683 (SC), has held that a positive act on the part of the accused is required to be established to bring home the charge against the accused for the offence under section 276C(2) of the Act.*

10. *In the case on hand, the conduct of petitioner No. 1 making payments in terms of the returns filed by it, though delayed and made after coercive steps were taken by the department do not lead to the inference that the said payments were made in an attempt to*

² (2020) 428 ITR 89W (Kar)



evade tax declared in the returns filed by it. Delayed payments, under the provisions of the Act, may call for imposition of penalty or interest, but by no stretch of imagination, the delay in payment could be construed as an attempt to evade tax so as to entail prosecution of the petitioners for the alleged offence under section 276C(2) of the Act. In that view of the matter, the prosecution initiated against the petitioners, in my considered opinion, is illegal and tantamount to abuse of process of court and is liable to be quashed.

For the aforesaid reasons, the petitions were allowed. The proceedings initiated against the petitioners in C. C. No. 94 of 2014 and C. C. No. 95 of 2014 pending before the Special Court (Economic Offences) Bengaluru are quashed. It is made clear that this order shall not come in the way of the Department taking necessary steps for recovery of the tax, if any, due and payable by the petitioners in accordance with law."

13. Therefore, mere delay in payment of tax after the coercive steps taken cannot always be a matter of drawing an inference that the petitioner/assessee was having culpable mental status for evasion of tax. At the most, if there is any delay in payment of tax, then the interest, penalty and other charges may be imposed.



14. In the present case, as per the certified copy of the rectification, the interest, cess and surcharge are levied and the difference of tax of payment was Rs.46,47,187/- and this amount was paid by the petitioner/assessee; therefore, as per the principles of law laid down by this Court as above discussed, when the petitioner/assessee has made full payment of tax, there are no ingredients available for trial in proving the culpable mental status. Therefore, continuation of proceedings is futile exercise. Hence, the proceedings initiated against the petitioner/assessee are liable to be quashed. Thus, the revision petition is liable to be allowed.

15. In the result, I proceed to pass the following:

ORDER

- i. The criminal revision petition is ***allowed***.
- ii. The order dated 29.02.2024 passed on interlocutory application filed under Section 227/239 read with Section 245(2)



of Cr.P.C. in C.C.No.246/2015 by the Court
of II Additional Civil Judge and JMFC,
Ballari, is hereby set aside.

iii. Therefore, the petitioner is discharged
from the offences foisted.

Sd/-
(HANCHATE SANJEEVKUMAR)
JUDGE