

(1985) 06 PAT CK 0002

In the Patna High Court

Case No : Criminal Revision No's. 544 to 551 of 1980

Baleshwar Prasad Singh

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 04-06-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 360
Income Tax Act, 1961 — Section 277

Citation : (1986) 55 CTR 284 : (1986) 159 ITR 818 : (1985) PLJR 749 : (1986) 24 TAXMAN 742

Hon'ble Judges : Prem Shanker Sahay, J

Bench : Single Bench

Advocate : G.C. Bharuka, Navaniti Prasad Singh and R.K. Agrawal, for the Appellant; Lalit Mohan Prasad, Ashwini Kumar Sinha and Devendra Prasad Sinha, for the Respondent

Judgement

P.S. Sahay, J.—All these applications have been heard together and will be governed by this common judgment. The sole petitioner in all the cases has been convicted u/s 277 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), and has been sentenced to undergo rigorous imprisonment for six months in each case. He was also charged u/s 199 of the Indian Penal Code of which he has been acquitted.

2. Shortly stated, the prosecution case is that the petitioner filed returns under the Act for the assessment years 1961-62 to 1968-69 showing his status as Hindu undivided family and also treating the income of contract work, which he was doing as a contractor of the Public Works Department, as such, though the contract work was a partnership business along with two more persons, namely, Sri Baldeo Prasad Sahu and one Sri Laxmi Narain Gupta. The income derived from contract work should have been shown in the return as income from partnership business, which was not done. A dispute arose between the three partners and the matter was referred to arbitrators who gave their award on November 4, 1967, which was made a rule of the court.

3. The petitioner then filed a petition before the Commissioner of Income Tax on October 10, 1969, admitting that the income derived from contract work was a partnership business with others. He was also examined by the Income Tax Officer, Muzaffarpur, on November 6, 1969. Thereafter, the Commissioner, by his order as contained in exhibit-4, sanctioned for the prosecution of the petitioner and in pursuance of that, eight cases were filed for the different assessment years for making a false verification in the return. Four witnesses have been examined by the prosecution and documents have been filed in support of the prosecution case and exhibit-1 is the report of the Income Tax Inspector which was endorsed by the Income Tax Officer, exhibit-2. Exhibit-3 is the statement of the petitioner before the Income Tax Officer. Exhibit-4 is the sanction order ; exhibit-5 is the settlement petition filed before the Commissioner ; exhibit-6 is the returns of the different years in different cases and exhibit-8 is the award given by the arbitrators. The defence of the petitioner was that he had not committed any offence and the verification was made in a bona fide manner and the contents of the same were not false to his knowledge. Three witnesses were also examined on behalf of the defence.

4. The learned Magistrate, on a consideration of the materials on the record, accepted the prosecution case and convicted the petitioner as stated above for making a false verification in the returns for all the assessment years. He, however, acquitted the petitioner of the charge u/s 199 of the Indian Penal Code. On appeal, the conviction and sentence passed by the trial court have been upheld. Being aggrieved by the aforesaid judgment, the petitioner has filed eight revisions which were ordered to be heard together.

5. Most of the facts have been admitted by the defence. The income from partnership business was admittedly not shown in the return and this was admitted in the petition filed before the Commissioner and also accepted by the petitioner in his statement before the Income Tax Officer.

6. Mr. G. C. Bharuka, learned counsel appearing on behalf of the petitioner, has submitted that the petitioner has not been put specific question u/s 313 of the Code of Criminal Procedure that he had made verification in the return knowing it to be false and, therefore, that circumstance cannot be used against him. The argument is that this was a material circumstance and this having not been put to the petitioner, he was not given an opportunity to explain the same and in that view of the matter, the conviction and sentence passed against the petitioner is fit to be set aside. In support of his contention, reliance has been placed on the case of *Machander Vs. State of Hyderabad*, , and the cases of *Sharad Birdhichand Sarda Vs. State of Maharashtra*, and *Sheikh Multan Vs. The State of Bihar*, . In all these cases, it has been held that the circumstance on which the prosecutions wants to rely must be specifically put to the accused and unless it is done, it cannot be used against him. Learned counsel has also relied on a Full Bench decision of the Madhya Bharat High Court in the case of *Fakir Chand Nandram v. The State* AIR 1950 MB 76, in which extra judicial confession was

made by the accused but it was not put to him u/s 342 of the Code of Criminal Procedure which is now Section 313, and, therefore, it had been held that it could not be used against the accused. The principles are well known and there are numerous decisions on this point. But, the question for consideration is whether the accused has been taken unawares and had absolutely no knowledge about it. Sri Lalit Mohan Prasad, learned counsel for the Income Tax Department, has submitted that the petitioner himself, in his statement before the Income Tax Officer and in his petition before the Commissioner, had admitted that though there was a partnership business, it was not shown in the return and, therefore, the petitioner was fully aware of all the facts and no prejudice can be said to have been caused to him. He has further submitted that three witnesses have been examined by the defence and the petitioner had sufficient opportunity to show to the court that prejudice has actually been caused to him, but this has not been done. I have given my utmost and anxious consideration to the submissions made at the Bar and, in my opinion, the contention raised on behalf of the Department has to be accepted. The petition of complaint has been filed on the sole allegation that the petitioner had deliberately not shown the income from contract business as income from partnership business and the petitioner had full knowledge about it and after the award, it became clear that the facts will be known to the authorities and, thereafter, the petition was filed before the Commissioner. In that view of the matter, the petitioner has not been prejudiced at all and even if no question has been put to him u/s 313 of the Code of Criminal Procedure, the conviction cannot be set aside on that ground. Further, it has been submitted that the prosecution has failed to prove that at the time of making the declaration, the petitioner knew that the declaration made by him was false. In this connection, it will be better to refer to the relevant provision which is Section 277 of the Act.

"277. False statement in verification, etc.--It a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable,--

(i) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine."

7. From the facts of this case, it is abundantly clear that the petitioner, while at the time of filing the return, very well knew that the contract business was a partnership business with others and, therefore, it was his bounden duty to mention the income derived therefrom as income from partnership business. Learned counsel for the petitioner has submitted that by making this omission, the petitioner was not in any way benefited. But, in my opinion, that is not a

relevant consideration at all. Had there been no dispute and no award, probably the whole thing would have gone unnoticed and it was only after the dispute arose and the award was given that the petitioner knew the implication and became active and started filing petitions before the Income Tax authorities. Mr. Bharuka has submitted that the statements made in the petition were done in an innocent manner in order to purchase peace; but it does not seem to be so innocent as it has been presented before me. The award was made on November 4, 1967, and even after that date, for the return for the year 1968-69, the partnership business was not shown in that return. The explanation, by no stretch of imagination, can be said to be reasonable or probable and, therefore, the case of Adikanda Swain Vs. Emperor, , will have no application to this case.

8. It has also been vehemently argued by Mr. Bharuka that the sanction order, as contained in annexure-4, is not in accordance with law and the prosecution lodged against the petitioner is fit to be quashed on that ground alone. His contention is that the sanctioning authority, namely, the Commissioner, has not applied his mind and on that ground alone the prosecution is fit to be quashed. Reliance has been placed on the case of Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, , and on the case of Jagdish Prasad Verma Vs. The State, . Those cases were under the Prevention of Corruption Act and the sanctioning authority had accorded sanction without looking into the relevant papers and, in that view of the matter, the sanction order was held to be non est.

9. The position under the Income Tax Act is quite different and it would be better to quote Section 279 of the Act.

"279. Prosecution to be at the instance of Commissioner.--(1) A person shall not be proceeded against for an offence u/s 275A, section 276A, Section 276AA, Section 276B, Section 276C, Section 276CC, Section 276D, Section 276E, Section 277, Section 278 or Section 278A except at the instance of the Commissioner."

10. The remaining provisions are not relevant for this case. The words "except at the instance of the Commissioner", which have been underlined* by me, indicate that the Commissioner is the only authority who has to give permission for prosecution. Reading the sanction order, exhibit-4, it is clear that all papers were examined and, thereafter, the Commissioner came to the conclusion that it was a fit case in which prosecution should be ordered. The words "at the instance of the Commissioner" have been interpreted in the case of T.S. Baliah Vs. T.S. Rengachari, and it has been rightly contended by the learned counsel appearing for the Department that the position of Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, , is quite different and cannot be equated to the facts of this case. Learned counsel for the Department has also drawn my attention to Section 279, Sub-section (3), of the Act which is as follows :

"279. (3) Where any proceeding has been taken against any person under Sub-section (1), any statement made or account or other document produced by such

person before any of the Income Tax authorities specified in Clauses (a), (b), (c), (d) and (e) of Section 116 shall not be inadmissible as evidence for the purpose of such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived u/s 273A or that the offence in respect of which such proceeding was taken would be compounded. "

11. It has been submitted that any document filed by the petitioner is admissible and in exhibit-3 and exhibit-5, the petitions filed by the petitioner, there is clear admission about the partnership business and, therefore, any court is fully entitled to take cognizance of the same. If the petitioner has himself accepted the position, then he is estopped from challenging the same. On a careful consideration of the submissions, in my opinion, the sanction order, exhibit-4, is valid and cannot be assailed. Lastly, it was contended that the petitioner should be given the benefit of Section 360 of the Code of Criminal Procedure, he being a first offender and should not be sent to jail. Mr. Prasad, for the Department, has submitted that though the provisions of Section 360 will be applicable to this case, it should not be resorted to in the instant case. He has submitted that in cases relating to economic offences and tax evasion, the court should be strict in giving such benefit to the accused. In support of his contention, reliance has been placed in the cases of Prem Ballab and Another Vs. The State (Delhi Admn.), ; Pyarali K. Tejani Vs. Mahadeo Ramchandra Dange and Others, , and Joginder Singh Vs. The State of Punjab, . In my opinion, the contention raised on behalf of the Department seems to be correct and, therefore, the petitioner is not entitled to the benefit u/s 360 of the Code of Criminal Procedure.

12. Now, coming to the sentence, the minimum sentence of six months has been awarded but there are eight cases for eight years and, in my opinion, it is a fit case in which the provisions of Section 427 of the Code of Criminal Procedure should be invoked. Section 427 of the Code of Criminal Procedure runs as follows:

"427. Sentence on offender already sentenced for another offence.--(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order u/s 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such

previous sentence."

13. In the result, all the applications are accordingly dismissed. But, I direct that the sentence of six months imposed upon the petitioner in Criminal Revision No. 544 of 1980 will run concurrent with the sentence in other cases u/s 427 of the Code of Criminal Procedure.