Before Mehinder Singh Sullar, J.

INCOME TAX OFFICER AND ANOTHER – *Petitioner*

versus

SUDESH SHARMA – *Respondent*

CRM No.A-959-MA of 2014

November 10, 2014

Code of Criminal Procedure, 1973 – Ss. 378 & 468 – Indian Penal Code, 1860 – Ss. 177 & 182 – Limitation Act, 1963 – S.5 – Scope of appeal against acquittal – Cognizance – Limitation – Appellant filed complaint against respondent alleging that assessee claimed refund on basis of wrong TDS Certificates submitted through him – Complaint not instituted against assessee – Only respondent who was assessee's advocate arrayed as accused – Income tax return submitted for assessment year 1987-88 – Summoning order passed on 3.7.1999 – Respondent acquitted by trial court – Appeal against acquittal filed – Held, Assessee had claimed refund on the basis of forged TDS Certificates – Respondent who was an advocate only submitted the income tax return on behalf of assessee – He could not be held liable for criminal prosecution for documents procured by assessee – Further held, maximum sentence prescribed under the indicated sections may extend to 6 months – Section 468 postulates that no court shall take cognizance of such offences after expiry of period of one year – Object which the statute seeks to subserve is clearly in consonance with concept of fairness and speedy trial enshrined in Article 21 of the Constitution of India – Mandatory and statutory bar created by Section 468 Cr.P.C. cannot and should not be avoided under any circumstances – Cognizance barred by limitation as well - Further held, that Judgments of acquittal containing valid reasons cannot be interfered with in exercise of limited jurisdiction under Section 378 (4) Cr.P.C. unless the same are illegal, perverse and without jurisdiction.

Held, that the respondent-accused had only submitted the income tax return along with all the pointed documents on behalf of main assessee. In other words, all the TDS certificates, which were purported to have been issued by the Northern Railway, were supplied by the main assessee to his Advocate. It was the main assessee, who had procured the documents from the concerned authorities and claimed the refund. In case, the main assessee had claimed the refund

on the basis of forged TDS certificates, then, the Income Tax Authorities were competent and well within their jurisdiction to reject his claim of refund under the relevant provisions of the Income Tax Act. Thereafter, the aggrieved party had a right to file the statutory appeal in this relevant connection. Be that as it may, therefore, in that eventuality, the respondent-accused, who was an Advocate, had just submitted the income tax return on behalf of main assessee, cannot possibly be and indeed could not be held liable for criminal prosecution for procuring the documents by main assessee in order to attract the penal provisions of indicated offences, as contrary urged on behalf of complainant-ITO. Similarly, the mere fact that he had prepared the income tax return on behalf of assessee, ipso facto, is not a ground, muchless cogent, to hold respondent-accused guilty for the commission of offences punishable under sections 177 and 182 IPC in the absence of main assessee.

(Para 14)

Further held, that not only that, there is yet another aspect of the matter, which can be viewed entirely from a different angle. The bare perusal of the record would reveal that the respondent-accused had submitted the income tax return on 24-11-1989 and the main assessee had obtained the TDS certificate, much prior thereto from the Railway authorities. The respondent accused was summoned to face the trial, vide summoning order dated 3-7-1999 and ultimately he was charge sheeted for having committed the offences punishable under sections 177 and 182 IPC. What cannot possibly be disputed here is that the maximum sentence prescribed under the indicated offences is simple imprisonment for a term, which may extend to six months each or with fine, which may extend to Rs.1000/- each or with both. Sequelly, section 468 Cr.PC postulates that no Court shall take cognizance of such offences after the expiry of period of one year as contemplated under section 468 (1) (2) (b) of Cr.PC. The very object of section 468 Cr. PC in putting a bar of limitation of proceedings was clearly to stop the parties from filing cases after a long time (delay) and to prevent the abuse of process of court by filing vexatious and belated prosecutions long after the date of the offence. This object which the statute seeks to subserve is clearly in consonance with the concept of fairness and speedy trial as enshrined in Article 21 of the Constitution of India. Thus, it is imperative and utmost importance that any prosecution instituted by the State or a private complainant must abide by law in letter and spirit or to take the risk of the prosecution failing on the

ground of limitation. To my mind, the mandatory and statutory bar created by section 468 Cr.PC cannot and indeed should not be avoided under any circumstances. In this manner, what to talk of vicariously convicting the respondent accused in the absence of main assessee, even the initiation of entire criminal proceedings against him are non est in the eyes of law.

(Para 15)

Further held, that taking cognizance of the pointed offences against the respondent-accused was barred by limitation as well. Such articulated impugned judgments of acquittal, containing valid reasons, cannot possibly be interfered with in exercise of limited jurisdiction under Section 378(4) Cr.PC by this Court, unless and until, the same are illegal, perverse and without jurisdiction. Since no such patent illegality or legal infirmity has been pointed out by the learned counsel for petitioners, so, the impugned judgments of acquittal deserve to be and are hereby maintained for the reasons mentioned here-in-above in the obtaining circumstances of the case.

(Para 16 & 17)

Yogesh Putney, Advocate *for the petitioner*

MEHINDER SINGH SULLAR, J.

(1) As identical questions of law and facts are involved, therefore, I propose to dispose of the indicated petitions for leave to appeal, arising out of the similar impugned judgments of acquittal of the same date between the same parties, vide this common order to avoid the repetition. However, the conspectus of the facts, which needs a necessary mention for deciding the core controversy, involved in the present petitions, has been extracted from

(2) The matrix of the facts and evidence unfolded during the course of trial, culminating in the commencement, relevant for deciding the instant petitions for leave to appeal and emanating from the record is that initially, main assessee Ashok Kumar Sharma s/o Bhagwan Dass, Railway contractor (for brevity "the main assessee") had engaged Sudesh Sharma, Advocate respondent-accused and supplied him the requisite documents and TDS certificates for the purpose of furnishing his income tax return for the assessment year 1987-88. Consequently, the respondent had filled the income tax return on behalf of main assessee and claimed a refund of `3395/- on the basis of TDS certificates purported to have been issued by the Senior Divisional

Accounts Officer, Northern Railway, New Delhi. The complainant - Income Tax Officer (for short "ITO") claimed that in the wake of verification, the TDS certificates were found not to be genuine and the refund was wrongly claimed by the main assessee.

(3) Leveling a variety of allegations and narrating the sequence of events in detail, in all, according to the complainant, the main assessee has wrongly claimed the refund of `3395/- on the basis of wrong TDS certificates submitted in his income tax return, through respondent-accused Sudesh Kumar, Advocate. In the background of these allegations, the complainant ITO had instituted different complaints, not against the main assessee, but against Sudesh Sharma, Advocate in the manner depicted here-in-above. Similar complaints were also filed by complainant-ITO against the respondent-accused with respect to main assessees in other connected matters

(4) After completion of all the codal formalities, ultimately the respondent-accused was ordered to be summoned, by virtue of summoning order dated 3.7.1999 by the trial Court. Consequently, he was charge sheeted for commission of offences punishable u/ss 177 and 182 IPC. The contents of charge sheets were read over and explained to the respondent, to which, he pleaded not guilty and claimed trial. Thereafter, the case was slated for evidence of the complainant by the trial court.

(5) Having closed the evidence of complainant, the statement of the respondent-accused was recorded as contemplated under Section 313Cr.P.C. The entire incriminating evidence was put to enable him to explain any circumstances appearing on record against him. However, he had stoutly denied the evidence of complainant in its totality and pleaded false implication on account of filing of a civil suit by him against the complainant ITO. In support of his defence, he examined Ram Dhan Babbar as DW1 and closed his defence evidence.

(6) Likewise, taking into consideration the totality of the facts & evidence on record, the respondent-accused was acquitted, by means of impugned judgments of acquittal dated 8.5.2012 by the trial Court.

(7) Aggrieved thereby, the appeals filed by the complainant ITO were dismissed being not maintainable as well, by virtue of judgments dated 19.9.2013 (Annexure A4) by the appellate Court.

(8) Sequelly, the complainant-ITO still did not feel satisfied and preferred the instant time barred petitions for leave to appeal against the impugned judgments of acquittal, invoking the provisions of section

378(4) Cr.PC along with the applications u/s 5 of The Limitation Act to condone the delay of 547 days (in main case), which of course, has already been condoned, by means of separate orders of even date by this Court. That is how I am seized of the matter.

(9) Having heard the learned counsel for the petitioner, having gone through the record with his valuable help and after bestowal of thoughts over the entire matter, to my mind, there is no merit and the present petitions for leave to appeal deserve to be dismissed in this regard.

(10) Ex facie the argument of learned counsel that since there was sufficient evidence on record, so, the trial Court has committed a legal mistake to acquit the respondent-accused, by way of impugned judgments of acquittal, is not only devoid of merit but misplaced as well.

(11) At the very outset, it may be added here that the jurisdiction of appellate Court in case of acquittal was determined by the Hon'ble Apex Court in a celebrated judgment of ***Ghurey Lal*** *versus* ***State of U.P.***[1]**.** Having considered the scope of sections 378, 386 Cr.PC and a line of various judgments on the point, it was ruled as under (Para 75):-

> "75. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:
>
> *1.* The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.
>
> A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:
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> *i)* The trial court's conclusion with regard to the facts is palpably wrong;
>
> *ii)* The trial court's decision was based on an erroneous view of law;
>
> *iii)* The trial court's judgment is likely to result in "grave miscarriage of justice";

[1] (2008) 10 SCC 450

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction-the High Courts/appellate courts must rule in favour of the accused."

(12) Such thus being the legal position and evidence on record, now the short & significant question, though important, which invites an immediate attention of this Court and arises for determination in the instant petitions is, as to whether the trial Court has committed such jurisdictional error or patent illegality to acquit the respondent-accused and there are substantial and compelling reasons to set aside the impugned judgments of acquittal by this Court or not ?

(13) Having regard to the contentions of learned counsel for petitioner, to me, the answer must obviously be in the negative, as the complainant-ITO has miserably failed in this relevant connection and the present petitions for leave to appeal deserve to be dismissed for the reasons mentioned here-in-below.

(14) As is evident from the record that the complainant-ITO claimed that the main assessee has submitted the income tax return for the assessment year 1987-88 claiming a refund of `3395/- based on false TDS certificate through respondent-accused Sudesh Sharma, Advocate. Strange enough, the complainant ITO had not filed any complaint against the main assessee and only arrayed the respondent Advocate as an accused, who was stated to have submitted the income tax return on his behalf. Meaning thereby, the respondent-accused had only submitted the income tax return along with all the pointed documents on behalf of main assessee. In other words, all the TDS certificates, which were purported to have been issued by the Northern Railway, were supplied by the main assessee to his Advocate. It was the main assessee, who had procured the documents from the

concerned authorities and claimed the refund. In case, the main assessee had claimed the refund on the basis of forged TDS certificates, then, the Income Tax Authorities were competent and well within their jurisdiction to reject his claim of refund under the relevant provisions of The Income Tax Act. Thereafter, the aggrieved party had a right to file the statutory appeal in this relevant connection. Be that as it may, therefore, in that eventuality, the respondent-accused, who was an Advocate, had just submitted the income tax return on behalf of main assessee, cannot possibly be and indeed could not be held liable for criminal prosecution for procuring the documents by main assessee in order to attract the penal provisions of indicated offences, as contrary urged on behalf of complainant-ITO. Similarly, the mere fact that he had prepared the income tax return on behalf of assessee, ipso facto, is not a ground, muchless cogent, to hold respondent-accused guilty for the commission of offences punishable u/ss 177 and 182 IPC in the absence of main assessee.

(15) Not only that, there is yet another aspect of the matter, which can be viewed entirely from a different angle. The bare perusal of the record would reveal that the respondent-accused had submitted the income tax return on 24.11.1989 and the main assessee had obtained the TDS certificate, much prior thereto from the Railway authorities. The respondent-accused was summoned to face the trial, vide summoning order dated 3.7.1999 and ultimately he was charge sheeted for having committed the offences punishable u/ss 177 and 182 IPC. What cannot possibly be disputed here is that the maximum sentence prescribed under the indicated offences is simple imprisonment for a term, which may extend to six months each or with fine, which may extend to `1000/- each or with both. Sequelly, section 468 Cr.PC postulates that no Court shall take cognizance of such offences after the expiry of period of one year as contemplated u/s468 (1) (2) (b) of Cr.PC. The very object of section 468 Cr.PC in putting a bar of limitation of proceedings was clearly to stop the parties from filing cases after a long time (delay) and to prevent the abuse of process of court by filing vexatious and belated prosecutions long after the date of the offence. This object which the statute seeks to subserve is clearly in consonance with the concept of fairness and speedy trial as enshrined in Article 21 of the Constitution of India. Thus, it is imperative and utmost importance that any prosecution instituted by the State or a private complainant must abide by law in letter and spirit or to take the risk of the prosecution failing on the ground of limitation. To my mind, the mandatory and statutory bar created by section 468 Cr.PC cannot

and indeed should not be avoided under any circumstances. In this manner, what to talk of vicariously convicting the respondent accused in the absence of main assessee, even the initiation of entire criminal proceedings against him are non est in the eyes of law.

(16) Therefore, otherwise also, taking cognizance of the pointed offences against the respondent-accused was barred by limitation as well. Not only that, taking into consideration the non-maintainability of the complaint against the respondent-accused, inherent legal lacunae, missing of link evidence, contradictions, improbabilities, totality of the evidence on record and ratio of law on the point, the trial Court has correctly acquitted him, by way of impugned judgment of acquittal, which, in substance, is as under:-

> "11. The aforesaid discussion make it clear that there is only arguable point as to whether an Advocate may be held liable for submission of wrong/false income tax return showing name of non existing persons in order to derive pecuniary benefit in the shape of refund or it was filed with an intention to cause harm to public servant.
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> I would like to point out fact as per evidence led by complainant. Initially return was submitted to dealing clerk who put up the same to the ITO and on perusal of return along with documents, ITO was/is competent either to accept or reject the claim. If ITO rejected the claim after due enquiry about assessee/claimant then he was required to issue notice to the assessee/claimant as to whether he submitted return or not but no such enquiry was conducted.Complainant did not prove any enquiry relating to non existence of assessee or claimant before this Court. It is however amply clear that if claim is to be accepted by ITO then refund amount must be credited in the account of assessee. In that way, there was no role of an advocate to claim bogus refund because if the refund amount is credited in account of assessee then if any wrong claim is submitted before public servant even then he may easily reject the claim as sought in the return. Further, ITO must have initiated proceedings judiciously as required under rules. He was bound to obtain power of attorney of an advocate along with verification or attestation about assessee by an advocate on the return but no such procedure was being followed or implemented while submission of return by an

individual assessee himself or through his counsel or clerk. This income tax return is in the name of assessee/claimant and it does not bear the signature of an advocate. In case, an advocate filled these returns in his own handwriting on dictation or direction of assessee even then no criminal liability can be shifted upon an advocate who will certainly not receive any refund, rather this amount of refund must be credited in the account of assessee/individual. In case, assessee collected some vague document and attached with the return then it is duty of the public servant to scrutinize each and every fact in fair and impartial manner, so that question of acceptance or rejection of refund an be determined judiciously. This return is neither supported with any verification report by an advocate nor any affidavit or power of attorney and in that way if there was not found any assessee then public servant may easily reject the refund by exercising his power in a judicious manner. Here the accused Sudesh Sharma explained his position in reply and reason to issue letter by ITO because he instituted civil suit against ITO on 11.6.1990 in the court of Shri Inderjit Mehta, then ld. Sub Judge 1st Class, Kurukshetra and notice in this case was served upon Shri M.L.Jain, then ITO and due to this reason Shri M.L.Jain, then ITO became annoyed and instituted this complaint to avenge accused Sudesh Sharma.

12. More so, there is apparently missing link evidence which I would like to highlight as under :-

That complainant failed to establish who submitted return before dealing clerk. It is no where established as to whether clerk of an advocate, assessee/claimant or Sudesh Sharma Advocate submitted or furnished return before dealing clerk.

That the complainant failed to examine dealing clerk who received return without verification or attestation by an advocate.

That there is nothing mentioned in the return about endorsement as to whether the contents mentioned in the return are true and correct to the best of my knowledge or an assessee nor it bears the signature of an advocate.

That this return is not supported with any power of attorney, so it may easily said it is not proved any authorization by any assessee in whose behalf claim/refund was sought while submission of return.

That there is posted one Income Tax Officer and one Inspector who used to dealt with more than 4000-5000 returns in a year, if it was so then before issuing letter to an advocate, ITO should have obtained power of attorney of an advocate relating to alleged assessee/claimant and verification and attestation report regarding contents mentioned in the return to be correct and genuine on behalf of assessee. But no such verification or attestation had been sought on return furnished with the case file.

That in case of submission of report, ITO may frame or direct an advocate to furnish PAN Card of assessee or any other identification of assessee so that claim of assessee can be decided judiciously. However, no such identification of assessee has been obtained as per record on file. Since, claim/refund was to be credited in the account of assessee then it cannot be said that an advocate would collect fake TDS certificate from employer in order to derive any pecuniary benefit from the complainant department.

That if any employer/contractor/Railway Department may derive pecuniary benefit on behalf of fake assessee by way of opening their bank account then the benefit must be received by the employer or contractor or department and in that way it will not attribute any role of an advocate in deriving benefit from the complainant department. However IT Oneither enquired about contractor/employer/department nor it may presume that it was an act of an advocate to take undue benefit in the shape of money while furnishing wrong return because it is for the authority of Income Tax Department either to accept or reject claim as sought in the return as per rule. Here in this case, claim/refund has been rightly rejected by the competent authority after due enquiry about documents annexed with return.

That complainant department neither issued any notice to employer/contractor/department nor produced any enquiry report. In case, Sudesh Sharma filled requisite performa etc. in his own hand writing even then it cannot be said that he

submitted returns in order to derive any benefit because refund/claim was to be credited in account of assessee. Until otherwise, it is duty of an advocate to put forward claim before income tax authority on behalf of assessee and if authority after due scrutiny found it not proper or wrong then claim may easily be rejected. So, it is not understandable as to what was need of obtaining expert report in order to compare the writing mentioned in the return because amount of refund was not be credited in the account of an advocate. So, he was not held liable for submission of wrong information on behalf of assessee because if a person is not in existence even then refund/claim if accepted cannot be credited in his account. Here in this case, letter was duly replied by Sudesh Sharma but even then unnecessary evidence was being collected to shift undue burden upon an advocate who had no role to derive any benefit while submission of return on behalf of assessee.

That ITO verified about assessee while sending Inspector to visit personally and on receipt of report of Inspector regarding non existence of assessee, claim was rejected belonging to assessee but it would not create any criminal liability for submission of wrong income tax return by an advocate on behalf of assessee."

(17) Meaning thereby, the trial Court has examined the matter in the right perspective and correctly acquitted the respondent-accused. The learned counsel for petitioners did not point out any material, much less cogent, so as to warrant any interference in the impugned judgments of acquittal. Such articulated impugned judgments of acquittal, containing valid reasons, cannot possibly be interfered with in exercise of limited jurisdiction under section 378(4)Cr.PC by this court, unless and until, the same are illegal, perverse and without jurisdiction. Since no such patent illegality or legal infirmity has been pointed out by the learned counsel for petitioners, so, the impugned judgments of acquittal deserve to be and are hereby maintained for the reasons mentioned here-in-above in the obtaining circumstances of the case.

(18) No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the petitioner.

(19) In the light of aforesaid reasons, as there is no merit, therefore, the instant petitions for leave to appeal are hereby dismissed as such.

J.S. Mehndiratta

Before K.Kannan,J.

DR. DHIVYA S. WIFE OF DR.PRADEEP KUMAR —*Petitioner*

versus

STATE OF PUNJAB AND OTHERS —*Respondent*

CWP No. 13397 of 2014

November 12, 2014

Constitution of India, 1950 – Art.226 – Quota in education - Payment under bond – Petitioner gained admission in MD course in Physiology with Patiala Government College under 50% All India Quota – Students taking admission under All India Quota had to sign bond at time of admission that if he/she left college, would pay Rs. 15 lakh – Petitioner secured admission in PGI, Chandigarh for post graduate course in medicine and opted to leave Patiala Government college – She sought for return of her original certificates that were submitted in Patiala college – Said college declined to release certificates on ground that she was bound to pay `15 lakhs as contained in clause of bond - Held, that petitioner was governed both by terms of prospectus and relevant Government notifications – Prospectus did not require that students getting admission under All India Quota had to furnish bond in favour of Government – If there was no bond, there was no question of an obligation which did not exist through any instrument in writing – Question of enforcement of bond terms or payment of `15 lakh did not arise.

Held, that the petitioner could be governed both by the terms of the prospectus and the Government notification issued in the year 2013. The prospectus does not require the furnishing of bond in favour of the Government to All India Quota. What the prospectus omits to do is filled up by notification of the Government that applies the requirement of a bond not only to the State quota students but also to All India quota. If this clause were to be applied by the State to require ` 15 lacs to be paid then such an enforcement is possible only if there is a bond.