

**AFR****HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 1379 of 2019**

- Union Of India Ministry Of Finance, Department Of Revenue Through Assistant Commissioner Of Income Tax, Circle - 2 (1) Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. M/s Shri Shyam Warehousing And Power Private Limited, Village Banari, Naila, Janjgir, District Janjgir - Champa Chhattisgarh.
2. Ramesh Kumar Agrawal, Director M/s Shri Shyam Warehousing And Power Private Limited, Village Banari, Naila, Janjgir , District Janjgir - Champa Chhattisgarh
3. Liladhar Agrawal, Director M/s Shri Shyam Warehousing And Power Private Limited, Village Banari, Naila, Janjgir, District Janjgir - Champa Chhattisgarh
4. Ashish Agrawal, Director M/s Shri Shyam Warehousing And Power Private Limited, Village Banari, Naila, Janjgir, District Janjgir - Champa Chhattisgarh

---- Respondent

For Petitioner

Ms. Naushina Ali, Advocate on behalf of
Mr. Amit Chaudhari, Advocate

Order On Board By**Hon'ble Mr. Justice Prashant Kumar Mishra****27/6/2019**

1. Heard.
2. The Revenue has moved before this Court invoking jurisdiction under Section 482 of Cr.PC to question the legality and validity of the impugned order passed by the Sessions Judge, Bilaspur in

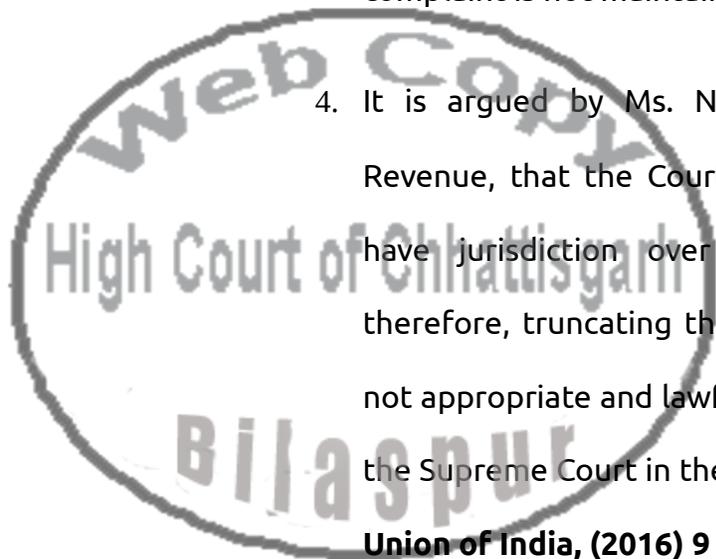


Criminal Revision No.89/2019, which, in turn, was preferred against the order passed by the Chief Judicial Magistrate, Bilaspur on 23.1.2019 in an unregistered complaint filed by the Revenue.

3. Both the Courts below have refused to register the complaint for the reason that under a Notification issued by the High Court of Chhattisgarh on 7.2.2007, the Court at Janjgir-Champa would have jurisdiction for trial of the offence, therefore, the complaint is not maintainable at Bilaspur.

4. It is argued by Ms. Naushina Ali, learned counsel for the Revenue, that the Courts at Bilaspur and Janjgir, both would have jurisdiction over the subject matter of complaint, therefore, truncating the jurisdiction only at Janjgir-Champa is not appropriate and lawful in view of the judgment rendered by the Supreme Court in the matter of **Babita Lila and another Vs. Union of India, (2016) 9 SCC 647**.

5. Elaborating her submission, learned counsel for the Revenue would further put-forth that in the present matter, the assessee was subjected to survey proceedings under Section 133A of the Income Tax Act, 1961 (in short "the Act, 1961"). During survey, the assessee's business premises at Jangjir were inspected and subsequently, he was issued notice on 17.2.2018 under Section 131 of the Act, 1961, a copy of which is shown to the Court and is made part of the record, directing the assessee to present himself at Mahima Complex, Vyapar Vihar, Bilaspur to





give attendance to produce the Books of Accounts and thereafter, his statement was also recorded on 7.3.2018 during his attendance at Bilaspur. It is, thus, argued that the assessee falsified his statement and did not disclose his true income in his statement during survey, therefore, the act of falsifying statement occurred at Bilaspur and as such, offence under Sections 276 and 277 of the Act, 1961 would not only be made out at the place of business but also at the place where the assessee made false statement withholding or concealing his true income.

6. A perusal of the papers filed with this petition would demonstrate that before initiating the prosecution, an opportunity of hearing was provided to the accused-Company and that a Survey under Section 133A was conducted, wherein, he was found to have withheld information with an object of not disclosing his true income and thereby, evading payment of tax.

7. In the light of the above argument about invoking of Section 133A against the assessee, the said provision has to be looked into as to the scope of powers of the Revenue in the course of survey.

8. Section 133A (1) of the Act, 1961 provides that during survey, the assessee is required to facilitate the Revenue to inspect such Books of Accounts or other documents and to furnish such information in relation to the matter. Item (iii) of sub-clause (ia)



of sub-section (3) of Section 133A empowers an officer conducting the survey to record the statement of any such person, which may be useful for, or relevant to, any proceeding under this Act. Thus, recording of statement of the assessee or any other person is part of survey under Section 133A of the Act, 1961.

9. The assessee was issued summons under Section 131 of the Act, 1961 to attend the office of the Income Tax Department at Mahima Complex, Vyapar Vihar, Bilaspur. During the attendance of the assessee, his statement was recorded and thus, part of the survey was also conducted at Bilaspur in addition to the search of his business premises at Janjgir-Champa.

10. In the matter of **Babila Lila (supra)**, the Supreme Court was dealing with the issue of jurisdiction of one of the Courts at two places i.e. Aurangabad and Bhopal, where the search was carried out by the Income Tax Department. In such factual matrix, the Supreme Court would hold thus in para 75 & 76 :

“75. Though the concept of “cause of action” identifiable with a civil action is not routinely relevant for the determination of territoriality of criminal courts as had been ruled by this Court in *Dashrath Rupsingh Rathod vs. State of Maharashtra*, their Lordships however were cognizant of the word “ordinarily” used in Section 177 of the Code to acknowledge the exceptions contained in Section 178 thereof. Section 179 also did not elude notice.

76. Be that as it may, on a cumulative reading of Sections



177, 178 and 179 of the Code in particular and the inbuilt flexibility discernible in the latter two provisions, we are of the comprehension that in the attendant facts and circumstances of the case where to repeat, a single and combined search operation had been undertaken simultaneously both at Bhopal and Aurangabad for the same purpose, the alleged offence can be tried by courts otherwise competent at both the aforementioned places. To confine the jurisdiction within the territorial limits to the court at Aurangabad would amount, in our view, to impermissible and illogical truncation of the ambit of Sections 178 and 179 of the Code. The objection with regard to the competence of the court of the Chief Judicial Magistrate, Bhopal, is hereby rejected.

11. In the case at hand, this Court is confronted with survey operation and not search operation, however, as discussed in the preceding paragraphs, the survey was carried out not only at Janjgir-Champa but also at Bilaspur by issuing summons under Section 131 of the Act, 1961 directing the assessee to produce the documents and thereafter, recording his statement at Bilaspur.

12. Recording of statement during survey is one of the powers of survey under section 133A (3) (1a) (iii), therefore, the Courts at Janjgir as well as Bilaspur, both would have jurisdiction to deal with the subject complaint/prosecution by the Income Tax Department for the alleged offence under Sections 276 and 277 of the Act, 1961.

13. The Notification issued by the High Court of Chhattisgarh on 7.2.2007 is for the creation of Special Courts for the jurisdiction



of a particular District. It does not restrict the jurisdiction of another Court, if, otherwise, the Court has jurisdiction to try the offence, for which, the complaint has been filed by the Income Tax Department.

14. Reference to the Notification is not relevant for deciding the controversy as to whether in relation to a search operation, where the falsifying of statement is made during survey, which Court would have jurisdiction.

15. In view of the foregoing, the petition succeeds and the impugned order passed by the Sessions Judge, Bilaspur and that of the Chief Judicial Magistrate, Bilaspur refusing to register the complaint, are set-aside.

16. The Chief Judicial Magistrate, Bilaspur is directed to register the complaint and proceed to deal with the same in accordance with law.

Sd/-

(Prashant Kumar Mishra)

Judge

Shyna

