

**IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE PURUSHAINDR KUMAR KAURAV**

**ON THE 09 OF MARCH, 2022**

**WRIT PETITION No.12040 of 2017**

**Between:-**

**BHAGWATI PRASAD DUBEY SON OF  
LATE SHRI M.M.DUBEY, OCCUPATION  
AGRICULTURIST, AGED ABOUT 82  
YEARS, RESIDENT OF WARD No.16/11,  
MALAKHEDI, HOSHANGABAD, MP.**

**.....PETITIONER**

***(BY SHRI ASHISH SHROTI - ADVOCATE)***

**AND**

- 1. SMT. SUMARTI BAI WIDOW OF SHRI  
HARISH CHANDRA AGED ABOUT 64  
YEARS.**
- 2. SITARAM SON OF LATE SHRI HARISH  
CHANDRA, AGED ABOUT 40 YEARS.**
- 3. PREM SHANKER SON OF LATE SHRI  
HARISH CHANDRA, AGED ABOUT 37  
YEARS.**

**ALL RESIDENT OF WARD NO.16/11,  
RAIPUR ROAD, MALAKHEDI,  
HOSHANGABAD, TEHSIL AND DISTRICT  
HOSHANGABAD (M.P.).**

**....RESPONDENTS**

***(BY SHRI PRAMOD SINGH TOMAR – ADVOCATE  
ABSENT)***

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*This petition coming on for admission this day, **Hon'ble Shri Justice Purushaindra Kumar Kaurav**, passed the following:*

**ORDER**

This petition under Article 227 of the Constitution of India is directed against the order dated 27.07.2017 (Annexure P/5) passed by II<sup>nd</sup> Civil Judge, Class-II, Hoshangabad in C.S.No.10-B of 2015.

2. The facts of the case are that the respondents are the owner and in possession of a land bearing Khasra No. 62, P.H.No.18, Tehsil & District Hoshangabad admeasuring 2.60 acres. Out of said land, it was agreed that 01 acre of land would be sold by the respondents in favour of the petitioner for a sum of Rs.3.50 lakh. The petitioner paid an amount of Rs.3.20 lakh to the respondents towards the advance part payment of the total sale consideration. Later on, on account of certain reasons, the said sale transaction could not take place and the petitioner demanded the advance payment which was paid to the respondents. Since, the same was returned to the petitioner, he filed the civil suit for refund of the said money of

Rs.3.20 lakh from the respondents-defendants. During the pendency of the civil suit, respondents-defendants raised an objection regarding admissibility of the agreement in question dated 26.12.2011 on the ground that the same is not a registered document and is insufficiently stamped.

3. The learned trial Court vide impugned order dated 27.7.2017 (Annexure P-5) allowed the application and directed for impounding of the agreement either through the Court or through the Collector of Stamps. Hence, the petitioner is in the instant writ petition.

4. Learned counsel for the petitioner made singular submission that the learned trial court has erred in imposing the maximum penalty under Section 40 of the Indian Stamp Act, 1899 (for short Act of 1899), whereas, taking into consideration the scheme of the Act and the legislative intent, ten times penalty is not always necessary and under the facts of the present case, the learned trial

court should have taken lenient view while imposing the maximum penalty.

5. This court on 18.08.2017, while issuing notices to the respondents, directed stay of operation of the impugned order dated 27.07.2017. The said order is still in force.

6. None appears for the respondents despite service of notice. Hence, this court has proceeded to decide the case on merits.

7. The Hon'ble Supreme Court in the matter of *Trustees of H.C. Dhanda Trust Vs. State of Madhya Pradesh and others*<sup>1</sup> had an occasion to consider the provisions of Section 40 of the Act of 1899. In the said case the "deed of assent" was found to be improperly stamped and the Collector of Stamps imposed ten times penalty against the petitioner therein. In para-12 of the said decision, the Hon'ble Supreme Court formulated a question as to "*whether imposition of ten times penalty by the Collector of Stamps under the provisions of the Act of 1899 was valid or not*". By placing reliance

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1 (2020) 9 SCC 510.

on the provisions of the law and the decisions in the matter of *Gangappa Vs. Fakhirappa*<sup>2</sup> and *Peteti Subba Rao Vs. Anumala S. Narendra*<sup>3</sup>, the Hon'ble Supreme Court held that the purpose of penalty generally is a deterrence and not retribution. When a discretion is given to a public authority, such public authority should exercise such discretion reasonably and not in oppressive manner. The responsibility to exercise the discretion in reasonable manner lies more in cases where discretion vested by the Statute is unfettered. Imposition of the extreme penalty i.e ten times of the duty or deficient portion thereof cannot be based on the mere factum of evasion of duty. The reason such as fraud or deceit in order to deprive the Revenue or undue enrichment are relevant factors to arrive at a decision as to what should be the extent of penalty under Section 40(1)(b).

8. Keeping in mind the aforesaid principle of law, this court finds that the petitioner-plaintiff has filed the suit for refund of his earnest

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2 (2019) 3 SCC 788.

3 (2002) 10 SCC 427.

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money. The document in question was executed on the stamp paper of Rs.100/-. There does not appear any ill intention or to commit any fraud with the public exchequer. Hence, taking into consideration the overall facts and circumstances of the case, instead of relegating the matter to trial court to exercise power under Section 38(2) of the Stamp Act, 1899 or to the Collector of Stamps for exercise of powers under Section 40 of the Stamp Act, 1899, this Court reduces the penalty from ten times to two times and the petitioner is directed to deposit the duty with penalty before the trial court, which shall thereafter proceed in accordance with law.

9. Accordingly, the petition is allowed to the extent indicated above.

**(PURUSHAINDRA KUMAR KAURAV)**  
**JUDGE**

MKL.