



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

CRIMINAL REVISION PETITION NO. 396 OF 2020

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BETWEEN:

THE INCOME-TAX DEPARTMENT
BY ITS ASSISTANT COMMISSIONER OF
INCOME TAX (TDS),
TDS-CIRCLE-3(1),
H.M.T. BHAVAN, BELLARY ROAD,
BANGALORE - 560 032.

...PETITIONER

(BY SRI. E.I. SANMATHI, ADVOCATE)

AND:

SHRI VISHWESHWARA RAO CHAVA,
MANAGING DIRECTOR
M/S SICON DESIGN TECHNOLOGIES
PRIVATE LIMITED,
4TH FLOOR, SRI NARAYANI ARCADE,
NO.321-247/3-4, KUNDALAHALLI,
ITPL MAIN ROAD, BROOKE FIELD,
BANGALORE-560037.

...RESPONDENT

(BY SRI. KIRAN S. JAVALI, SENIOR COUNSEL FOR
SRI. CHANDRASHEKARA K., ADVOCATE)

THIS CRL.RP IS FILED UNDER SECTION 397 READ WITH
401 OF CR.P.C PRAYING TO SET ASIDE THE ORDER OF
DISCHARGE OF RESPONDENT VIDE ITS ORDER DATED





01.10.2019 IN C.C.NO.77/2018 ON THE FILE OF THE SPECIAL COURT FOR ECONOMIC OFFENCES AT BENGALURU.

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

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

ORAL ORDER

Heard the petitioner's counsel and the counsel appearing for the respondent.

2. This revision petition is filed challenging the order dated 01.10.2019 passed by the Special Court for Economic Offences, Bengaluru, (henceforth referred to as 'the Trial Court') discharging accused No.2 in C.C. No.77/2018.

3. The factual matrix of the case of the revision petitioner before the Trial Court are that the complainant / Income Tax Department by its Assistant Commissioner of Income Tax, TDS Circle-3(1) filed the complaint under Section 200 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') alleging that accused No.1 - Company and other accused had not remitted the deducted Tax Deducted at Source (TDS) of Rs.4,84,69,841/- pertaining to the financial year 2013-14 and thereby, committed an offence punishable under



Section 276B of the Income Tax Act, 1961 (hereinafter called as 'the Act').

4. Accused Nos.2 to 6 being the Directors vicariously liable for the offence committed by the accused No.1 by virtue of Section 278B of the Act. In pursuance of the complaint, the case was registered against the accused persons and cognizance was taken and they appeared through their counsel and got enlarged on bail. Accused No.1 was represented by Mr. Shivashankar.

5. The evidence before charge was also recorded as required under Section 244 of Cr.P.C. The complainant cited the witnesses, who were also examined as PWs.1 and 2 and relied upon the documents, which were marked as Exs.P1 to P13. The case was posted for hearing before charge. At this juncture, the accused Nos.2 to 6 have filed an application under Section 245(1) of Cr.P.C. claiming discharge on the ground that there is no materials to frame charge against accused Nos.2 to 6. It is also contended that the complainant has not obtained a list of Directors and the documents for having served the notice under Section 2(35) of the Act are also not produced. The



evidence was tendered without there being a personal knowledge. There is no material over the role in filing quarterly returns or the annual returns or board resolution. This application was resisted by the revision petitioner by filing objections contending that there are sufficient materials to frame a charge against accused Nos.2 to 6 along with accused No.1. The notice under Section 2(35) of the Act was issued to the accused Nos.2 to 6 and Company has replied. There are averments to the effect that accused Nos.2 to 6 have actively participated in the day-to-day affairs of the Company. The accused in their reply admitted the non-payment of TDS within time. It is contended that the nature of defence will have to be tested during the course of trial. The Trial Court having heard the learned counsel for both the parties, formulated the following points for determination:

"Point No.1: Whether there are sufficient materials to frame the charge against the accused No.1 Company for the offence punishable under section 276B of the Act?

Point No.2: Whether the accused No.2 to 6 shown that they are not in charge of day to day affairs of accused No.1 Company, hence liable to be discharged?



Point No.3: What order?"

The Trial Court answered the point No.1 as affirmative and answered the point No.2 in the negative and while answering the point No.2 in the negative which is under challenge, taken note of the factual aspects and a discussion was made that, according to the complainant, by issuing a notice under Section 2(35) of the Act, they were treated as the Principal Officers of the accused No.1. Exs.P5 to P9 are the attested copies of the notices under Section 2(35) of the Act. In the notice, it is stated that on perusal of the records, it is found that when the offence was committed, they were in-charge and were responsible for the conduct of the business of the Company and also found that they were connected with the management and administration of the accused No.1. It is observed that the complainant has not produced the records referred therein. The documents for having issued the notices or for having served the notices are also not produced. The first reason assigned by the Trial Court is that no notices were served on accused Nos.2 to 6. The second reason is that in order to prove that they were in-charge of the affairs of the Company and treating them as Principal Officers of the accused No.1,



also not produced the document to show that *prima facie* case is made out that they were in-charge of the affairs of the Company. The Court cannot presume the issuing and serving of notice as contemplated under Section 2(35)(b) of the Act. Even otherwise, there is no evidence to the effect that the accused Nos.2 to 6 were in-charge of financial affairs of accused No.1-Company. The Trial Court answering the point No.2, discharged the accused Nos.2 to 6 including this petitioner, who is an accused No.2 and hence, the present revision petition is filed before this Court.

6. The counsel appearing for the petitioner would vehemently contend that the Court below has failed to appreciate the facts and numerous case laws of higher Courts which held that notice issued under Section 2(35) of the Act holds the Director as the Principal Officer. The complainant primarily stated that the respondent was being treated as the Principal Officer of the Company. Even otherwise, the purpose of Section 278B of the Act is that once the offence is shown to have been committed by the Company, then the liability of the Directors in-charge of its affairs is attracted. Counsel also would vehemently contend that the Court below failed to



appreciate the fact that the Company is a juristic person and respondent being the Managing Director of the Company is solely responsible for the acts/defaults committed by the Company. It is also contended that as per the information available in the public domain, the accused No.2 is the Managing Director and he has also signed the Income Tax Return (ITR) for the Assessment year 2014-15 in the capacity of the Managing Director for the relevant year as required by Section 139 read with Section 140(c) of the Act which is again a proof that the Managing Director is responsible for the affairs of the Company and he would be having complete knowledge about any defaults including the statutory defaults committed by the Company. The Managing Director of the Company cannot be absolved of this responsibility even if he has delegated the powers to some other employee. It is also contended that the Court below also failed to consider the provisions of Sections 278AA and proviso to Section 278B of the Act. Both discuss situations when a person is not to be treated as guilty of committing the offence. Section 278AA places the burden on the accused to prove that there was reasonable cause for the failure to deposit the deducted taxes



within time into the Government account. Proviso to Section 278B places the burden on the person who at the time of the offence was in-charge of and responsible to the conduct of the business of the Company to prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. The counsel referring to these provisions also would vehemently contend that the reply was given by the Company on 07.08.2014. Referring to the notice issued to the Company and also acknowledged that the Company as well as Principal Officers of the Company have received the notice dated 30.07.2014 and about launching of prosecution against them for not depositing the remittance of TDS. He also brought to the notice of this Court the reasons for delay in remittance also mentioned in the letter itself. When once they have admitted that notice was issued cannot seek for discharge. The counsel also submit that these accused persons have been discharged erroneously. Proceedings was held against accused No.1 wherein the document is also marked as Ex.P12 for admitting the issuance of notice and when such notice was issued and acknowledged, the very reasoning given by the Trial Court that



no notice was served as contemplated under Section 2(35) of the Act is not correct. The counsel would also vehemently contend that when the Principal Officers are recognized, and also brought to the notice of this Court, Section 2(35) of the Act wherein the term "principal officer" is defined as follows:

"(35) "principal officer", used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, means—

(a) the secretary, treasurer, manager or agent of the authority, company, association or body, or

(b) any person connected with the management or administration of the local authority, company, association or body upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof;"

7. Learned counsel also brought to the notice of this Court the proviso under Section 276B of the Act wherein liability to be fixed if the offences are invoked against the respondent herein. Failure to pay the tax collected at source to the credit of Central Government. The counsel referring to Section 276B as well as Section 278B of the Act would contend that where an offence under this Act has been committed by a



Company, every persons who is in helm of affairs at the time of 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. When such provision is very clear that the officer in the helm of the affairs of the Company committed default in making payment of the amount when specific allegations also made in the complaint that they were in the helm of affairs of the Company ought not to have been discharged from the offences invoked against them. Counsel in support of this argument, relied upon the judgment of the Hon'ble Apex Court in **MADHUMILAN SYNTEX LTD. & ORS. v. UNION OF INDIA & ANR.** reported in **[(2007) 290 ITR 0199]** and brought to the notice of this Court paragraph No.13 of the judgment, where discussion was made with regard to Section 276B of the Act - Failure to pay the tax deducted at source and also discussion was made with regard to Section 278B - Offences by Companies and also discussion made in paragraph No.14: "it is clear that wherever a company is required to deduct tax at source and to pay it to the account of



the Central Government, failure on the part of the company in deducting or in paying such amount is an offence under the Act and has been made punishable. It, therefore, cannot be said that the prosecution against a company or its directors in default of deducting tax or paying tax is not envisaged by the Act".

8. The counsel brought to the notice of this Court the discussion made by the Hon'ble Apex Court with regard to Section 2(35) of the Act in paragraph No.15 of the judgment in the case of **Madhumilan Syntex Ltd.** (supra) and also paragraph Nos.26 and 28 therein. Referring to this judgment, counsel would vehemently contend that the Trial Court committed an error in coming to such a conclusion. Whether respondent in helm of affairs or not, he could be said to be principal officer or not, would require evidence and it should be considered at the stage of trial and the Trial Court ought not to have come to such a conclusion that in the evidence was recorded under Section 245 of Cr.P.C. and also brought to the notice of this Court paragraph No.26 of the said judgment wherein also an observation is made by the Hon'ble Apex Court that it is a matter of evidence, an appropriate order can be



passed at the trial. Even the counsel brought to the notice of this Court paragraph No.28 of the said judgment, where it was observed: "...under s.276B r/w s. 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". The counsel referring to this judgment would vehemently contend that when the notice was issued and acknowledged by the Company and even having acknowledged that the principal officers also have received the notice, the order impugned suffers from infirmity and hence, this Court can exercise revisional jurisdiction.

9. Per contra, the counsel appearing for the respondent would vehemently contend that it is not in dispute that private complaint is filed before the Trial Court and also counsel would vehemently contend that before framing the charge, evidence of two witnesses has been recorded under Section 244 of Cr.P.C. and also placed the material before the



Court. The Trial Court also having considered the material on record comes to the conclusion that no material is placed before the Court for having served the notice to this respondent and others and also comes to the conclusion that in order to show the material that this respondent was at the helm of the affairs of the Company, no such material is placed on record and hence, rightly come to the conclusion that *prima facie* no material to proceed against this respondent. Hence, the order does not suffer from any infirmity and also does not require any interference to be exercised in the revisional jurisdiction.

10. The counsel appearing for the respondent would submit that the notice which the petitioner's counsel refers is not under Section 2(35) of the Act and the same cannot be construed as notice under Section 2(35) of the Act.

11. Having heard the petitioner's counsel and also the counsel appearing for the respondent and also considering the provisions and also the principles laid down in the judgment referred supra relied upon by the petitioner's counsel as well as the submission of the respondent's counsel, the points that would arise for consideration of this Court are:



1. Whether the Trial Court committed an error in discharging the accused No.2 / respondent that he is not in charge of the day-to-day affairs of the accused No.1 - Company in answering the point No.2 as negative and whether it requires interference of this Court in exercise of revisional jurisdiction?

2. What order?

12. Having heard the petitioner's counsel as well as the counsel appearing for the respondent, it is not in dispute that the revision petitioner has filed a private complaint before the Trial Court invoking Section 200 of Cr.P.C. making the allegation that the accused No.1 - Company has not remitted the amount of Rs.4,84,69,841/- to the Central Government for the financial year 2013-14 after deducting the TDS. It is alleged that this respondent and others have committed the offence punishable under Section 276B of the Act. The question before this Court is only with regard to whether the discharge of accused No.2 made by the Trial Court is right or wrong? Whether there are materials before the Court or not? It has to be noted that in the order itself, the Trial Court while answering point No.2, made an observation that accused Nos.2 to 6 are the Directors of the accused No.1-Company and they



were in charge of the day-to-day affairs of the accused No.1- Company and the same has been averred in the complaint. It is also contended in the complaint that while issuing the notice under Section 2(35) of the Act, this respondent and others were treated as Principal Officers of the accused No.1. It is also important to note that Exs.P5 to P9, which are the attested copies of the notices under Section 2(35) of the Act, were also marked before the Trial Court. In the notice also, it is stated that on perusal of the records, it is found that when the offence was committed by this respondent and others were in-charge and were responsible for the conduct of the business of the Company and also found that they are connected with the management and administration of the accused No.1. This averment is also referred to in the order of the Trial Court itself while considering the point No.2. When such averment is made in the complaint and also documents - Exs.P5 to P9 are the attested copies of the notices were marked before the Trial Court where specific allegation is also made in the said notices that this respondent and others were responsible for the conduct of the business of the Company and also found that they are connected with the management and administration of



the accused No.1. The fact that two witnesses were examined before the Trial Court is not in dispute and the contents of the complaint and also the averments made in the complaint that this respondent and others have been arrayed as accused Nos.2 to 6 were the Directors of accused No.1 - Company is also not disputed. The notices have been issued. Notices were placed before the Trial Court and same were marked as Exs.P5 to P9. The issue is with regard to whether the same has been served or not. The main contention of the counsel appearing for the respondent that notices are issued not under Section 2(35)(b) of the Act. The fact is that Exs.P5 to P9 are the attested copies of the notices under Section 2(35) of the Act and the same have been referred by the Trial Court. It is also important to note that when the averment is made specifically in the complaint itself and while discharging the accused persons, it is also settled law that the Court has to look into the *prima facie* document whether *prima facie* material discloses the case to proceed against the accused persons. It is also settled law that the accused cannot take any defence while seeking for discharge before the Trial Court. The defence of the accused cannot be considered while considering an



application filed for discharge of the accused persons. Only the Court has to look into the material on record. In the case on hand, admittedly, a private complaint was filed before the Court and before framing the charge also, evidence of the witnesses have been recorded. Now the counsel appearing for the petitioner also contend that notices were issued to accused Nos.2 to 6 and also the Court has to take note of definition of 'principal officer' Section 2(35) of the Act. Having taken note of Section 2(35) of the Act which is extracted above, it is very clear that the definition of 'principal officer' under Section 2(35) of the Act states that principal officer, used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, means - (a) the secretary, treasurer, manager or agent of the authority, company, association or body, or (b) any person connected with the management or administration of the local authority, company, association or body upon whom the [Assessing] Officer has served a notice of his intention of treating him as the principal officer thereof. Having taken note of the same is concerned, the Trial Court also referred to in paragraph No.11 of its order that in the complaint, it is specifically averred that



accused Nos.2 to 6 are the Directors of the accused No.1- Company and they were in charge of the day-to-day affairs of the accused No.1-Company and accordingly the complainant, by issuing the notices under Section 2(35) of the Act, all of them have treated as Principal Officers of the accused No.1. Exs.P5 to P9 are the attested copies of the notices under Section 2(35) of the Act. It is also mentioned in the notice, it is stated that on perusal of the records, it is found that when the offence was committed, they were in charge and were responsible for the conduct of the business of the Company and also found that accused Nos.2 to 6 are connected with the management and administration of the accused No.1. It is the averment made in the complaint and the same has been mentioned in the order of the Trial Court itself. Hence, it is clear that specific averment is made in the complaint that accused Nos.2 to 6 were at the helm of affairs of the Company. But only reason given is that no such notice was given. But the attested copies - Exs.P5 to P9 are placed before the Trial Court. The counsel appearing for the petitioner brought to the notice of this Court that a reply was given by the Company itself with regard to the notice that was issued under Section 276B read



with Section 278B of the Act to prosecute them. It is important to note that this Court has to take note of the relevant provisions of Section 276B read with Section 278B of the Act. This Court would like to rely upon the proviso to Section 276 B which reads as follows:

"Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B.

276B. 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 XVII-B; 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."

Section 278B of the Act reads as follows:

"Offences by companies.

278B. *(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."*

13. Having referred to Sections 276B and 278B of the Act and referring to paragraph No.13 of the judgment in the case of ***Madhumilan Syntex Ltd.***, (supra), where the Apex Court also in detail discussed the Chapter XXII which relates to offences and prosecution and Section 276B deals with "Failure to pay tax". The Section at the relevant time is as under:

*"276B. Failure to pay the tax deducted at source.—
If a person fails to pay to the credit of the Central Government, the tax deducted at source by him as required by or under the provisions of Chapter XVII-B 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."*

The same has been extracted in paragraph No.13 of the said judgment. Even explanation for the purpose of Section 278B of the Act is also taken note of. "Company" means a body corporate and referring to this provision also, an observation is



made in paragraph No.14 of the said judgment that "from the above provisions, it is clear that wherever a company is required to deduct tax at source and to pay it to the account of the Central Government, failure on the part of the company in deducting or in paying such amount is an offence under the Act and has been made punishable. It, therefore, cannot be said that the prosecution against a company or its directors in default of deducting or paying tax is not envisaged by the Act." The paragraph No.14 of the said judgment of the Apex Court is also taken note of, that the prosecution against the Company or its Directors in default of deducting or paying tax and hence, the very material available on record that this respondent and others are the Directors is not in dispute and also as defined under Section 2(35) of the Act, they are the principal officers is also not in dispute. Apart from that, paragraph No.15 of the said judgment in the case of **Madhumilan Syntex Ltd.** (supra) reads as follows:

"15. So far as directors are concerned, it is alleged in the show-cause notice as well as in the complaint that they were 'principal officers' of the company. In the show-cause notice, it was asserted that the appellants were considered as principal officers under s.2(35) of the Act. In the complaint also, it was stated that the other accused were associated with the business of the company and



were treated as principal officers under s. 2(35) of the Act and hence they could be prosecuted. Dealing with an application for discharge, the trial Court observed that accused No.1 was company whereas other accused were directors. Whether they could be said to be principal officers or not would require evidence and it could be considered at the stage of trial and the application was rejected. In revision, the First Addl. Sessions Judge took similar view."

14. In paragraph No.15 also, it is categorically stated that in the show-cause notice as well as in the complaint that they were 'principal officers' of the company. So far as the Directors are concerned, it was asserted that the this respondent and others were considered as Principal Officers under Section 2(35) of the Act. In the complaint also, it was stated that the other accused were associated with the business of the Company and were treated as Principal Officers under Section 2(35) of the Act. Hence, they could be prosecuted. Dealing with an application for discharge, the Trial Court observed that the accused No.1 was Company whereas other accused were Directors. Whether they could be said to be Principal Officers or not, would require evidence and it could be considered at the stage of trial and application was rejected. This is also discussed in paragraph No.15 of the said judgment with regard to the scope of discharge extensively and that



evidence could be considered at the stage of trial with regard to whether they are the principal officers or not. It is also important to note that in paragraph No.26 of the said judgment also, the Apex Court having considered the statutory provisions observed as follows:

"26. From the statutory provisions, it is clear that to hold a person responsible under the Act, it must be shown that he/she is a 'principal officer' under s.2(35) of the Act or is 'in charge of' and 'responsible for' the business of the company or firm. It is also clear from the cases referred to above that where necessary averments have been made in the complaint, initiation of criminal proceedings, issuance of summons or framing of charge, cannot be held illegal and the Court would not inquire into or decide correctness or otherwise of the allegations levelled or averments made by the complainant. It is a matter of evidence and an appropriate order can be passed at the trial."

Having read this observation of the Apex Court also, it is very clear that "to hold a person responsible under the Act, it must be shown that he/she is a 'principal officer' under s.2(35) of the Act or is 'in charge of' and 'responsible for' the business of the company or firm. It is also clear from the cases referred to above that where necessary averments have been made in the complaint, initiation of criminal proceedings, issuance of



summons or framing of charge, cannot be held illegal and the Court would not inquire into or decide correctness or otherwise of the allegations levelled or averments made by the complainant. It is a matter of evidence and an appropriate order can be passed at the trial." From the observation also it is very clear with regard to the fact that the averments are made in the complaint that this respondent and others are responsible for the affairs of the Company that could be considered in the trial.

15. The Apex Court in paragraph No.28 of the judgment in ***Madhumilan Syntex Ltd.'s*** case (supra) has held as follows:

"28. It was urged that a separate notice and/or communication ought to have been issued before issuance of show cause notice under s. 276B r/w s. 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."



Having referred paragraph No.28 of the said judgment also, question with regard to the issuance of separate notice is concerned, the Apex Court held that "it was urged that a separate notice and/or communication ought to have been issued before issuance of show cause notice under s.276B r/w s.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". Having taken note of the principles laid down by the Apex Court in paragraph No.28 also it is held that no such independent and separate notice is necessary when in the show cause notice, it was stated that Directors were to be considered. In the case on hand, there is no dispute with regard to the fact that before launching of the prosecution, a notice was issued on 30.07.2024 and counsel of the petitioner also brought to the notice of this Court the reply given by the Company wherein it also categorically acknowledged while giving reply that with reference to the



above facts and subject with regard to the launching of prosecution when notice was issued under Section 276B read with Section 278B of the Act that notice was given to the Company and Principal Officers of the Company and have received notices from the complainant and also categorically mentioned that notice was acknowledged with regard to the proposal to launching of prosecution against the Principal Officers of the Company for delaying remittance of TDS and in the reply also, they admitted reasons for delay in remittance of the amount. When such material is available before this Court and when specific averment is made in the complaint itself that this respondent and others are in the helm of affairs of the Company and they are the Directors, they are the Principal Officers and notices were also given and marked documents - Exs.P5 to P9 and the very contention that no notice was served and they are not in charge of the affairs of the Company, the Trial Court committed an error in making such an observation that no notice was served as contemplated under Section 2(35) of the Act and also that they have not been in charge of the Company is nothing but perversity and it requires interference by this Court. The impugned order suffers from legal infirmity



and also Court can exercise its revisional jurisdiction when the order suffers from illegality and incorrectness and the trial Court committed an error in coming to such a conclusion that this respondent and others were not in charge of the affairs of the Company when specific allegation is made in the complaint itself for making an averment and even the same has been extracted by the Trial Court in paragraph No.11 of the impugned order in the beginning itself with regard to the specific averments made in the complaint and also marking of documents Exs.P5 to P9, the attested copies of the notices issued under Section 2(35) of the Act and the defence cannot be raised at the time of considering the discharge application. Only the Court has to look into the material available on record and the same is a matter of trial.

16. The counsel appearing for the respondent would contend that the judgment which was referred by the petitioner's counsel by considering the scope of Section 482 of Cr.P.C and whether it is petition under Section 482 Cr.P.C. or in other petitions also, the Court has to look into the principles laid down by the Apex Court in the judgment rendered in the case of ***Madhumilan Syntex Ltd.*** (supra) particularly referring



the provisions of Sections 276B and 278B of the Act discussed in paragraph Nos.13, 14, 15, 26 and 28 and also comes to the conclusion that there is no need of issuance of independent and separate notice if in the show cause notice it was stated that Directors were to be considered as Principal Officers under the Act. Hence, the judgment is applicable to the case on hand and the Trial Court committed an error in discharging this respondent (accused No.2). Hence, the order requires to be set aside by answering the point No.1 as affirmative.

17. In view of the discussions made above, I pass the following:

ORDER

The Criminal Revision Petition is ***allowed***.

The impugned order dated 01.10.2019 passed by the Special Court for Economic Offences, Bengaluru in so far as it relates to discharging accused No.2 in C.C. No.77/2018 is set aside and Trial Court is directed to proceed in accordance with law.

Sd/-
(H.P.SANDESH)
JUDGE