

(1993) 09 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 6093 of 1993

Arjun Kumar Agrawal

APPELLANT

Vs

S.C. Kanungo, Income Tax Officer and Another

RESPONDENT

Date of Decision : 21-09-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 309
Income Tax Act, 1961 — Section 276C, 277

Citation : (1993) 204 ITR 749

Hon'ble Judges : D.M. Patnaik, J; A. Pasayat, J

Bench : Division Bench

Advocate : S.C. Lal, M.R. Mishra, N. Panda and R. Panda, for the Appellant; A.K. Ray, for the Respondent

Judgement

A. Pasayat, J.—The petitioner, Arjun Kumar Agrawal, and three others, partners of a partnership firm, styled Messrs. Shankar Textiles, are accused persons in 2(c). C. C. No. 71 of 1991 pending in the Court of the Additional Chief Judicial Magistrate (Special Court for Economic Offences), Cuttack. On the basis of a complaint filed by the Income Tax Officer, Dhenkanal (opposite party No. 1 herein), the aforesaid case was instituted on the allegations, inter alia, that (a) the accused persons have wilfully attempted to evade payment of tax, penalty or interest chargeable or imposable under the Income Tax Act, 1961 (in short, "the Act"), by suppressing and/or concealing their assessable income, thereby rendering them liable to be prosecuted u/s 276C of the Act, and (b) the accused persons made false statements during verification by knowingly delivering statements and/or accounts which are false, thereby committing an offence u/s 277 of the Act. After appearance in court, the accused persons filed an application to defer hearing of the case till disposal of the appeal filed before the Commissioner of Income Tax (Appeals), Orissa (opposite party No. 2). The prayer was rejected on the ground that pendency of the appeal cannot stand as a bar to the criminal court's proceeding in the matter and to launching prosecution, and there was no necessity to stay the proceeding.

2. Learned counsel for the accused-petitioner has urged that the learned Additional Chief Judicial Magistrate did not consider that the result of the appeal would have a material effect on the proceeding itself. If the appeal is decided in favour of the accused, the continuance of the criminal proceeding would result in miscarriage of justice. Learned counsel for the Revenue, however, submitted that prosecution can be launched notwithstanding pendency of the appeal and, in any event, there is no infirmity in the order passed by the learned Additional Chief Judicial Magistrate.

3. The result of a proceeding under the Act does not, in all cases, become binding on the criminal court and the court has to judge the proceeding placed before it independently. Otherwise, there is a danger of a contention being advanced that, whenever an assessee or any other person liable under the Act has failed to convince the authorities in the proceedings under the Act that he has not violated any provision, the conviction of such person should invariably follow in the criminal court. No doubt, the criminal court has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and, in an appropriate case, may direct the proceeding to be dropped in the light of an order passed under the Act. In a given case, the conviction recorded by a subordinate court can be set aside in the light of the judgment of the appellate authority where the order forming the basis of prosecution is completely nullified by the order of the appellate court. In a given case, even if prosecution is initiated, the court may decide not to proceed in the light of a finding favourable to the assessee recorded by an authority under the Act subsequent to the launching of the prosecution. The plea that prosecution cannot be launched and/or the proceeding cannot be Initiated under Sections 276C and 277 of the Act as long as some proceeding under the Act in which there is a chance of success of the assessee is pending is without substance. A mere expectation of success in some proceeding in appeal or reference under the Act cannot be a ground for holding that the institution of the criminal proceeding under Sections 276C and 277 of the Act is unauthorised. The position on the point has been succinctly stated by the apex court in *P. Jayappan Vs. S.K. Perumal*, First Income Tax Officer, Tuticorin, . The apex court has observed that even the pendency of reassessment proceedings cannot act as a bar to the institution of criminal prosecution for the offences punishable under Sections 276C and 277 of the Act or Sections 195 and 196 of the Indian Penal Code. In the aforesaid premises, the launching of the prosecution cannot be said to be illegal.

4. Coming to the question whether the criminal court is bound to adjourn a proceeding when an appeal is pending, Section 309 of the Code of Criminal Procedure, 1975 (in short, "the Code"), is relevant. In appropriate cases, the court may adjourn or postpone the hearing of a criminal case in exercise of its discretionary power u/s 309 of the Code, if the disposal of any proceeding under the Act which has a bearing on the proceedings before it is imminent so that it may take into consideration the order to be passed therein. In such cases, the

discretion has to be exercised judicially and in such a way as not to frustrate the object of the criminal proceedings. There can be no rule of universal application in making it necessary for a criminal court to adjourn or postpone the hearing of a case before it indefinitely or for an unduly long period only because some proceeding which may have some bearing on it is pending elsewhere.

5. Coming to the facts of the present case, we find that Appeal No. 30 of 1990-91 is pending before opposite party No. 2. The complaint was filed on March 27, 1991. The appeal appears to have been filed earlier. The learned Additional Chief Judicial Magistrate has not recorded any finding whether the result of the appeal would have any effect on a criminal proceeding or not. It is stated by learned counsel for the Revenue that the appeal can be disposed of by opposite party No. 2 within a short time if the appellants before opposite party No. 2 co-operate. Considering the fact situation, we direct that the petitioner shall appear before opposite party No. 2 with a copy of our order on September 27, 1993, and move for fixing an early date for the hearing of the appeal. If such a prayer is made, the appellate authority would do well to fix the appeal for an early hearing and dispose of the same by the end of October, 1993. The proceeding in the court of the Additional Chief Judicial Magistrate (Special for Economic Offences), Cuttack, shall remain stayed till November 2, 1993. The accused-petitioner shall appear in the Court of the Additional Chief Judicial Magistrate on November 2, 1993, when further orders shall be passed by the learned Additional Chief Judicial Magistrate.

6. The writ application is accordingly disposed of. No costs.

D.M. Patnaik, J.

7. I agree.