

46 CT. CASES 5868/2018

INCOME TAX OFFICE VS. POONAM JAIN

15.10.2025 At 3:00 PM

PRESENT: Sh. Kanhaiya Singhal, Ld. SPP for the complainant.

Accused through VC.

Sh. H.S. Bhullar, Ld. counsel for accused through VC.

Ms. Yashi Gupta, Proxy Counsel for accused.

Order on charge

1. The present order shall decide upon the rival contention with regard to framing of charge upon accused. While the accused is seeking discharge due to insufficiency of evidence brought on record, the prosecution has asserted that there is sufficient material on record to frame charge against the accused.
2. Through the present complaint commission of offences by the accused under Sections 277 and 276C (1) IT Act, 1961 for AY 2009-10. 2018 has been alleged by the Income Tax Department. As per the complaint the complainant department came to know about the commission of these offences by the accused from the website www.icij.org wherein it was revealed that the accused is shareholder in M/s Armoric Management pte Limited, a BVI company. Thereafter a reference was made to FTTR division of CBDT in order to ascertain the interest of accused in the said company whereupon the replies received from the competent authority of BVI in FTTR division disclosed that the above said company maintain its account

in UBS,mAG Singapore. Thereafter the complainant sought information from the Singapore authorities and the reply received disclosed that the accused was the beneficial owner and authorised representative of the abovesaid company as per the account details of account maintained with UBS Singapore. It is submitted that the fact has been denied by the accused in her statements made on oath u/s 132(4)/131 of the Income Tax Act recorded during search and seizure action conducted on 02.03.2017. The accused had thus, attempted to evade tax and committed offence punishable u/s 276-C (1) of the I.T. Act. Further, the accused, by making a false statement in verification, which she knew to be false and does not believe it to be true, she has committed offence punishable u/s 277 of the I.T. Act and under section 181, 191 and 193 of IPC. It is submitted by the Ld SPP that the evidence recorded during pre-charge evidence including the material placed on record is sufficient to show existence of prima facie case against the accused for framing of charges and initiation of trial.

3. It is submitted by the Ld. Counsel for accused that perusal of the entire pre-charge evidence relied upon by the complainant department in the instant case shows the complainant has miserably failed to bring on record any admissible evidence, which may result in conviction of the accused persons and thus the accused persons deserve to be discharged. It is further submitted on behalf of the accused that the foundation of the complaint is the information from the ICIJ website (www.icij.org) showing the accused as a shareholder in M/s Armoric Management PTE Ltd., BVI, supported by a snapshot/printout (CW1/A). Acting on this, the Department

sought information from foreign authorities. The BVI Authority was approached on 09/10.01.2014, and documents were provided on 25.08.2015 (Ex. CW1/E) under the Indo-BVI Tax Information Exchange Agreement (TIEA). The Singapore Authority was approached on 17.11.2016, and documents were furnished on 14.02.2017 (Ex. CW1/H) under the Indo-Singapore DTAA. It is further argued that The prosecution's case rests entirely on unauthenticated foreign documents exhibited by CW-1, namely: (a) Ex. CW-1/E, a reply and documents dated 25.08.2015 from BVI, marked OSR without production of originals (objected by defence), and (b) Ex. CW-1/H, a letter dated 28.07.2015 from Singapore. These documents, produced without proper authentication, carry no evidentiary value, and thus the prosecution has failed to establish charges under Sections 276(1) and 277 IT Act, 1961 for AY 2009-10. Consequently, the pre-charge evidence also does not prove that the accused was either a shareholder of M/s Armoric Management PTE Ltd. (BVI) or a beneficial owner of a UBS AG Singapore bank account. Thus, it has been prayed that the accused be discharged. Further, Ld. Counsel for accused has pointed out following defects in the case of the complainant, which requires the discharge of accused:

Misleading the court qua documents exhibited as OSR: the prosecution's case rests solely on unauthenticated foreign documents produced through CW-1. Ex. CW-1/E, is a reply with annexures dated 25.08.2015 allegedly recived from the BVI authorities, exhibited as OSR without production of originals and specifically objected to by the defence counsel, and Ex. CW-1/H, is a letter dated 28.07.2015 allegedly recived from Singapore. It is argued that as

these documents lack proper authentication, they carry no evidentiary value. The documents purportedly received from BVI were collectively marked as Ex. CW-1/E, but none of them were brought in originals. CW-1 misled this Hon'ble Court by wrongly representing that originals corresponding to the photocopies were available and certified under Section 279B of the Income Tax Act, 1961. However, Section 279B does not dispense with the requirement of producing originals or meeting the evidentiary standards mandated by the Indian Evidence Act, 1872. Despite claiming to have custody of the originals, the complainant failed to produce them, casting serious doubt on both the authenticity and admissibility of the documents relied upon. Further, the witness repeatedly stressed that the documents were routed through the FT&TR Division, Government of India, from the BVI authorities, and were therefore assumed to be genuine. However, mere transmission through an official channel does not exempt such foreign documents from the mandatory requirement of being duly proved in accordance with Indian law.

Lack of proper authentication and admissibility of foreign documents under Indian Law:

4. The present complaint is founded solely on photocopies of documents allegedly received from authorities in the British Virgin Islands and Singapore, claimed to be certified under Section 279B of the Income Tax Act, 1961. A plain reading of Section 279B makes it clear that admissibility requires either production of the original records or a certified copy attested by the Income Tax Authority, affirming that the originals are in its custody. In this case, the

Complainant has bypassed this requirement by certifying photocopies without producing or possessing the originals, thereby creating only a false appearance of authenticity.

5. Foreign documents cannot be admitted under Section 279B unless their originals are in the Complainant's "custody". In the absence of such custody, admissibility can only be established through Section 78(6) of the Indian Evidence Act, 1872, which mandates strict authentication of foreign public documents. Since the Complainant has complied with neither provision, reliance on these documents is legally unsustainable.
6. The documents allegedly received from BVI consist only of photocopies, with no original evidence tendered to establish the shareholding of M/s Armoric Management PTE Ltd. These documents fail to meet the statutory requirements of Section 78(6) of the Indian Evidence Act, 1872, as they (i) lack authentication by foreign authorities, (ii) bear only the complainant's own stamp despite her not being the custodian or certifying authority, and (iii) are neither notarized nor certified by an Indian Consul or diplomatic agent.
7. Under Sections 62 to 65 of the Evidence Act, primary evidence means production of the original document, while certified copies may constitute secondary evidence only under specific circumstances. Photocopies qualify as secondary evidence only if the existence and execution of the original are established and the non-production of the original is satisfactorily explained. In the present case, these mandatory conditions have not been met, rendering the photocopies inadmissible and incapable of being read as evidence within the meaning of Sections 61-65 of the Act.

8. It is well-settled in law that secondary evidence cannot substitute primary evidence unless the statutory exceptions are strictly complied with. Since this has not been done, the exhibited documents have no evidentiary value and ought to be disregarded altogether.
9. Furthermore, although the Indo-BVI TIEA was executed under Section 90 of the Income Tax Act, 1961, empowering authorities of both countries to exchange information relating to tax evasion and investigation, such information must still be proved before the court in accordance with the provisions of the Indian Evidence Act.
10. That according to Article 1 of the Agreement for Exchange of Information with respect to taxes with Virgin Islands: "The competent authorities of the through exchange of information that is Contracting Parties shall provide assistance foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning the taxes and the tax matters covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, verification, enforcement, recovery collection of tax claims with respect to persons subject to such taxes, or the investigation or prosecution of tax matters in relation to such persons, information shall be exchanged in accordance with the provisions of this Agreement."
11. That according to Article 5 of Agreement for Exchanging of Information with respect to taxes with British Virgin Islands: "If specifically requested by the competent authority of the Requesting Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its

domestic laws, in the form of depositions of witnesses and authenticated copies of original records."

It is argued that however, the documents filed by the Complainant do not carry any deposition of witnesses, nor are they an authenticated copy of original records, as alleged by them.

12. That according to Section 3 of the Diplomatic and Consular (Oath and Fees) Act, 1948:

3. Powers as to oaths and notarial acts abroad.-

(1) Every diplomatic or consular officer may, in any foreign country or place where he is exercising his functions, administer any oath and take any affidavit and also do any notarial act which any notary public may do within 3 [a State); and every oath, affidavit and notarial act administered, sworn or done by or before any such person shall be as effectual as if duly administered, sworn or done by or before any lawful authority in 4 [a State]. (2) Any document purporting to have affixed, impressed or subscribed thereon or thereto the seal and signature of any person authorised by this Act to administer an oath in testimony of any oath, affidavit or act, being administered, taken or done by or before her, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person.

13. In the case of **Anurag Dalmia vs ITO**, the statutory scheme governing foreign documents mandates proper attestation and

authentication by the issuing authority abroad and, where applicable, further authentication by the Indian High Commission under the Diplomatic & Consular (Oaths and Fees) Act, 1984. In the present case, CW-1 merely self-certified photocopies of documents under Section 279B of the Income Tax Act, despite never having custody of the originals. Such certification is invalid, and the documents from BVI and Singapore (Ex. CW-1/E and CW-1/H) fail the requirements of Section 78(6) of the Evidence Act, making them inadmissible.

(Para-57, Pg @ 14)

14. The prosecution also relies on alleged bank statements of UBS AG, Singapore, linked to M/s Armoric Management PTE Ltd. These statements are neither originals nor authenticated electronic records. They were produced as plain printouts, unsupported by a mandatory Section 65B certificate under the Evidence Act, rendering them inadmissible as per settled Supreme Court law. Moreover, compliance with Section 2A of the Bankers' Books Evidence Act, 1891, stricter than Section 65B was also absent, since no accompanying certificate was furnished by the bank.

15. Given the absence of properly authenticated or legally admissible evidence, the complaint rests entirely on unreliable documents. Consequently, the accused cannot be lawfully proceeded against and is entitled to discharge.

Non-compliance with the indo-bvi agreement and its legal implications:

16. That the long title of the Indo-BVI Agreement mentions: "...Now, therefore, in exercise of the powers conferred by section 90 of directs that all the provisions of the said Agreement, as set out in the the Income-tax Act, 1961 (43 of 1961), the Central Government

hereby Annexure hereto, shall be given effect to in the Union of India with respect to criminal tax matters immediately and with respect to all other matters covered in Article 1, for taxable periods beginning on or after the 22nd day of August, 2011 or where there is no taxable period, for all charges to tax arising on or after the 22nd day of August, 2011."

17. The Complainant has wrongly invoked the Indo-BVI Agreement while ignoring its express limitation: it applies only to taxable periods beginning on or after August 22, 2011. Yet, the present complaints concern AYS 2008-2014, including years when the company was inactive and struck off. Reliance on documents outside the Agreement's scope is legally impermissible and suggests fabrication to sustain the case. This disregard of the Agreement's temporal applicability renders the complaints untenable and maliciously instituted.

18. That in Article 7 of the Agreement-possibility of declining a request for information Clause (1) states that:

"1. The competent authority of the Requested Party may decline to assist: where the request is not made in conformity with this Agreement"

19. The Complainant's request was not in conformity with Article 7 of the Indo-BVI Agreement, making the information furnished legally deficient. Article 5(3) further requires such information to be in the form of a witness deposition or authenticated copies of original records conditions not satisfied here. Moreover, the information pertains to periods before August 22, 2011, whereas the Agreement applies only prospectively. Thus, the material relied on

lacks legal sanctity, is inadmissible in evidence, and renders the allegations unsustainable in law.

No quantification of alleged tax evasion u/s 276c (1):

20. The prosecution has failed to prove the essential ingredient of quantification of the alleged tax evasion, which is a sine qua non for invoking Section 276C (1) of the Income Tax Act, 1961. It is a settled principle of law that penal provisions under this section can be attracted only when the prosecution establishes with certainty the precise quantum of tax sought to be evaded.
21. This quantification is crucial, as the distinction between clause (i) and clause (ii) of Section 276C (1) hinges entirely on the amount:
Clause (i): where tax evasion exceeds ₹25,00,000, attracting a higher punishment.
Clause (ii): where the evaded tax is below ₹25,00,000, carrying a lesser penalty.
22. In the present case, the prosecution has neither produced any concrete evidence nor conducted any assessment to determine the actual amount of tax allegedly evaded. This omission creates ambiguity regarding both the nature and gravity of the alleged offence, making it legally impossible for the Court to ascertain whether clause (i) or clause (ii) is applicable. At the stage of framing charges, the Court is required to examine whether a prima facie case exists. However, in the absence of any material quantifying the alleged evasion, the very foundation of Section 276C (1) is missing, rendering the proposed charges legally unsustainable. Proceeding further in such circumstances would result in grave miscarriage of justice. Accordingly, since no prima facie case is disclosed, the accused is entitled to discharge at this stage itself.

No case made out u/s 277 of the Income Tax Act, 1961

23. The prosecution has failed to establish the foundational requirement of credible and admissible evidence under Section 277 of the Income Tax Act, 1961, thereby rendering the allegation of making false statements legally unsustainable.
24. In the case of Anurag Dalmia vs ITO, to sustain a charge under Section 277, the prosecution must prove beyond doubt that (a) the statement was false, and (b) it was made knowingly or with belief in its untruth. Mere assertions of falsehood, without cogent proof, cannot form the basis of prosecution. (Para – 121)
25. The present case rests upon documents already shown to be false, fabricated, unauthentic, and inadmissible. A charge premised on such defective material violates settled principles of criminal jurisprudence requiring reliable evidence beyond reasonable doubt.

A Standard of proof at the stage of framing of charge.

Before analysing the rival contentions of the parties, it would be appropriate to check the standard measure to be adopted to gauge the evidence. Though it has been the case of complainant that be it a chargesheet filed before the court in pursuance of conclusion of investigation, initiated on registration of FIR or be it the complaint for warrant triable offence, the court has to consider the material placed on record to consider and decide whether prima facie case against the accused is made out or not, otherwise it will amount to holding a mini trial at the stage of charge and recording of evidence in post charge evidence stage, will be a futile exercise. But the Ld. Counsel for accused has opposed the said contention on the basis of provisions contained in Section 245 (1) r/w Section 244 (1) of Cr.PC and on the basis of ratio of hon'ble High Court of Delhi in Suresh

Khullar Vs. Vijay Khullar, (2008) DLT 685 and ratio of judgment of hon'ble Apex Court in Ajoy Kumar Ghosh Vs. State of Jharkhand, (2009) 14 SCC 115.

From the consideration of the submissions, perusal of record and the position of law, it is noted that there is difference in considering the material as well as the proof of evidence at the stage of charge while considering the framing of charge in cases instituted on police report and warrant cases instituted on complaint. Section 245 R/w Section 244 of Cr.PC makes it clear that court has to consider the evidence led by the complainant during pre charge evidence and is to frame charges in warrant cases instituted upon complaint, only if the evidence so led is of such nature that if, unrebutted will result in conviction of accused. Further the court has to discharge the accused, if court considers that no case against the accused has been made out which, if unrebutted, would warrant his conviction. This distinction can be understood by referring the operative part of judgment of hon'ble High Court of Delhi in Suresh Khullar (supra) and of hon'ble Apex Court in Ajoy Kumar Ghosh (supra), which is reproduced here for the sake of convenience.

Hon'ble High Court of Delhi has observed in **Suresh Khullar Vs. Vijay Khullar, (2008) DLT 685** :

“Needless to say that the learned Magistrate in the instant case also seems to have fallen into error by assuming that in a criminal complaint case in respect of which the warrant trial procedure is to be followed at the time of framing of charge, only a prima facie evidence is to be seen. It is in this context that the learned Magistrate seems to have referred to the judgment of Supreme Court in case titled Onkar Nath Mishra & Ors. Vs. State (NCT of Delhi) &

Anr. 2008 (1) JCC 65. The learned Magistrate seems to be oblivious of the fact that in a warrant trial case instituted on the basis of a complaint at the stage of framing of the charge, quantum of proof which is required for framing of the charge is much higher than in a State case for the purpose of framing of the charge. This would be evident from the fact that Section 245(1) says that in such cases, charge could be framed only when the evidence, which is adduced by the complainant at the pre- charge level, is of such a nature that it is left unrebutted would result in conviction. Therefore, the said quantum of proof would be much higher than the prima facie case and slightly lesser than the beyond reasonable doubt. The Magistrate seems to have fallen into grave error on account of her ignorance about the said provision of law”.

Hon’ble Apex Court has observed in **Ajoy Kumar Ghosh Vs. State of Jharkhand, (2009) 14 SCC 115** :

“22. In the warrant trial instituted otherwise than the police report, the complainant gets two opportunities to lead evidence, firstly, before the charge is framed and secondly, after the framing of the charge. Of course, under Section 245(2) CrPC, a Magistrate can discharge the accused at any previous stage of the case, if he finds the charge to be groundless.

....

24. Now, there is a clear difference in Sections 245(1) and 245(2) of CrPC. Under Section 245(1), the Magistrate has the advantage of the evidence led by the prosecution before him under Section 244 and he has to consider whether if the evidence remains unrebutted, the conviction of the accused would be warranted. If there is no discernible incriminating material in the evidence, then the

Magistrate proceeds to discharge the accused under Section 245(1) CrPC.”

Hon’ble Apex Court has observed in **Sunil Mehta and Anr Vs. State of Gujarat AIR online 2013 SC 381**:

12. Sections 244 to 246 leave no manner of doubt that once the accused appears or is brought before the Magistrate the prosecution has to be heard and all such evidence as is brought in support of its case recorded. The power to discharge is also under Section 245 exercisable only upon taking all of the evidence that is referred to in Section 244, so also the power to frame charges in terms of Section 246 has to be exercised on the basis of the evidence recorded under Section 244. The expression “when such evidence has been taken” appearing in Section 246 is significant and refers to the evidence that the prosecution is required to produce in terms of Section 244(1) of the Code. There is nothing either in the provisions of Sections 244, 245 and 246 or any other provision of the Code for that matter to even remotely suggest that evidence which the Magistrate may have recorded at the stage of taking of cognizance and issuing of process against the accused under Chapter XV tantamounts to evidence that can be used by the Magistrate for purposes of framing of charges against the accused persons under Section 246 thereof without the same being produced under Section 244 of the Code. The scheme of the two Chapters is totally different. While Chapter XV deals with the filing of complaints, examination of the complainant and the witnesses and taking of cognizance on the basis thereof with or without investigation and inquiry, Chapter XIX Part B deals with trial of warrant cases instituted otherwise than on a police report. The trial of an accused under Chapter XIX and the evidence relevant

to the same has no nexus proximate or otherwise with the evidence adduced at the initial stage where the Magistrate records depositions and examines the evidence for purposes of deciding whether a case for proceeding further has been made out. All that may be said is that evidence that was adduced before a Magistrate at the stage of taking cognizance and summoning of the accused may often be the same as is adduced before the Court once the accused appears pursuant to the summons. There is, however, a qualitative difference between the approach that the Court adopts and the evidence adduced at the stage of taking cognizance and summoning the accused and that recorded at the trial. The difference lies in the fact that while the former is a process that is conducted in the absence of the accused, the latter is undertaken in his presence with an opportunity to him to cross-examine the witnesses produced by the prosecution.

26. From the consideration of above said case law as well as Section 244 and 245 of Cr.PC, this court is of opinion that charges can be framed against the accused, only when in the pre charge evidence led by the complainant, all the documents are proved and material strictly as per rules of evidence and no material document can be left unproved to be proved at the post charge stage. In the absence of any such proof, court cannot be of view that the pre charge evidence so recorded, will result in conviction of accused if the same remains unrebutted and accordingly accused will be discharged as per provisions of Section 245 of CR.PC.

27. **Conclusion:**

On the basis of above discussion, it is noted that complainant has not been able to prove as per rules of evidence the information recieved from the competent authority of BVI and Singapore against the accused, during pre charge evidence as per provisions of Indian Evidence Act. Further, the complainant is solely relying upon the photocopies for the purposes of framing charges against accused and initiating trial against the accused. The complainant is alleging offence of evasion of tax by the accused and has not even conducted assessment to at least state the amount of tax allegedly evaded. This court is of considered opinion that the evidence brought by the complainant during pre-charge evidence, can not be said to be such that same will result in conviction of accused, if the same remains un rebutted.

28. Accordingly accused is discharged in the present case for offences under 276 C(1) and 277 of the Income Tax Act, 1961 and under Section 181, 191 and 193 of IPC.

(ARJINDER KAUR)
ACJM: (SPECIAL ACTS): CENTRAL
THC: DELHI: 15.10.2025