



**\*IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

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% Dated: 29.04.2020

**+CRIMINAL PETITION No.2860 of 2020**

Between:

# Paturi Prashanti, W/o.Dr.Ramana Murthy,  
Aged about 49 years, Occ: Housewife,  
Resident of # 54-13-11, Gurudwara Raod,  
Gurunanak Nagar, Vijayawada – 520 008.

**... PETITIONER/ACCUSED No.4**

**AND**

\$ 1) The State of Andhra Pradesh,  
Rep. by its Public Prosecutor,  
High Court for the State of Andhra Pradesh  
At Amaravathi.

2) The Income Tax Officer (TDS),  
Ward-I, Vijayawada.

**... RESPONDENTS/COMPLAINANT**

! Counsel for petitioner : Sri V.V.Anil Kumar

^Counsel for Respondent No.1 : Public Prosecutor

^Counsel for 2<sup>nd</sup> Respondent : Smt. Kiranmayi, Learned  
Standing Counsel for Income Tax

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>HEAD NOTE:

? Cases referred:

1. (2012) 1 Supreme Court Cases 520
2. (2010) 3 Supreme Court Cases 330
3. 2008 (106) DRJ 319



**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

**CRIMINAL PETITION No.2860 of 2020**

**ORDER:**

The petitioner is accused No.4 in C.C.No.80 of 2019 on the file of the IV Additional District Judge-cum-Special Judge, Economic Offences Court at Visakhapatnam under Section 276B of Income Tax Act, 1961.

2. The complaint against the petitioner is as follows:

M/s Andhra Hospitals Eluru Private Limited, a company incorporated under the Companies Act, had deducted a sum of Rs.41,49,161/- as tax deduction at source for the assessment year 2017-18. However, this amount was not credited to the Central Government Account within the stipulated time.

3. Section 276B of the Income Tax Act reads as follows:

*“276B. Failure to pay tax to the credit of Central government under Chapter XIID or XVIIIB.—If a person fails to pay to the credit of the Central Government,---*

*(a) the tax deducted at source by him as required by or under the provisions of Chapter XVIIIB; or*

*(b) the tax payable by him, as required by or under,----*

*(i) sub-section (2) of section 115-O; or*

*(ii) the second proviso to section 194B, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.*

4. The Income Tax Officer (T.D.S.), T.D.S.Ward-1, Vijayawada on the allegation that an offence has been committed under Section 276B of the Income Tax Act had filed



C.C.No. 80 of 2019 against the said Andhra Hospitals Eluru Private Limited and three other persons, including the Petitioner herein, by describing them as Directors of the Company.

5. The petitioner has now approached this Court by way of the present criminal petition for quashing C.C.No.80 of 2019 on the file of the IV Additional District Judge-cum-Special Judge, Economic Offences Court at Visakhapatnam.

6. Sri V.V.Anil Kumar, learned counsel for the petitioner, submits that the said complaint requires to be quashed against the petitioner on two grounds:

1) Firstly, The Petitioner is not a Director of the company as she had resigned as a Director of the company with effect from 17.02.2016, which is before the assessment year 2017-18. In support of this contention, the petitioner has produced the Form-DIR-12 filed with the Registrar of the companies showing that the petitioner had resigned and ceased to be a Director of the company as on 17.02.2016.

2) Secondly, when an offence is committed by a company, the Directors or other officers of the Company are deemed to be guilty and liable for punishment, under the Income Tax Act, Section 278B, in the following circumstances only:

*“278B. Offences by companies.—*

*(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the*



*offence and shall be liable to be proceeded against and punished accordingly:*

*Provided that nothing contained in this sub- section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.*

- (2) *Notwithstanding anything contained in sub- section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*
- (3) *Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, without prejudice to the provisions contained in sub-section (1) or sub-section (2), such company shall be punished with fine and every person, referred to in sub-section (1), or the director, manager, secretary or other officer of the company referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act.*

*Explanation.- For the purposes of this section,-*

- (a) *"company" means a body corporate, and includes-*
- (i) a firm; and*
  - (ii) an association of persons or a body of individuals whether incorporated or not; and*
- (b) *"director", in relation to-*
- (i) a firm, means a partner in the firm;*
  - (ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.*

In view of the above provision, only those persons, who, at the time the offence was committed, were in charge of and responsible to the company for the conduct of the business of the company, would be deemed to be guilty of the offence. This would mean that any complaint filed against any officer of the company would require a statement as to how such officer of the company was in charge or responsible for the conduct of the business of the company. Similarly, where the offence has been



committed with the consent or connivance or is attributable to any neglect on the part of a Director, the said Director would be liable to be proceeded against. This would mean that the complaint would have to make out a case against such a Director on the lines set out in Section 278B (2) of Income Tax Act.

7. Sri V.V. Anil Kumar, learned counsel for the petitioner, submits that there is no allegation anywhere in the complaint against the petitioner and she has been simply arrayed as accused No.4 with the description that she is a Director of the accused No.1 company.

8. Smt. Kiranmayi, learned Standing Counsel for the Income Tax, would submit that the first ground raised by the petitioner would require a trial as to whether the petitioner had resigned as a Director of the company or not and the production of DIR-12 Form by the petitioner cannot be looked into by the Court at this stage. She also submitted that every Director of a company has to be treated as being in charge of the business of the company and would automatically be deemed to be guilty of an offence committed by the companies under the Income Tax Act, 1961. She submits that in such circumstances, there is no need to make any further allegation against any of the Directors to bring home the offence against them.

9. Sri V.V.Anil Kumar, learned counsel for the petitioner, relied upon the Judgments of the Hon'ble Supreme Court in **Anita Malhotra vs. Apparel Export Promotion**



**Council and another**<sup>1</sup> to contend that this Court can always look into a document, such as DIR-12 obtained from the Registrar of the companies, under Section 482 of Cr.P.C.

10. In that case, one of the Ex-Directors against whom a complaint had been filed under Section 138 r/w 141 of Negotiable Instruments Act, 1981, before the trial Court had approached the Hon'ble High Court of Delhi with the plea that she had resigned as a Director of the Company even before the issuance of the cheque and had produced Form-32 (which is equivalent to DIR-12 Form under the 2013 Act) to contend that she was not a Director at the time when the cheque was issued. The Hon'ble High Court of Delhi had refused to look into the said Form 32 on various grounds. The Hon'ble Supreme Court accepted the Form-32 produced by the petitioner and had held that such a document was sufficient for the High Court to give relief to the petitioner therein, in a proceeding under section 482 of Cr.P.C.

11. In the present case, the DIR-12 Form produced by the petitioner shows that she had resigned as a Director of the accused No.1 company on 17.02.2016 itself. As such, she cannot be prosecuted on the ground that she is a Director of the Company at the relevant point of time..

12. The Petition would also succeed on the second ground raised by Sri V.V. Anil Kumar. Provisions similar to

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<sup>1</sup> (2012) 1 Supreme Court Cases 520



Section 278B of the Income Tax Act are found in various other Acts also. Section 141 of the Negotiable Instruments Act is in *pari materia* similar to the provisions of Section 278B of the Income Tax Act. This provision has been considered by the Hon'ble Supreme Court in **National Small Industries Corporation Limited vs. Harmeet Singh Paintal and another**<sup>2</sup>. The Hon'ble Supreme Court had held, in paragraph 39, as follows:

*“39. From the above discussion, the following principles emerge:*

*(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.*

*(ii) Section 141 does not make all the directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.*

*(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make the accused therein vicariously liable for offence committed by the company along with averments in the petition containing that the accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.*

*(iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.*

*(v) If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and*

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<sup>2</sup> (2010) 3 Supreme Court Cases 330



*by virtue of their position they are liable to be proceeded with.*

*(vi) If the accused is a Director or an officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in the complaint.*

*(vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases”.*

13. The Hon'ble High Court of Delhi had also considered the provisions of Section 278B of the Income Tax Act, 1961, in **K.C.PALANISWAMY & ANR. Vs. INCOME TAX OFFICER<sup>3</sup>** and had observed in paragraph No.14 as under:

*“14. Sub-section (1) of Section 278 B Income Tax Act is on the same lines as Section 141 of the Negotiable Instruments Act, 1881 ('NI ACT'). It has been explained in several decisions of the Supreme Court, including **S.M.S.Pharmaceuticals vs. Neeta Bhalla (I), AIR 2005 SC 3512: 2005 (85) DRJ 256 (SC)** that the complaint under Section 138 read with Section 141 NI Act must necessarily contain the bare minimum averment to show that the director who is sought to be made liable for the offence committed by the Company as “at the time of commission of the offence” in charge of the affairs of the Company and responsible to it for the conduct of its business. Even if the words of the statute need not be repeated there must be some averment to that effect in the complaint. In other words, the directions cannot be roped in only because they were in that position without anything else being attributed to them.*

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<sup>3</sup> 2008 (106) DRJ 319





14. The complaint does not have a single averment about any of the persons said to be Directors of the 1<sup>st</sup> accused Company. In view of the aforesaid Judgments of the Hon'ble Supreme Court, the proceedings against the petitioner in C.C.No.80 of 2019 on the file of the IV Additional District Judge-cum-Special Judge, Economic Offences Court at Visakhapatnam under Section 276B of Income Tax Act, 1961 has to be quashed on both grounds, namely, that the petitioner was not a Director of the company at the relevant point of time and there are no allegations of any nature against the petitioner required under the provisions of Section 278B of the Income Tax Act, to rope the petitioner into the complaint.

15. Accordingly, the criminal petition is allowed quashing the C.C.No.80 of 2019 on the file of the IV Additional District Judge-cum-Special Judge, Economic Offences Court at Visakhapatnam under Section 276B of Income Tax Act, 1961 against the petitioner herein.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

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**R. RAGHUNANDAN RAO, J.**

29.04.2021

**Note: L.R. copy to be marked.**

**B/o.**

**SDP**



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