

(2019) 11 KAR CK 0006

In the Karnataka High Court

Case No : Criminal Revision Petition No. 955, 959, 969 Of 2019

D.K.Shivakumar

APPELLANT

Vs

Income Tax Department

RESPONDENT

Date of Decision : 12-11-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 4(h), 4(m), 20, 190, 190(1)(b), 190(1)(c), 195, 197, 227, 239, 245, 245(2), 300, 340
Income tax Act, 1961 — Section 2(2), 2(8), 2(16), 3, 3(3), 3A, 4, 20(1), 55, 116, 116(ba), 116(a), 116(b), 116(c), 116(d), 116(e), 116f, 116(g), 117(1), 120(4), 120(1)(2), 132, 132A, 132(4), 133, 139(1), 153(A), 216, 269UA(c), 276(c)(1), 271(iii)(i), 275A, 275B, 276, 276(1), 276A, 276B, 276BB, 276C, 276CC, 276(c)(1), 276D, 277, 277A, 277, 278, 278(6), 279, 279(1), 279(2)
Indian Penal Code, 1860 — Section 120B, 193, 199
Prevention Of Corruption Act, 1988 — Section 19
Prevention Of Food Adulteration Act, 1954 — Section 20
Central Sales Tax Act, 1956 — Section 2(d), 8(2), 8(3)(b), 8(1)(b)
Transfer Of Property Act, 1882 — Section 106
Constitution Of India, 1950 — Article 13, 20(2)

Citation : (2019) 11 KAR CK 0006

Hon'ble Judges : B.A.Patil, J

Bench : Single Bench

Advocate : B.V.Acharya, V. Chavan, G.Rajagopalan, Jeevan J. Neeralgi

Final Decision : Dismissed

Judgement

1. Criminal Revision Petition No.955/2019 has been preferred by petitioner-accused No.1, Criminal Revision Petition No.959/2019 has been preferred by petitioner-accused No.5, Criminal Revision Petition No.969/2019 has been preferred by petitioner-accused No.4 being aggrieved by the order passed on application filed under Section 245 of Cr.P.C. for discharge by LXXXI Additional City Civil and Sessions Judge, Bengaluru, in Special Criminal Case No.759/2018 dated 25.6.2019.

2. I have heard the learned Senior Counsel Sri.B.V.Acharya for Sri Aravind V.

Chavan in Criminal Revision Petition No.955/2019, Sri.A.Shankar, learned Senior Counsel for Sri.Shayam Sundar M.S. in Criminal Revision Petition No.959/2019, and Sri.Shashi Kiran Shetty for Smt.Latha S. Shetty in Criminal Revision Petition No.969/2019 and Sri.G.Rajagopalan, Additional Solicitor General, along with Sri. Jeevan J. Neeralgi, Senior Standing Counsel for respondent.

3. The factual matrix of the case of the prosecution is that Deputy Director of Income Tax Investigation, Bengaluru, lodged a complaint against the accused persons for having committed an offence punishable under Sections 276 (C)(1), 277, 278 of the Income Tax Act and also under Sections 193, 199 and 120B of Indian Penal Code. In the said complaint it is alleged that there is escapement of the income tax in the middle of the financial year and thereby they have committed the alleged offence. Earlier all the accused persons filed a criminal petition before this Court for quashing, but the same has been withdrawn with liberty to file an application for discharge.

Accordingly, application under Section 245(2) of Cr.P.C. was filed and to the said application, the respondent also contested by filing his objections. The learned Special Judge after hearing both the parties dismissed the application. Challenging the same, the petitioners-accused are before this Court.

4. It is the first contention of the learned Senior Counsel Sri.B.V.Acharya appearing for petitioner-accused No.1 that there is no valid sanction as contemplated under Section 279 of the Income Tax Act (hereinafter called as an 'Act'). In the instant case the sanction has been granted by Principal Director of Income Tax, but as per Section 279 of the Act, sanction has to be given only by Principal Commissioner who is heading the assessment wing, though there are two wings i.e. the investigation wing and assessment wing. It is his further submission that as per Section 279 of the Act no proceedings can be initiated for the offence under Sections 275A, 275B, 276, 276A, 276B, 276BB, 276C, 276CC, 276D, 277, 277A or 278 except with the previous sanction of the Principal Commissioner or the Commissioner or Commissioner (Appeals) or the appropriate authority. It is his specific contention that the intent of the legislation if it is taken as contemplated under Section 279 of the Act, the Principal Director of Income Tax is not having any authority. It is his further submission that though Section 2(16) of the Act defines the Commissioner and it includes the Commissioner of Income Tax or Director of Income Tax or a Principal Commissioner of Income Tax or a Principal Director of Income Tax under sub-section (1) of Section 117 of the Act, but the general definition does not have a legislative intent to include them under Section 279 of the Act. The Scheme of the Act if it is taken into consideration each word of the section has got its own intent and the definition clause not applicable and it cannot be read with inclusive clause or a power of the Director of Income Tax. It is his further submission that the trial without authority is going to vitiate the entire proceedings. The trial Court without looking into the said facts has come to a wrong conclusion and has wrongly dismissed the application filed by the

petitioner-accused. The sanction order passed is without jurisdiction. It is his further submission that in the absence of specific power to grant sanction under Section 279 of the Act, passing of sanction order is without jurisdiction. He further submitted that while reading the definition it should be remembered that certain expressions occurring in the Act and if the words starts with certain expressions as unless the context otherwise requires, then under such circumstances it is not mandatory that one should mechanically attribute to the said expression, the meaning assigned to it in the clause. Where the context does not permit or where the context requires otherwise, the meaning assigned to it in the said definition need not be applied. In order to substantiate his contention he relied upon the decision in the case of Printers (Mysore) Ltd. And another Vs. Assistant Commercial Tax Officer and Others reported in (1994) 2 SCC 434. It is his further submission that a definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. The meaning has to be given as assigned to it therein, unless the context otherwise requires. In order to substantiate his contention he relied upon the decision in the case of K.Balakrishna Rao and Others Vs. Haji Abdulla Sait and Others reported in (1980) 1 SCC 321. It is his further submission that if the above ratio is looked into the power has to be seen how the Principal Director of Income Tax is not contemplated under Section 279 of the Act and how it has authorized him to give the sanction is a fishy. It is his further contention that grant of proper sanction by a competent authority is a sine-qua-non for taking cognizance of an offence and trial without authority and without jurisdiction is a nullity. In order to substantiate his contention he relied upon the decision in the case of State of Karnataka through CBI Vs. C.Nagarajaswamy reported in (2005) 8 SCC 370. He further relied upon one more decision in the case of Nanjappa Vs. State of Karnataka reported in (2015) 14 SCC 186.

5. It is his further submission that at this stage there is no sanction. On that count now the case has to be closed and the accused has to be discharged. It is his further submission that subsequently they can obtain a proper sanction in accordance with law and file a fresh charge sheet. It is his further submission that the Circular given some authority, but it will not over-ride the statutory provision of law and no authority can be given to sanction by virtue of the Circular. It is his further submission that accused No.1 is a Cabinet Minister Rank and sanction cannot be given by any other authority except the Governor of the State who is competent to issue the sanction.

6. He further submitted that the present case itself is premature. He further submitted that the sanction order was passed on 28.5.2018 to prosecute in respect of the assessment for the year 2018-19. The financial year 2017- 18 is relevant to the assessment year 2018-19. It is his further submission that admittedly the search was conducted on 2.8.2017 and as per Section 139 (1) of the Act the due date for filing the return of income is 31.7.2018 or up to 30.9.2018 in case of the audit is required. When the filing of return of the Income Tax for the year 2018 is not completed, prior to that, the prosecution has

been initiated before the due date of filing of the return. In that light the prosecution proceeding are prematured. It is his further submission that the tax has been paid for the earlier years and subsequent tax has also been paid, then under such circumstances there was no question of Income Tax Authorities registering the case. It is his further submission that the finding of the tribunal is conclusive since no order has been passed by the tribunal, if the tribunal acquits, no offence survives under the Act. Under such circumstances, till the assessment is made, any penalty is imposed and if the order of the tribunal is not finalized, till then the initiation of the proceedings as against the petitioners-accused is not sustainable in law. In order to substantiate his contention he relied upon the decision in the case of K.C.Builders and Another Vs. The Assistant Commissioner of Income Tax reported in (2004) 2 SCC 731. On these grounds he prayed to allow the petition and to set aside the impugned order and discharge the accused.

7. The learned Sr. Counsel Sri.A.Shankar for Sri.Shyam Sundar M.S. appearing on behalf of petitioner- accused No.5 by reiterating the arguments advanced by the learned Senior Counsel Sri.B.V.Acharya submitted that no notice is issued to set the law into motion as contemplated under Section 153(A) of the Act and as such the proceedings initiated are premature. By referring to Section 55 of the Act, Principal Director is not having any authority to issue sanction. Section 116 of the Act gives who are all the persons appointed and having a control and called as the Income Tax Authorities. It is his further submission that the Principal Director of Income Tax being not competent person and acted contrary to the provisions of Section 279(1) of the Act. It is his further submission that in the absence of specific power granted under Section 279(1) of the Act, question of passing sanction order does not arise. In that light, entire proceedings are vitiated. He further contended that non-designated authority passing an order is void-ab-initio. In order to substantiate his contention he relied upon a decision in the case of A.K. Roy and Another Vs. State of Punjab and Others reported in (1986) 4 SCC 326. He further contended that Principal Director of Income Tax was included by virtue of amended provision to Section 216 of the Act with effect from 1.6.2013. Before amendment he was not included. When name of two authorities have been included, the legislative intent to give the power to pass sanction order was not inferred since the said name has not been included in Section 279(1) of the Act. It is his further submission that in the provisions of Sections 132, 132A, 133 of the Act however the name of the Principal Director and the Principal Commissioner together has been included. Non-inclusion in Section 279 of the Act clearly shows that no power has been given to him. The provisions of Section 2(16) of the Act are not applicable to get the jurisdiction by the Director of Income Tax Commissioner. It is his further submission that when two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense.

8. The respondent is relying upon the Notification dated 13.11.2014, but the said Notification has been challenged in the Writ Petition before this Court. It is his further submission that the administrative and special powers cannot be

delegated on the basis of the Notification when the statute itself is in existence and the said Notification has been issued not under Section 120(4) of the Act but it is under Section 120(1) and (2). It is his further submission that the Board cannot issue any such Notification of delegation of the power. The sanctioning power given does not corresponds to the provisions and Chapter-XIII (C) of the Act. It is his further submission that many Notifications have been issued by the Department, but therein what power has been entrusted has been specifically mentioned, but the Notification dated 13.11.2014 not in the form in which the Notifications have been earlier issued. If that part is taken into consideration, then it clearly goes to show that the power was not intended to be given to the Principal Director of Income Tax. The said Notification is observed and it is a omnibus Notification. On these grounds he prayed to allow the petition and to set aside the impugned order.

9. By supporting the arguments of the learned Senior Counsel, Sri.Shashikiran Shetty, learned Senior Counsel submitted that the written argument filed by the petitioner- accused No.4 has not been considered and the sanction order has been challenged. It is his further submission that sanction has been challenged in the writ petition before this Court and the stay has been granted. However he submitted that subsequently the Court has made a clarification to the effect that the stay is applicable only to the said case and not to other cases. It is his further submission that the Court below has not followed the procedure contemplated under Sections 340 and 195 of Cr.P.C. so as to bring home the guilt of the accused as contemplated therein. In the absence of such material the cognizance taken and the proceedings held are not maintainable and the same are liable to be set aside. On these grounds he prayed to allow the petition and to set aside the impugned order.

10. Per contra, Sri.Rajagopalan, Additional Solicitor General vehemently argued and submitted that earlier the present petitioners-accused filed criminal petition on the same grounds contending the same arguments, but the said criminal petitions have been withdrawn to file an appropriate application before the Court below for discharge. At this stage, they cannot urge the same grounds and contention before this Court. It is his further submission that in the application filed for discharge under Section 245 of Cr.P.C., the only ground available to the accused is that the charge is groundless and no case has been made out as against the accused if the entire material is unrebutted. When they have filed an application under Section 245 of Cr.P.C., other grounds are not available and they cannot urge those grounds except the grounds mentioned as contemplated under Section 245 of Cr.P.C. It is his further submission that the petitioners-accused have avoided the payment of tax. Whether they have avoided tax or not is a mixed question of law and fact which has to be considered only during the course of trial and the party will be having a right to adjudicate the same under Section 278(C) of the Act and it is the duty of the accused to prove the same. It is his further submission that the statement of the accused recorded under Section 132 of the Act can be used as an evidence and all the accused persons have given

their statement for having avoided the tax. Under the Income Tax Act it is the accused who has to prove that he was not having any intention to avoid the tax. That cannot be looked into at this premature stage. He further submitted that under Section 132(4) of the Act, all the proceedings are judicial proceedings and the language used under Section 197 of Cr.P.C. has to be looked into and Court is not having any bar to take the cognizance for the offence under Section 279 of the Income Tax Act and also under Section 120B and other section of the Indian Penal Code. It is his further submission that the language used in Section 197 of Cr.P.C., the Court cannot take the cognizance except with the previous sanction, but the act of accused No.1 is not falling within the category of a public servant while evading the tax and the said act has not been done in discharge of his official duty. Under the said circumstances the sanction as contemplated under Section 197 of Cr.P.C. is not applicable and the said ground urged in this behalf will also not come to the aid of the accused. It is his further submission that Section 2(16) of the Act defines the Commissioner. It includes a person appointed to be a Commissioner of Income Tax or a Director of Income Tax or a Principal Commissioner of Income Tax or a Principal Director of Income Tax.

11. It is his further submission that Section 116 of the Act gives the authorities of Income Tax and classes of Income Tax Authorities for the purpose of the said Act. As per Section 116(ba) of the Act, the Principal Directors of Income Tax or Principal Commissioners of Income Tax, Section 116(c) also says Directors of Income Tax or Commissioners of Income Tax or Commissioners of Income Tax (Appeals). In that context, if the scheme of the Act and hierarchy of the officials is taken into consideration, Act makes it clear that it covers the Principal Directors of Income Tax who is also having an authority. It is only distribution of work and sanction given by virtue of exercising the power is justifiable and the Director of Income Tax has rightly given the sanction. In that light, he submitted that the contention of the learned counsel for the petitioners is not sustainable in law.

12. It is his further submission that proceedings under the Income Tax Act is of a civil nature under the relevant statute and criminal prosecution on the same set of facts and circumstances will not come in the way. Adjudication proceedings and criminal proceedings are two independent proceedings and both can go on simultaneously and the proceedings under adjudication is not binding on the criminal proceedings. In order to substantiate his such argument he relied upon the decision in the case of Radheshyam Kejriwal Vs. State of West Bengal and Another reported in (2011) 3 SCC 581 and another decision of Madras High Court in the case of Krishnaswami Vijayakumar Vs. Principal Director of Income-tax (Inv.) Chennai reported in (2017) 88 Taxmann.com 114 (Madras). It is his further submission that the contention of the learned counsel for the petitioners that no proceedings can be initiated until and unless the adjudication proceedings are concluded is not correct proposition of law. Act does not prohibit institution of criminal proceedings under Section 276(C) and 277 of the Act though the adjudication proceedings are pending and have not finalized. In order

to substantiate his contention he relied upon the decision in the case of P.Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin reported in 1984 (Supp) SCC 437. It is his further submission that the provisions of Sections 195 and 197 of Cr.P.C. are not applicable to get a sanction since the proceedings before the Income Tax Authorities are considered to be judicial proceedings and the said provision is not referring to judicial proceedings. In order to substantiate his argument he relied upon the decision in the case of Lalji Haridas Vs. State of Maharashtra reported in (1964) 52 ITR 423 (SC).

13. It is his submission that by virtue of amendment three posts have been created and the Director of Income Tax is also one of them and he is also having equal powers to give the sanction. It is his further submission that there are internal guidelines given to the Director of Income Tax.

Whether he is having an authority or not is a matter of trial. At this juncture it cannot be held that he is not having any authority. It is his further submission that the Notification under which he has issued the sanction has been challenged before the Court but not finalised. In that light also the said contentions are not sustainable in law. On these grounds he prayed to dismiss the petitions.

14. I have carefully and cautiously gone through the submissions made by the learned counsel appearing for the parties and I have given my thoughtful consideration to the Citations quoted by the learned counsel appearing for the parties.

15. The first and foremost contention which was taken up by the learned Senior counsel for the parties are that when the search took place on 2.8.2017 as per Section 4 of the Income Tax Act, it was in the middle of the previous year and the assessment will be made from 1.4.2017 to 31.3.2018 and when the search took place, the total income for the entire previous year having not been computed, there is application to quantify the tax as per the rate fixed by the Finance Act and only after concluding the evasion of the tax as contended in the complaint as per Section 276(C)(1) of Income Tax Act arise. But in the instance case on hand without the said adjudicatory proceedings in the criminal proceedings having been initiated and as such the complaint itself is not maintainable in law.

16. It is not in dispute that the raid took place on 2.8.2017 and subsequently a private complaint has been filed and thereafter, after investigation the charge sheet has been filed as against the petitioners-accused.

17. The moot question which arise for consideration of the Court is that whether the proceedings initiated are going to vitiate the entire proceedings without concluding the adjudicatory proceedings under the Act.

18. I have carefully and cautiously gone through the Income Tax Act. Nowhere the Income Tax Act prohibits or restrict institution of criminal proceedings under Sections 276(C), 277 of the Income Tax Act.

19. This issue came up before the Hon'ble Apex Court in the case of Radheshyam Kejriwal Vs. State of West Bengal and Another quoted supra at paragraph Nos.37, 38 and 39 it has been observed as under;

37. We find substance in the submission of Mr Sharan. There may appear to be some conflict between the views in Standard Chartered Bank (1) [(2006) 4 SCC 278 : (2006) 2 SCC (Cri) 221] and L.R. Melwani [AIR 1970 SC 962 : 1970 Cri LJ 885 : (1969) 2 SCR 438] holding that adjudication proceedings and criminal proceeding are two independent proceedings and both can go on simultaneously and finding in the adjudication proceedings is not binding on the criminal proceeding and the judgments of this Court in Uttam Chand [(1982) 2 SCC 543 : 1982 SCC (Tax) 150] , G.L. Didwania [1995 Supp (2) SCC 724] and K.C. Builders [(2004) 2 SCC 731 : 2004 SCC (Cri) 1092] wherein this Court had taken a view that when there is categorical finding in the adjudication proceedings exonerating the person which is binding and conclusive, the prosecution cannot be allowed to stand. The judgments of this Court are not to be read as a statute and when viewed from that angle there does not seem any conflict between the two sets of decisions. It will not make any difference on principle that latter judgments pertain to cases under the Income Tax Act.

38. The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

39. In our opinion, therefore, the yardstick would be to judge as to whether the

allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.

20. On going through the said decision it makes it clear that the pendency of the assessment proceedings cannot act as a bar to institution of a criminal prosecution for the offences punishable under Section 276(1) or Section 277 of the Act. In the light of the discussion held by me above and the law laid down the first contention of the learned Senior counsels appearing for the parties does not survive for consideration.

21. Be that as it may. No provision of the Income Tax Act provides that a prosecution for the offence cannot be launched until reassessment proceedings are initiated against the assessee and are completed. They are two different proceedings and it has also been the law laid down by the Hon'ble Apex Court that the finding in the adjudication proceedings are not binding in the Criminal Court or if adjudication proceedings are decided on merits without contravention to the criminal proceedings and on the similar proceedings if a criminal proceedings have been launched, then under such circumstances it can be said to be abuse of process of the Court. Admittedly in the instant case, it is the specific contention of the petitioners that after the raid they have filed the returns and the assessment proceedings are to be held. When the criminal proceedings have been initiated in the first instance, thereafter the returns have been filed for the assessment year, then under such circumstances the contention taken up by the learned counsel appearing for the petitioners, that the proceedings initiated is premature before the assessment year is not tenable in law. Keeping in view the above said facts and circumstance, I am of the considered opinion that the contention raised by the learned Senior counsels appearing for the petitioners is not having any force, the same is liable to be rejected.

22. The second contention which has been taken up by the learned counsel appearing for the parties are that there is no valid sanction to prosecute the accused in this case.

23. Though several contentions have been raised by the learned Senior Counsel, they have not attach the sanction order dated 28.5.2018 with regard to the application of mind by the sanctioning authority and he has not gone through the records and he has mechanically issued the sanction order. The only attach which has been made is that the sanction order dated 28.5.2018 has been signed by Principal Director of Income Tax under Section 279(2) of the Act, there is no power to pass such sanction order under the said Section and in that light the sanction order is no sanction order and the entire proceedings are going to vitiate. It is further contended that if the sanction order is not issued by a Competent Authority, in that event the Court cannot take cognizance of the

offence. In this behalf they have relied upon the decision in the case of State of Karnataka through CBI Vs. C.Nagaraj Swamy quoted supra at paragraph No.25 it has been observed as under:

25. In view of the aforementioned authoritative pronouncements, it is not possible to agree with the decision of the High Court that the trial court was bound to record either a judgment of conviction or acquittal, even after holding that the sanction was not valid. We have noticed hereinbefore that even if a judgment of conviction or acquittal was recorded, the same would not make any distinction for the purpose of invoking the provisions of Section 300 of the Code as, even then, it would be held to have been rendered illegally and without jurisdiction.

24. He further relied upon the decision in the case of Nanjappa quoted supra at paragraph No.19 it has been observed as under.

19. The legal position was reiterated once more by this Court in State of Karnataka v. C. Nagarajaswamy [(2005) 8 SCC 370 : (2006) 1 SCC (Cri) 47] , wherein this Court summed up the law in the following words: (SCC pp. 377-78, para 25)

"25. In view of the aforementioned authoritative pronouncements, it is not possible to agree with the decision of the High Court that the trial court was bound to record either a judgment of conviction or acquittal, even after holding that the sanction was not valid. We have noticed hereinbefore that even if a judgment of conviction or acquittal was recorded, the same would not make any distinction for the purpose of invoking the provisions of Section 300 CrPC, 1973 as, even then, it would be held to have been rendered illegally and without jurisdiction."

25. They have also relied upon the decision in the case of Assistant Commissioner, Assessment-II, Bangalore and others Vs. Velliappa Textiles Ltd and Another reported in (2003) 11 SCC 405 quoted supra. At paragraph No.5 it has been observed as under:

5. At this stage, I consider it appropriate to clarify the legal position regarding grant of sanction for launching prosecution. Section 279 of the Act lays down that a person shall not be proceeded against for the offences enumerated in the section except with the previous sanction of the Commissioner or Commissioner (Appeals) or the appropriate authority. There are similar provisions in many other statutes which put an embargo on the power of the court to take cognizance of the offence except with the previous sanction of the competent authority provided in the statute like Section 197 of the Code of Criminal Procedure, Section 19 of the Prevention of Corruption Act or Section 20 of the Prevention of Food Adulteration Act. The basic idea behind such provision is to save persons from frivolous or malicious prosecutions instituted by private persons, who may do so on account of business rivalry or feeling hurt on account of any action taken by a public servant in discharge of his official duty. Anyone

can set the machinery of law into motion by either lodging an FIR or filing a complaint in court. The Magistrate can take cognizance of the offence under Section 190(1)(b) CrPC in the former case if the police, after investigation, submits a charge-sheet and in the latter case under Section 190(1)(c) CrPC. In order to protect persons from unnecessary prosecutions and consequent harassment that a provision for sanction is made. The sanction to prosecute is undoubtedly an important matter and it constitutes a condition precedent to the institution of the prosecution. For a valid sanction, it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is desirable that the facts should be referred to on the face of the sanction, but this is not essential. If the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must, in the course of the trial, prove by extraneous evidence that those facts were placed before the sanctioning authority and the authority after applying his mind to the relevant facts had accorded the sanction. The authority giving the sanction should *prima facie* consider the evidence and all other attending circumstances before he comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden. But he is not required to hold any inquiry to satisfy himself as to the truth of facts alleged.

26. It is their further contention that when the statute itself does not provide any power and if the power has been given to the Principal Commissioner or Commissioner or Commissioner(Appeals) or the appropriate authority, the Principal Director of Commissioner is not entitled to issue the sanction order. It is their further contention that what has been stated in the section unless the context otherwise requires no other meaning can be given. In this behalf, they have relied upon the decision in the case of Printers (Mysore) Ltd. And another quoted *supra*, at paragraph No.18 it has been observed as under:

18. Now coming back to the amendment of the definition of "goods" in Section 2(d) of the Central Sales Tax Act, the said amendment, brought in with a view to bring the said definition in accord with the amendments brought in by the Constitution Sixth (Amendment) Act (referred to hereinbefore) was actuated by the very same concern, viz., to exempt the sale of newspapers from the levy of Central Sales Tax. The amendment was not intended to create a burden which was not there but to remove the burden, if any already existing on the newspapers - a policy evidenced by the enactment of the Taxes on Newspapers (Sales and Advertisements) Repeal Act, 1951. This concern must have to be borne in mind while understanding and interpreting the expression "goods" occurring in the second half of Section 8(3)(b). Now, the expression "goods" occurs on four occasions in Section 8(3)(b). On first three occasions, there is no doubt, it has to be understood in the sense it is defined in clause (d) of Section 2. Indeed, when Section 8(1)(b) speaks of goods, it is really referring to goods referred to in the first half of Section 8(3)(b), i.e., on first three occasions. It is only when Section 8(3)(b) uses the expression "goods" in the second half of the clause, i.e., on the fourth occasion that it does not and cannot be understood in

the sense it is defined in Section 2(d). In other words, the "goods" referred in the first half of clause (b) in Section 8(3) refers to what may generally be referred to as raw material (in cases where they were purchased by a dealer for use in the manufacture of goods for sale) while the said word "goods" occurring for the fourth time (i.e., in the latter half) cannot obviously refer to raw material. It refers to manufactured "goods", i.e., goods manufactured by such purchasing dealer - in this case, newspapers. If we attach the defined meaning to "goods" in the second half of Section 8(3)(b), it would place the newspapers in a more unfavourable position than they were prior to the amendment of the definition in Section 2(d). It should also be remembered that Section 2 which defines certain expressions occurring in the Act opens with the words: "In this Act, unless the context otherwise requires". This shows that wherever the word "goods" occurs in the enactment, it is not mandatory that one should mechanically attribute to the said expression the meaning assigned to it in clause (d). Ordinarily, that is so. But where the context does not permit or where the context requires otherwise, the meaning assigned to it in the said definition need not be applied. If we keep the above consideration in mind, it would be evident that the expression "goods" occurring in the second half of Section 8(3)(b) cannot be taken to exclude newspapers from its purview. The context does not permit it. It could never have been included by Parliament. Before the said amendment, the position was - the State could not levy tax on intra-State sale of newspapers; the Parliament could but it did not and Entry 92-A of List I bars the Parliament from imposing tax on inter-State sale of newspapers; as a result of the above provisions, while the newspapers were not paying any tax on their sale, they were enjoying the benefit of Section 8(3)(b) read with Section 8(1)(b) and paying tax only @ 4% on non-declared goods which they required for printing and publishing newspapers. Their position could not be worse after the amendment which would be the case if we accept the contention of the Revenue. If the contention of the Revenue is accepted, the newspapers would now become liable to pay tax @ 10% on non-declared goods as prescribed in Section 8(2). This would be the necessary consequence of the acceptance of Revenue's submission inasmuch as the newspapers would be deprived of the benefit of Section 8(3)(b) read with Section 8(1)(b). We do not think that such was the intention behind the amendment of definition of the expression "goods" by the 1958 (Amendment) Act. Even apart from the opening words in Section 2 referred to above, it is well settled that where the context does not permit or where it would lead to absurd or unintended result, the definition of an expression need not be mechanically applied. [Vide T.M. Kannian v. ITO [(1968) 2 SCR 103 : AIR 1968 SC 637 : 68 ITR 244] , Pushpa Devi v. Milkhi Ram [(1990) 2 SCC 134, 140] (para 14) and CIT v. J.H. Gotla]

27. They have also relied upon the decision in the case of K.Balakrishna Rao and Others quoted supra at paragraph No.24 it has been observed as under:

24. A definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. The opening

clause of Section 2 of the principal Act itself suggests that any expression defined in that section should be given the meaning assigned to it therein unless the context otherwise requires. The two-fold reasoning of the Division Bench for holding that the building in question was not a 'buildine' is that on June 10, 1964 (i) there was no lease in force and hence it was not let, and (ii) that on that date the plaintiff had no intention to lease it and therefore it was not to be let. We are of the view that the words "any building . . . let . . .", also refer to a building which was the subject- matter of a lease which has been terminated by the issue of a notice under Section 106 of the Transfer of Property Act and which has continued to remain in occupation of the tenant. This view receives support from the definition of the expression "tenant" in Section 2(8) of the principal Act which includes a person continuing in possession after the termination of the tenancy in his favour. If the view adopted by the Division Bench is accepted then it would not be necessary for a landlord to issue a notice of vacancy under Section 3 of the principal Act when a building becomes vacant by the termination of a tenancy or by the eviction of the tenant when he wants to occupy it himself. In law he cannot do so. He would be entitled to occupy it himself when he is permitted to do so under Section 3(3) or any of the provisions of Section 3-A of the principal Act. This also illustrates that the view of the Division Bench is erroneous. We, therefore, hold that the building in question was a "building" within the meaning of that expression in Section 2(2) of the principal Act on the date on which Section 3 of the Amending Act became operative.

28. They have also relied upon the decision in the case of A.K. Roy and Another quoted supra at paragraph No.10 it has been observed as under:

10. A careful analysis of the language of Section 20(1) of the Act clearly shows that it inhibits institution of prosecutions for an offence under the Act except on fulfilment of one or the other of the two conditions. Either the prosecutions must be instituted by the Central Government or the State Government or a person authorised in that behalf by the Central Government or the State Government, or the prosecutions should be instituted with the written consent of any of the four specified categories of authorities or persons. If either of these two conditions is satisfied, there would be sufficient authority for the institution of such a prosecution for an offence under the Act. The provision contained in Section 20(1) of the Act does not contemplate the institution of a prosecution by any person other than those designated. The terms of Section 20(1) do not envisage further delegation of powers by the person authorised, except that such prosecution may be instituted with the written consent of the Central Government or the State Government or the person authorised. The use of the negative words in Section 20(1) "No prosecution for an offence under this Act ... shall be instituted except by or with the written consent of" plainly make the requirements of the section imperative. That conclusion of ours must necessarily follow from the well-known rule of construction of inference to be drawn from the negative language used in a statute stated by Craies on Statute Law, 6th Edn., p. 263 in his own terse language:

"If the requirements of a statute which prescribes the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases absolute, and that neglect to attend to them will invalidate the whole proceeding."

(emphasis supplied) Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the legislature in enacting Section 20(1) was to confer a power on the authorities specified therein which power had to be exercised in the manner provided and not otherwise.

I am not having any difference of opinion with regard to the ratio laid down in the said decisions.

29. It is the contention of the respondent that Principal Director of Income Tax has been authorized by Notification dated 13.11.2014 and he can exercise the power specified in column (4) of the said Schedule and perform the functions relating thereto in respect of the territorial areas of whole of India. It is not in dispute that the said Notification issued has been challenged before the Court, but the matter is pending for consideration. It is the contention of the learned Senior counsels for the petitioners that the said Notification is not in consonance with the earlier Notifications and it has been brought to the notice of this Court that earlier Notifications have specifically mentioned the power and functions of each of the Officers with reference to Section under which power has been given and in that light the Notification dated 13.11.2014 is not in conformity with the earlier Notifications.

30. Merely because similar Notification as issued earlier has not been issued is not the mandate of the law, no such guidelines have been issued to that effect. In that light, it is not going to take away the authority which has been given by virtue of the said Notification. Even as per Section 2(16) of the Act "Commissioner" has been defined and it reads as under:

2(16). "Commissioner" means a person appointed to be a Commissioner of Income-tax or a Director of Income-tax or a Principal Commissioner of Income - tax or a Principal Director of Income-tax under sub-section (1) of section 117;

31. Even under Section 116 of the Act it gives the list of Income Tax Authorities which reads as under:

"116. There shall be the following classes of income-tax authorities for the purposes of this Act, namely:-

(a) the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)

[(aa) Principal Directors General of Income-tax or Principal Chief Commissioners of Income-tax,]

(b) Directors-General of Income-tax or Chief Commissioners of Income-tax

[(ba) Principal Directors of Income-tax or Principal Commissioners of Income-tax,]

(c) Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals),

[(cc) Additional Directors of Income-tax or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax (Appeals),]

(cca) Joint Directors of Income-tax or Joint Commissioners of Income-tax,]

(d) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy Commissioners of Income- tax (Appeals),

(e) Assistant Directors of Income-tax or Assistant Commissioners of Income- tax,

(f) Income-tax Officers

(g) Tax Recovery Officers

(h) Inspectors of Income-tax.]"

32. By combined reading of these two sections, they clarify that the Commissioner means and includes the Director of Income Tax and Principal Director of Income Tax and the same meaning has to be given in this regard. I am conscious of the fact that what expressions have been given has to be used in the context in which they have been used. It is not the meaning of the persons authorized which is involved in this case, but whether he is having any authority to issue the sanction or not is involved. It is the specific contention of the petitioners that when a Statute or a particular section authorizes a person named therein, he is alone entitled to issue the sanction order and in that context the said Section 279 of the Act should be given the meaning assigned therein. But admittedly, the power has been derived to issue the sanction under the Notification dated 13.11.2014.

33. For the purpose of brevity, I quote Section 279 of the Act, which reads as under:

Prosecution to be at the instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

279(1): A person shall not be proceeded against for an offence under section 275A, section 275B, section 276, section 276A, section 276B, section 276BB, section 276C section 276CC, section 276D, section 277, section 277A or section 278 except with the previous sanction of the Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority:

Provided that the Principal Chief Commissioner or Chief Commissioner, as the case may be, Principal Director General or Director General may issue such

instructions or directions to the aforesaid income-tax authorities as he may deem fit for institution of proceedings under this sub- section.

Explanation.-For the purposes of this section, "appropriate authority" shall have the same meaning as in clause (c) of section 269UA.

(1A) A person shall not be proceeded against for an offence under section 276C or section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under section 270A or clause (iii) of sub- section (1) of section 271 has been reduced or waived by an order under section 273A.

(2) Any offence under this Chapter may, either before or after the institution of proceeding be compounded by the Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General.

(3) Where any proceeding has been taken against any person under sub- section (1), any statement made or account or other document produced by such person before any of the income-tax authorities specified in clauses (a) to (g)] of section 116 shall not be inadmissible as evidence for the purpose of such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived, under section 273A or that the offence in respect of which such proceeding was taken would be compounded.

Explanation.- For the removal of doubts, it is hereby declared that the power of the Board to issue orders, instructions, or directions under this Act shall include and shall be deemed always to have included the power to issue instructions or directions (including instructions or directions to obtain the previous approval of the Board) to other income-tax authorities for the proper composition of offences under this section.

34. In the decision of K.Balakrishna Rao and others quoted supra observed that any expression defined in that section should be given the meaning assigned to it therein unless the context otherwise requires. These sections should be read in continuation with definition and further sections of a statute. It is well settled principles that whenever any confusion or doubt arises in any of the sections, definition clause should be looked to give a proper and exact meaning contained in the statute. In that light, Sections 2(16) and 279 has to be read together.

35. Be that as it may. Under Article 13 of the Constitution of India, there also the interpretation of unless the context otherwise has been interpreted. "Law" has been defined and it includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India, the force of Law. When the said Notification has been challenged and not yet finalized with regard to legality or otherwise, in that light, Notification dated 13.11.2014 as per Article 13 of the Constitution of India is having a force of law and by virtue of the said authority, if the sanction has been issued by the Principal Director of

Commissioner, then under such circumstances, it cannot be held that he is not having any authority to issue the sanction order. While seeing the intention and otherwise of the enactment, subsequent notification, amendments, ordinance and other aspects have to be seen conjointly. They cannot be read independently. In that light, the contention taken up by the petitioners is not having any force. As per the recent Act also some other authorities have also been included in the said Section. In that light, it is not the Principal Commissioner alone who is having the authority. By virtue of Notification the Principal Director of Income Tax will also act as an authority as observed above.

36. I am conscious of the fact that, if the sanction is invalid on any of the grounds, then under such circumstances, sine-qua-non taking the cognizance of the offence itself is going to vitiate the entire proceedings. When the sanction order has been challenged on any other grounds and the only ground raised is that it has been issued by a non-competent authority and if by virtue of Notification any authority has been given, then under such circumstances it cannot be held that the sanction has not been granted by a proper and a competent authority. In that light, the contention taken up by the learned counsel appearing for the parties is not having any force and the same is liable to be rejected.

37. Be that as it may. Ordinarily the question as to whether a proper sanction has been accorded for the prosecution of the accused or not will be dealt with at the stage of taking the cognizance. However, subsequently, it has been observed that the said contention can be taken at the earliest stage. But even at appellate stage, the same can be raised. Though Section 279 of the Act starts with non-obstante clause, the said error or omission is not considered to be a illegality, but it will be only irregularity. If it is irregularity, then it will not amounts to failure of justice and even it has been observed by the Hon'ble Apex Court, subsequently the sanction can also be obtained for prosecuting the accused. This proposition of law has been laid down by the Hon'ble Apex Court in the case of Anil Kumar and Others Vs. M.K.Aiyappa and another reported in (2013)10 SCC 705 and even in the case of Nanjappa quoted supra at paragraph No.23.5 it has been observed as under:

23.5. The rationale underlying the provision obviously is that if the trial has proceeded to conclusion and resulted in a finding or sentence, the same should not be lightly interfered with by the appellate or the revisional court simply because there was some omission, error or irregularity in the order sanctioning the prosecution under Section 19(1). Failure of justice is, what the appellate or revisional court would in such cases look for. And while examining whether any such failure had indeed taken place, the Court concerned would also keep in mind whether the objection touching the error, omission or irregularity in the sanction could or should have been raised at an earlier stage of the proceedings meaning thereby whether the same could and should have been raised at the trial stage instead of being urged in appeal or revision.

38. This fact also has not been seriously disputed by the learned Senior Counsel that subsequent sanction can also be obtained to prosecute the accused, if there is no proper sanction. Even the similar issue came up before the Hon'ble Apex Court in the case of Manju Surana Vs. Sunil Arora and Others reported in (2018) 5 SCC 557. But now the matter has been referred to Larger Bench. In this behalf the sanction is necessary or not, is a matter to be considered in detail.

39. Though it is contended by the learned Senior counsel that the sanction is necessary under Section 195 of Cr.P.C. to prosecute a public servant, I have carefully and cautiously gone through the provisions of law. Admittedly, all the accused persons have been prosecuted under Section 120B of IPC for conspiracy and as per Section 132 of the Act the statement given by the accused is considered to be evidence and it is reliable.

40. Even on close reading of Section 197 of Cr.P.C. sanction is very much necessary if a public servant has done any act in discharge of his official duty. If he is not discharging his official duties the said provision is not applicable. Concealing the Income Tax or the tax is not in the official discharge of duties. When it is not in official discharge of duties, then under such circumstances the said contention is not sustainable in law. Even as per Section 132(4) of the Act they are considered to be judicial proceedings to which no sanction is required. This proposition of law has been laid down by the Hon'ble Apex Court in the case of Lalji Haridas Vs. State of Maharashtra quoted supra which reads as under:

"As regards section 195 of the Code of Criminal Procedure, it is well-known that section 195 provides for an exception to the ordinary rule that any person can make a complaint in respect of the commission of an offence triable under the Code of Criminal Procedure. Section 4(h) of this Code defines a "complaint" as meaning the allegation made orally or in writing to a magistrate, with a view to his taking action under the Code, that some person, whether known or unknown, has committed an offence, but does not include the report of a police officer. This definition shows that any person can make a complaint in respect of the commission of an offence. Section 190 of Code of Criminal Procedure requires that the magistrate to whom complaint has been made should take cognizance of the said complaint, subject to the provisions of the said section. Thus, the general rule is that any person can make a complaint, and section 195 provides for an exception.

Section 193 of Indian Penal Code makes a distinction between offences committed in any judicial proceeding and those committed in proceedings other than judicial proceeding, whereas section 195(1)(b) of the Code of Criminal Procedure does not refer to judicial proceedings as such, but mentions proceedings in any Court. That is why the controversy between the parties in the present appeal laid within a very narrow compass.

The expression "judicial proceeding" is not defined in the Indian Penal Code, but there is the definition of the said expression under section 4(m) of the Criminal

Procedure Code. Section 4(m) provides that "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath. The expression "court" is not defined either by the Code of Criminal Procedure or the Indian Penal Code, though "court justice" is defined by section 20 of the latter Code as denoting a judge who is empowered by law to act judicially alone, or a body of judges which is empowered by law to act judicially as a body, when such judge or body of judges is acting judicially.

41. What are the factors which are to be considered at the time of discharge is one more aspect which the Court has to look into. It is well proposed proposition of law that at the time of hearing the discharge application, the Court has undoubted power to sift and weigh the evidence for a limited purpose for finding out as to whether there is a prima facie case against the accused or not. But the test to determine a prima facie case would naturally depend upon the facts of each case and no straight jacket formula or universal law has been made in this behalf. It is the specific case of the prosecution that the accused has evaded the tax by concealing the huge amount and at the time of raid it was noticed that there was escapement of the income tax. Even as could be seen from the statement given by each of the accused, they have thrown the blame on each other. It is well proposed proposition of law that when the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, then under such circumstances the Court will be fully justified in framing the charge and proceeding with the trial. It is also further observed that by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, Judge will be justified in discharging him. It is further clear that while examining such application, trial judge has to exercise its judicial mind to determine as to whether a case for trial has been made out or not without holding a mini trial. This proposition of law has been laid down by the Hon'ble Apex Court in the case of Union of India Vs. Prafulla Kumar Samal and another reported in (1979) 3 SCC 4, at paragraph 10 of the said decision it has been observed as under:

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the

facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

42. This proposition of law has been reiterated in Larger Bench in the case of Asim Shariff Vs. National Investigation Agency reported in (2019) 7 SCC 148. At paragraph No.18, it has been read as under:

18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the court is not supposed to hold a mini trial by marshalling the evidence on record.

43. Keeping in view the above said proposition of law, if the factual matrix is looked into with reference to Section 120B and other Sections of IPC, it cannot be said that there is no material as against the accused and accused is entitled to discharge, that too when grant of sanction is considered to be a irregularity as stated supra.

44. Taking into consideration the above facts and circumstances as discussed above in detail, the petitioners-accused have been found escaping huge tax which is going to affect the economy of the country. Under such circumstances prima facie petitioners-accused have not made out any grounds so as to interfere with the order of the trial Court. Though it is brought to the notice of this Court that sanction has been challenged in writ petition before this Court but it is not in

dispute that subsequently it was clarified in the said writ petition that stay is only to the said case. In that light, it will not come in the way for disposal of these petitions. However, if any benefit accrues in the said writ petition to the present accused they can be made available during the course of trial. It is also brought to the notice of this Court that many of the aspects have not been dealt with by the Court below though they have been urged during the course of argument, only on that ground if the matter is remitted to the trial Court to reconsider the same, it is going to defeat the ends of justice. That too after hearing the learned Senior Counsel appearing for the petitioners and they have argued the case in length for two and a half days and after spending so much time, I feel that it is not necessary to send it back only on that ground.

In that light, the petitions are devoid of merits and the same are liable to be dismissed and accordingly they are dismissed.