

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2537 OF 2018

Ramprakash Biswanath Shroff ... Petitioner

Vs

The Commissioner of Income Tax (TDS) and Ors. ... Respondents

Mr. Ramprakash B. Shroff- Petitioner in person.

Mr.Suresh Kumar for Respondent No.1.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

MONDAY, 15TH OCTOBER, 2018

P.C. :

1 At the request of Mr.Suresh Kumar and to enable him to file a comprehensive affidavit, we post this matter on 19th November, 2018.

2 This Writ Petition raises an issue which is of serious concern for those salaried employees employed by Companies and Corporations, whose Promoters and persons in-charge do not bother to issue, to the

employees from whose salary, the tax is deducted at source, the certificates. Hence, the petitioner says that the Form No.16 having not been issued in time, the employees are suffering serious consequences and are proceeded against for breaching and violating legal provisions. Some of these employees are senior citizens.

3 We would, therefore, request the respondents, particularly the Commissioner of Income Tax (TDS), Mumbai to file a comprehensive affidavit.

4 We want the Ministry of Finance, Department of Revenue also to be made aware of these serious lapses in Mumbai and around. We have noticed that there is no transparency, in the sense, no information is ever displayed in relation to such defaulters by the Department. We expect the Department to provide information of such defaulters so that those seeking employment or awaiting either retiral benefits or such other sums from the employers would know in advance as to how they are expected to comply with law. The petitioner says that he is a senior citizen of 65 years of age and because he is not in possession of Form No.16, he has suffered at the hands of the Department. Let, therefore,

the necessary steps be taken in law so that such occurrences are avoided in future. We would expect the Department of Revenue, particularly, Department of Income Tax to penalise such defaulters and take other strict measures contemplated by law against them. We post this matter in the hope that this Writ Petition will be taken as test case by respondent No.1.

5 During the course of arguments, we have invited Mr.Suresh Kumar's attention to Section 405 of the Indian Penal Code, 1860 and we find that *prima facie*, the reading of this Section together with its explanation furnishes enough ground to bring the persons like respondent Nos.2 to 5 to book by applying provisions of Section 405 of the Indian Penal Code to them. We do not see any record till date of the Department of Revenue having applied such a provision in the prosecution launched against such defaulters. Let Mr.Suresh Kumar enlighten us on this aspect as well.

[B.P. COLABAWALLA, J.]

[S.C. DHARMADHIKARI, J.]