

Law on Prosecution

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- **MADHUMILAN SYNTEX LTD. & ORS vs. UNION OF INDIA & ANR 160 Taxman 71 (SC)**

The next contention that since TDS had already been deposited to the account of the Central Government, there was no default and no prosecution can be ordered cannot be accepted. Mr. Ranjit Kumar invited our attention to a decision of the High Court of Calcutta in *Vinar & Co. & Anr. v. Income Tax Officer & Ors.*, (1992) 193 ITR 300. Interpreting the provisions of Section 276B, a Single Judge of the High Court observed that "there is no provision in the Income Tax Act imposing criminal liability for delay in deduction or for non-payment in time. Under Section 276B, delay in payment of income tax is not an offence". According to the learned Judge, such a provision is subject to penalty under Section 201(1) of the Act. We are unable to agree with the above view of the High Court. Once a statute requires to pay tax and stipulates period within which such payment is to be made, the payment must be made within that period. If the payment is not made within that period, there is default and an appropriate action can be taken under the Act. Interpretation canvassed by the learned counsel would make the provision relating to prosecution nugatory.

It was urged that a separate notice and/or communication ought to have been issued before issuance of show cause notice under Section 276 B read with Section 278B of the Act that the Directors were to be treated as Principal Officers under the Act. In our opinion, however, no such independent and separate notice is necessary and when in the show cause notice it was stated that the Directors were to be considered as Principal Officers under the Act and a complaint was filed, such complaint is entertainable by a Court provided it is otherwise maintainable. In view of the aforesaid discussion, the sanction to prosecute granted by the second respondent cannot be held illegal or unlawful nor the complaint can be held bad in law.

In the complaint dated February 26, 1992 filed by respondent No.2-Commissioner also, it was stated that appellants were considered as Principal Officers. In the above view of the matter, in our opinion, contention of the learned counsel for the appellants cannot be accepted that the complaint filed against the appellants, particularly against appellant Nos. 2-4 is ill-founded or not maintainable.

- **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & Anr., (2005) 8 SCC 89 : JT (2005) 8 SC 450**, wherein this Court held that essential averments must be made in the complaint that the person against whom complaint is made was in charge of and responsible for the conduct of business of the Company. Without such averment, no criminal liability would arise.
- **Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors., AIR 1983 SC 67**

"So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence, vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (accused Nos. 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed."

- **Standard Chartered Bank & Ors. V. Directorate of Enforcement & Ors., (2005) 4 SCC 530 : JT (2005) 5 SC 267.**

"As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the company. Such a discretion is to be read into the Section so far as the juristic person is concerned. Of

course, the court cannot exercise the same discretion as regards a natural person. Then the court would not be passing the sentence in accordance with law. As regards company, the court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. This appears to be the intention of the legislature and we find no difficulty in construing the statute in such a way. We do not think that there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake series of activities that affect the life, liberty and property of the citizens. Large scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy.