

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF OCTOBER, 2026

R

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.7772 OF 2019

C/W

CRIMINAL PETITION NO.7068 OF 2020

IN CRL.P NO.7772/2019:

BETWEEN:

1. SRI. K.R.PRADEEP,
S/O. SRI. K.N.RAMANARASIMHA SETTY
AGED ABOUT 58 YEARS
NO.859, 3RD BLOCK,
13TH MAIN, KORAMANGALA,
BANGALORE-560034.

...PETITIONER

(BY SRI. B.A. BELLIAPPA, ADVOCATE)

AND:

1. THE INCOME TAX DEPARTMENT
BY ITS DEPUTY DIRECTOR OF INCOME TAX (INV.)
UNIT-3 (3), C.R. BUILDING (ANNEXE),
QUEENS ROAD,
BENGALURU-560 001
(SRI. PRADEEP S.)

...RESPONDENT

(BY SRI. Y.V. RAVI RAJ, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE PROCEEDINGS IN C.C.NO.184/2019 FOR THE OFFENCE PUNISHABLE UNDER SECTION 35B OF THE WEALTH TAX ACT, PENDING ON THE FILE OF SPECIAL COURT FOR ECONOMIC OFFENCES, BENGALURU VIDE ANNEXURE-A.

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Location: HIGH
COURT OF
KARNATAKA

IN CRL.P NO.7068/2020:

BETWEEN:

1. SRI. K.R. PRADEEP
S/O K.N. RAMANARASIMHA SETTY
AGED ABOUT 59 YEARS
NO.859, 3RD BLOCK
13TH MAIN, KORAMANGALA
BENGALURU-560064.

...PETITIONER

(BY SRI. B.A. BELLIAPPA, ADVOCATE)

AND:

1. THE INCOME TAX DEPARTMENT
BY ITS DEPUTY DIRECTOR OF INCOME TAX (INV.)
UNIT-3(3), C.R.BUILDING (ANNEXE)
QUEEN'S ROAD
BENGALURU-560001.

...RESPONDENT

(BY SRI. Y.V. RAVI RAJ, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.PC PRAYING TO SET ASIDE THE ORDER PASSED BY THE COURT OF THE SPL.COURT (ECONOMIC OFFENCES) BENGALURU DATED 11.11.2020 IN C.C.NO.173/2018 REGISTERED FOR OFFENCE PUNISHABLE UNDER SECTION 277 OF THE INCOME TAX ACT 1961 AND 193 OF THE IPC AT ANNEXURE-A BY ALLOWING THE APPLICATION UNDER SECTION 245(1)(2) OF THE CODE OF THE CRIMINAL PROCEDURE AND DISCHARGE THE PETITIONER IN C.C.NO.173/2018 FOR THE OFFENCE PUNISHABLE UNDER SECTION 277 OF THE INCOME TAX ACT 1961.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.10.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

Heard learned counsel appearing for the petitioner and learned counsel appearing for the respondent.

2. The prayer is sought in Crl.P.No.7772/2019 to quash the proceedings in C.C.No.184/2019 for the offences punishable under Section 35B of the Wealth Tax Act, 1957, pending on the file of the Special Court (Economic Offences), Bangalore at Annexure-A, wherein cognizance was taken for the offence and issued summons.

3. The prayer is sought in Crl.P.No.7068/2020 to set aside the order passed in C.C.No.173/2018 dated 11.11.2020 for the offences punishable under Section 277 of the Income Tax Act, 1961 and Section 193 of IPC before the Special Court for Economic Offences, Bangalore rejecting the application filed for discharge at Annexure-A and consequently, allow the application filed under Section 245(1)(2) of the Code of Criminal Procedure.

4. The factual matrix of case of the prosecution in Crl.P.No.7772/2019 is that the respondent-complainant had filed a private complaint under Section 200 of Cr.P.C. before the learned Magistrate against the petitioner for the offence

punishable under Section 35B of the Wealth Tax Act, 1957. The Trial Court dispensed the sworn statement of complainant, since the complainant is a public servant. Having received the sanction accorded by the Principal Director of Income Tax (Investigation) Bangalore, filed the complaint. Having perused the averments of complaint and contents of annexed documents filed along with complaint, an order is passed under Annexure-A, wherein the Trial Court comes to the conclusion that search was conducted on 13.10.2027 and it reveals that though accused is having found the wealth exceeding the maximum amount, he had not filed the wealth tax returns. The accused deliberately and willfully failed to file the wealth tax return for the assessment year 2012-2013 with the intention to evade the tax. Hence, comes to the conclusion that it attracts Section 35B of the Wealth Tax Act, 1957 and issued summons and therefore, the very proceedings initiated against the petitioner is challenged.

5. Learned counsel appearing for the petitioner produced copy of the complaint as Annexure-B and in paragraph No.9, an allegation is made that accused failed to produce any proof for having filed wealth tax returns and so also, in paragraph No.10, it is contended that sworn statement

of the accused was recorded and he admitted that he had not filed wealth tax returns. So also, in paragraph No.11 taken note of filing of returns as contemplated under Section 14(1) of the Wealth Tax Act, 1957 and he did not file returns within due date. Hence, invoked the particular offence.

6. In Crl.P.No.7772/2019, learned counsel appearing for the petitioner would vehemently contend that prosecution could not have been launched without a net wealth and tax payable determined on regular assessment. The Court below failed to appreciate that while taking cognizance and issuance of summons and the authority which accorded sanction was not clothed with the power to issue sanction. The other ground urged is that scheme of the Act provides the Authorized Officer conducting a search and seizure to handover the seized materials to the Assessing Officer having jurisdiction over the assessee and it is contended that prosecution is barred by limitation. Hence, taking of cognizance is liable to be set aside. It is contended that search and seizure was under Section 37B of Wealth Tax Act, 1957 and issuance of notice under Section 14(2) and Section 17 of the Wealth Act, 1957 is mandatory for initiation of criminal action. The Court below failed to take note of non-issuance of notice and not following the procedure as

contemplated under Sections 14 and 17 of the Wealth Tax Act, 1957 which has resulted in grave prejudice to the petitioner. Even though there was no prima facie material, the Trial Court committed an error and without there being a regular assessment and determination of tax liability, there cannot be any prosecution. The Court below failed to note that in order to invoke Section 35B of the Wealth Tax Act, 1957 which deals with failure to furnish returns, the prosecution ought to have been made an assessment. Admittedly, no such exercise has been done by the department before launching prosecution. It is contended that the petitioner ought to have been discharged and there is no any presumption as to culpable mental state as contemplated under Section 35(O) of Wealth Tax Act, 1957.

7. It is the contention of learned counsel that the Court below committed an error in not considering the fact that Sanctioning Authority granted sanction without application of mind and without considering specific pleas raised in the various communications including the reply dated 06.03.2018 by the petitioner ought not to have given sanction when there was no assessment. Both under the Income Tax Act, 1961 and Wealth Tax Act, 1957, the assessment is made for each assessment year separately based on the returns filed for each

financial years preceding. Hence, the question of clubbing is also an erroneous approach and there are serious violation of statutory provisions. The mandatory requirement under Section 132 (9A) of the Income Tax Act, 1961 which stipulates that where the Authorized Officer has no jurisdiction over the person referred to therein, then he shall handover to the Assessing Officer having jurisdiction within a period of 60 days from the date on which the last of the authorization for search was executed. That if the department launches the prosecution without making any assessment, then the consequences would be without ascertaining whether there was a non-disclosure, without ascertaining whether assessee was amenable to wealth tax and without ascertaining these aspects, if the prosecution is launched, but assessment disclosed that there was no taxable wealth, assessee would have to face trial and ended in conviction. When assessment itself is barred by limitation and no possibility of determination of tax under the provisions of Wealth Tax Act, 1957. Hence, there cannot be any prosecution.

8. Learned counsel appearing for the petitioner in support of his argument brought to notice of this Court the very proviso to Section 35B of the Wealth Tax Act, 1957 with regard to if a person willfully fails to furnish returns in due time and in

the absence of any notice as contemplated, there cannot be any prosecution.

9. Per contra, learned counsel appearing for the respondent would submit that very initiation of proceedings under Section 35B of Wealth Tax Act, 1957 is for non-filing of returns as contemplated under Section 35B of Wealth Tax Act, 1957. The counsel would contend that in the complaint, specific averments are made in paragraph No.10 that income tax returns were not filed within due time. The counsel also brought to notice of this Court Section 35(O) of the Wealth Tax Act, 1957, wherein also there is a presumption as to culpable mental state. The Trial Court also while taking cognizance, passed a detailed order by applying judicious mind. Hence, it does not require any interference.

10. In Crl.P.No.7068/2020, prayer is sought to set aside the order dated 11.11.2020 passed in C.C.No.173/2018 rejecting the discharge application as per Annexure-A. Learned counsel appearing for the petitioner would vehemently contend that Section 279 of Income Tax Act, 1961 envisages that a person shall not be proceeded against for an offence under Sections 275A, 276, 276A, 276B, 276BB, 276C, 276CC, 276D,

277 or 278 except with the previous sanction of the Commissioner or Commissioner (Appeals) or the appropriate authority. Provided that the Chief Commissioner or, as the case may be, Director General may issue such instructions or direction, to the aforesaid income tax authorities as he may deem fit for institution of proceedings under this sub-section. Unless, there is a valid sanction issued by a competent officer, according sanction to prosecution, the Special Judge, who is empowered to take cognizance of the offence, would not be competent to take cognizance of the offence. In the case on hand, vide Annexure-A, an incompetent officer i.e., the Principal Director of Income Tax (Investigation) has accorded sanction which is one without jurisdiction. Therefore, a prior valid sanction is a prerequisite for initiation of proceedings and there cannot be any proceedings. The counsel also contends that under Scheme of Income Tax Act, 1961, under Section 132 of Chapter XIII, a search and seizure should be conducted and thereafter, the Assessing Officer should determine the tax liability after an enquiry, to determine the undisclosed income in relation to the assets that was seized during the search and the said proceedings cannot be said to be confiscatory in nature, but the object of this provision is to expedite the return

of seized assets after retaining what is due by way of tax. Without there being a determination of tax liability and a finding to the effect that the assessee has willfully attempted to evade tax, by denying the opportunity to reply to the show cause notice and participate in the enquiry, is arbitrary and in a haste, proceeded to launch prosecution.

11. The counsel also contend that an offence under Section 277 of Income Tax Act, 1961 could have been permitted only if, in the investigation where the amount of tax could have been "evaded" if the statement or account has been accepted as true and in the absence of such determination of the amount of evasion of tax, there cannot be a question of making false statement and committing an offence would not arise. The Court below has grossly erred in holding that quantification of evaded tax is not possible because the assessment is barred by limitation, when limitation under law is fundamental to initiate any criminal prosecution and therefore, the order rejecting the application is erroneous. The counsel also would vehemently contend that the Trial Court committed an error in dismissing the application and it requires interference.

12. Per contra, learned counsel appearing for the respondent in his argument brought to notice of this Court very proviso to Section 277(ii) of the Income Tax Act, 1961 particularly sub-clause (i) and (ii). The counsel would contend that there cannot be assessment when a false information and false details are given. The counsel brought to notice of this Court contents of the complaint, wherein specific allegations are made, particularly in paragraph No.5 of the complaint and the proviso under Section 276CC of Income Tax Act, 1961 is very clear with regard to penalizing the accused, if returns is not within due date and Section 277 of Income Tax Act, 1961 is for false statement and in complaint, specifically stated that false statement was made by the accused that he has no investment and not associated with any foreign companies and such statement given is a false statement. Hence, proceedings is initiated under Section 277 of the Income Tax Act, 1961.

13. In reply to this argument of learned counsel appearing for the respondent, learned counsel appearing for the petitioner would contend that only investment was made and the same is not an income. Hence, the counsel contends that there cannot be any proceedings and prays this Court to

set aside initiation of prosecution and discharge the accused by allowing the application.

14. However, Section 277 of the Income Tax Act, 1961 is very clear, if a person makes a statement in any verification under this Act or under any rule made there under, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable.

15. Having heard learned counsel appearing for the petitioner and learned counsel appearing for the respondent and also considering the relevant provisions, the points that would arise for consideration of this Court are:-

- (i) Whether the Trial Court committed an error in taking cognizance against the petitioner for the offences punishable under Section 35B of Wealth Tax Act, 1957 and whether it requires quashing of the proceedings as prayed in Crl.P.No.7772/2019?.
- (ii) Whether the Trial Court committed an error in dismissing the discharge application, in coming to the conclusion that sanction and filing of complaint is in accordance with law under Section 277 of the Income Tax Act, 1961.

Hence, there cannot be any discharge and whether such order requires interference as prayed in Crl.P.No.7068/2020?

(iii) What order?

Point No.(i):

16. Having considered the grounds which have been urged before this Court, the main contention of learned counsel appearing for the petitioner in Crl.P.No.7772/2020 is that prosecution could not have launched without a net wealth and tax payable determined on regular assessment and the sanction was also not clothed with the power to issue such sanction. So also, it is contended that search and seizure to handover seized materials to the Assessing Officer having jurisdiction over the assessee is barred by limitation. But, in the case on hand, it has to be noted that complaint is filed under Section 200 of Cr.P.C. invoking the offence punishable under Section 35B of the Wealth Tax Act, 1957 and particularly, an allegation is made in Annexure-B, complaint that during the course of search proceedings, statement of the accused was under Section 132(4) of the Income Tax Act, 1961 was recorded on 13.10.2017, wherein accused stated that jewellery found during the course of search is reflected in his wealth tax

returns and undertook to produce the same on 16.10.2017. However, accused failed to produce any proof for having filed the wealth tax returns as per Document No.6 i.e., the statement of the accused which is stated in paragraph No.9 of the complaint.

17. He also admitted in his statement on 24.11.2017 that he had not filed his wealth tax returns due to oversight and so also, in paragraph No.10 of complaint stated that he had not filed wealth tax returns and claimed that he has filed the same subsequent to search. In paragraph No.11 of the complaint stated that under Section 14(1) of Wealth Tax Act, 1957, he did not file the returns willfully and deliberately and Document No.8 is also referred to that effect. The Trial Court taken note of these are the averments made in the complaint and so also, dispensed recording of sworn statement. The document of proceedings of the Principal Director of Income Tax (Investigation) Bangalore dated 31.05.2019 is very clear that in paragraph No.5 of the order is very clear that petitioner is liable to be assessed under the Wealth Tax Act, 1957 as the different of net wealth and limit of basic net wealth exemption is much higher than the actual net wealth for the assessment years 2013-2014, 2014-2015 and 2015-2016 and also taken

note that assessee has not submitted the computation of net wealth tax for the assessment year 2012-2013. However, this Court has quashed the proceedings in respect of other assessment year is concerned in view of allowing of appeal i.e., for 2013-2014 and 2014-2015. But in respect of this proceedings is concerned, it is non-filing of returns as contemplated under Section 14(1) of the Wealth Tax Act, 1957 and the language of Section 35B of the Wealth Tax Act, 1957 is clear wherein it is said that once a taxpayer has committed default in filing the returns by due date, the prosecution proceedings under Section 35B of the Act could be initiated and pendency of any proceedings is no bar for initiation of prosecution proceedings.

18. This Court would like to rely upon judgment of the Apex Court in **SASI ENTERPRISES vs. ASSISTANT COMMISSIONER OF INCOME TAX** reported in **(2014) 5 SCC 139**. The Apex Court made an observation in this judgment that proviso Section 35B shall not even recognize the notice issued under Section 17 or under Section 14(2) of the Wealth Tax Act, 1957. The first and foremost contention of learned counsel appearing for the petitioner is that no notice was issued

and the same is mandatory cannot be accepted and the same is also considered in the proceedings itself.

19. It is also important to note that Apex Court also discussed in the said judgment that Section 276-CC of Income Tax Act, 1961 takes in sub-section (1) of Section 139, Section 142(1)(i) and Section 148. But, the proviso to Section 276CC takes in only sub-section (1) of Section 139 of the Act and the provisions of Section 142(1)(i) or 148 are conspicuously absent. Consequently, the benefit of the proviso is available only to voluntary filing of return as required under Section 139(1) of the Act. In other words, the proviso would not apply after deduction of the failure to file the return and after a notice under Section 142(1)(i) or 148 of the Act is issued calling for filing of the return of income. The proviso, therefore, envisages the filing of even belated return before the detection or discovery of the failure and issuance of notices under Section 142 or 148 of the Act. The above observation is in the context of the provisions of the Income Tax Act, 1961. The ratio of the judgment is equally applicable to the provisions of Wealth Tax Act, 1957, as the provisions of Section 35B of the Wealth Tax Act, 1957 is similar to the provisions of Section 276-CC of the Income Tax Act, 1961. Having considered the

said principle, it is very clear that intention of the legislature is to punish the person, who fails to furnish the returns voluntarily within due date, as prescribed under the provisions of law and it is very clear that the proceedings under Section 35B of Wealth Tax Act, 1957 is only for non-filing of returns within due date.

20. Learned counsel appearing for the respondent also contend that Section 35(O) of the Wealth Tax Act, 1957 and the legislation presumes existence of culpable mental state. The Apex Court also discussed the same in the very same judgment. The Court in a prosecution of offence like Section 276-CC, has to presume the existence of mens rea and it is for the accused to prove the contrary and that too, beyond reasonable doubt. Resultantly, the appellants have to prove the circumstances which prevented them from filing the returns. Hence, it is very clear that whether he had mens rea or not, the same is a matter of trial and there cannot be any quashing of proceedings when the offence was invoked under Section 35B of the Wealth Tax Act, 1957 and the same cannot be done at the preliminary stage of taking cognizance and initiation of proceedings. The proceedings initiated is also very clear, particularly in paragraph No.20 of the proceedings dated

31.05.2019 which is brought to notice of this Court by learned counsel appearing for the respondent that there was clear admission that wealth tax returns was not filed for the year 2012-2013 and the same is admitted. But, subsequently, he has filed wealth tax returns and this proviso under Section 35B of the Wealth Tax Act, 1957 is very clear that the same has to be filed within due date. When such being the case, the very contention of petitioner that Trial Court committed an error in taking cognizance and issuance of summons cannot be accepted.

21. The other contention of learned counsel for the petitioner is that initiation of proceedings is barred by limitation and there was no assessment and the said contention also cannot be accepted for the reason that returns was not filed within due date as contemplated under Section 14(1) of the Wealth Tax Act, 1957 and the very contention that the same is not assessed cannot be accepted and without filing the returns, there cannot be any assessment and the contention that the same is barred by limitation cannot be accepted for the reason that the same is mixed question of fact and law and there cannot be any proceedings also cannot be accepted for the reason that scope of Section 35B of Wealth Tax Act, 1957 is

very limited and the same is initiated for not filing the returns within a due date. The said contention was also taken note of before initiating the proceedings and giving sanction and whether issue of sanction is by competent authority or not and whether there is application of mind by the learned Judge also cannot be at the stage of taking cognizance and the said defence cannot be raised at the time of taking cognizance and the learned Judge has applied his judicious mind and proceeded in the matter. Hence, I answer point No.(i) as 'negative'.

Point No.(ii):

22. In Crl.P.No.7068/2020 challenge is made for rejecting the discharge application. The main contention of learned counsel appearing for the petitioner is also that Trial Court committed an error in considering the grounds which have been urged. It is not in dispute that on presentation of complaint, cognizance was taken that there are prima facie materials to proceed for the offence punishable under Section 277 of the Income Tax Act, 1961 and summons was issued. It is also not in dispute that evidence was recorded before charge by examining P.W.1 and documents Exs.P1 to P19 were also marked. It is also not in dispute that at the stage of framing of charge, an application is filed. The grounds urged in the

application is that there is no evidence in respect of evasion of tax. There is nothing on record to suggest that the answers given by the accused in the statement recorded on 17.01.2014 and 19.01.2018 are false. In fact, statements were not correctly recorded. On coming to know about the mistakes, they were immediately pointed out. The complainant without correcting the recording of errors filed the complaint and there is no prima facie basis to attract the ingredients of Section 193 of IPC.

23. The said application was resisted by the respondent contending that while recording the statement under Section 131 of the Income Tax Act, 1961 he has made false statement with regard to his association with companies, namely M/s. Smart Idea Group and M/s. Wide View International Group Limited. The sanction is valid and there is no lacuna in according sanction and whether it is valid or not cannot be considered at the time of discharge application. The statement which found to be liable attracts the penal consequences contemplated under Section 277 of the Income Tax Act, 1961 that he evaded amount sought to be invested and he does not speak about the quantum of amount sought to be evaded. Thus, 277(ii) of the Income Tax Act, 1961 squarely attracts the

present case. The accused failed to show anything contrary to the said evidences except bare denial.

24. Having considered the grounds urged in the application as well as the statement of objections, the Trial Court, particularly in respect of sanction is concerned, taken note of judgment of this Court in **D.K.SHIVA KUMAR vs. INCOME TAX DEPARTMENT** reported in **(2019) 12 TMI 533**, wherein it is held that "by virtue of notification dated 13.11.2014, the Principal Director of Income Tax is having the authority to accord the sanction". The first ground urged is that no sanction by competent authority and the Trial Court comes to the conclusion that the said contention cannot be accepted and answered the point No.1 regarding sanction and filing of complaint. While answering point No.2 also with regard to summoning of accused and also recording of sworn statement, when the accused was specifically asked about his association with any foreign company, but he has stated that he is associated only with company by name M/s. Pranava International Private Limited which is registered in Singapore. Apart from that, he is not associated with any other foreign company as Director or shareholder. But, department made reference to British Virgin Islands (BVI) through Foreign Tax

and Tax Research (FTTR) Division of Central Board of Direct Taxes (CBDT) New Delhi requesting for the details of association and investments of the accused in M/s. Smart Idea Group Incorporated and M/s. Wide View International Group Limited Companies registered in BVI. In response to that, the information was received under the provisions of the Tax Information Exchange Treaty between India and BVI. The information contained the Memorandum of Association and Articles of Association, Register of Shareholders of both companies and Register of Directors of M/s. Smart Idea Group Incorporated.

25. The Trial Court taken note of in paragraph No.12 that details disclose that the accused was a Director from 12.03.2007 to 19.03.2007 and shareholder of M/s. Smart Idea Group Incorporated which was incorporated on 28.02.2017 and struck off from the Register of Companies on 01.11.2008. The other information in respect of accused is that he is the shareholder of M/s. Wide View International Group Limited. The approximate value of the investment is Rs.22,00,000/-. After getting the information, once again summons under Section 131 of the Income Tax Act, 1961 was issued and the accused appeared and made his statement which was recorded on

19.01.2018. During the course of statement, the issue of his association with aforementioned companies was once again confronted to the accused. However, the accused specifically denied having any association with the said two companies. But, during the course of argument, learned counsel for the petitioner would submit that the same is only an investment and that is not the profit or an income. But, the very proviso is very clear that, if any false statements are made, then it attracts Section 277 of the Income Tax Act, 1961 and particularly, Section 277(ii) of the Income Tax Act, 1961 is against the undisclosed investments relevant to the assessment year 2007-2008 and whether this was intentional evasion of tax or not is a matter of evidence and at this stage, the Court cannot look into the same which is also the finding given by the Trial Court.

26. The other contention of learned counsel appearing for the petitioner is that no evidence as to quantification of tax and there is no finding or evidence to that effect. The ingredients of Section 277 of the Income Tax Act, 1961 not contemplates the same. The Court has to consider only the evidence produced by the complainant and if the same remains un-rebutted, it results in conviction of the accused and

thereafter, the Court has to frame charge and proceed with the trial. If not, the accused is to be discharged. That means, the evidence produced by the complainant is to be accepted and there cannot be any defence at the time of considering the discharge application and the same cannot be looked into whether there is an evidence as to quantification of tax and the Court has to take note whether any denial by the accused. When the statement was recorded under Section 131 of the Income Tax Act, 1961, he denied the investment in the companies located at foreign Country and Trial Court also taken note of document of Ex.P16 i.e., the details received from the CBDT, wherein it is mentioned that accused made the investment and admittedly, the accused not disclosed the same in the returns of income. Having taken note of the same, it is very clear that the accused has suppressed the very investment, but the quantum of evaded tax is not stated in the complaint. But, question is whether quantification of evaded tax is the essential ingredients to constitute the offence under Section 277 of the Income Tax Act, 1961.

27. The Trial Court also taken note of the said fact in paragraph No.19 i.e., the proviso to Section 277 of the Income Tax Act, 1961. Having considered the first part is concerned, it

speaks about evasion of tax, but in the second part, there is no mention with regard to evasion of tax. The Trial Court also made an observation that quantification is not possible because the assessment is barred by limitation. In case where the assessment is within time, the argument that without quantification of evasion, the prosecution is not maintainable under Section 277 of the Income Tax Act, 1961 is acceptable. In the complaint, it is stated that approximate value of investment is Rs.22,00,000/-. It is also to be noted that even without assessment order, the prosecution is maintainable and the first proviso is very clear regarding evasion of tax. But, in the case on hand, the offence alleged against the accused is that he had given a false statement and Section 277(ii) of the Income Tax Act, 1961 comes within the ambit of accusation made against the petitioner. When such reasoning is given, the grounds which have been urged by learned counsel appearing for the petitioner cannot be accepted and the Court has to take note of conjoint provisions of Section 277(i) and 277(ii) of Income Tax Act, 1961 and the very proviso to Section 277(ii) of the Income Tax Act, 1961 is very clear with regard to punishment i.e., in any other case with rigorous imprisonment for a term which shall not be less than three months but which

may extend to (two) years and with fine. The first part is also very clear that if a person makes a statement in any verification under this Act or under any rule made there under, or delivers an account or statement which is false. In the case on hand, the accused has made statement before the Authority under Section 131 of Income Tax Act, 1961, wherein he had denied his investment and also his role in foreign companies and investments, knowing fully well that he has made investments and is making a false statement and the same is a punishable offence. Therefore, the very argument of learned counsel appearing for the petitioner cannot be accepted.

28. The Trial Court in detail passed an order while rejecting the application and given the reasoning and also taken note of ingredients of the offence under Section 277 of the Income Tax Act, 1961 and so also statement made under Section 131 of the Income Tax Act, 1961 when he was summoned and his sworn statement was also recorded on 17.01.2014. Subsequently, after securing the information, once again, he was summoned under Section 131 of the Income Tax Act, 1961 and he made the statement on 19.01.2018 and once again, he made a false statement. When such being the case,

there cannot be any discharge. Hence, I answer point No.(ii) as 'negative'.

Point No.(iii):

29. In view of the discussion made above, I pass the following:

ORDER

The criminal petitions are ***dismissed***.

Sd/-
(H.P.SANDESH)
JUDGE

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