
(1989) 04 PAT CK 0013

In the Patna High Court

Case No : Criminal Revision No. 743 of 1986

Banwarilal Satyanarain and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 24-04-1989

Acts Referred:

Income Tax Act, 1961 — Section 194A, 201, 221, 264, 276B

Citation : (1990) 38 BLJR 5 : (1989) 80 CTR 31 : (1989) 179 ITR 387 : (1990) 1 PLJR 107 : (1989) 46 TAXMAN 289

Hon'ble Judges : B.N. Agrawal, J

Bench : Single Bench

Advocate : G.G. Bharuka, Ramesh Kumar Agrawal and S.D. Sanjay, for the Appellant; S.L. Jha, for the Respondent

Judgement

B.N. Agrawal, J.—This application has been filed on behalf of the petitioners for setting aside the impugned order dated June 15, 1986, passed in trial No. 6 of 1986, before the Presiding Officer, Special Court, for trial of cases relating to economic offences (hereinafter referred to as the "Special Court") by which he has refused to discharge the petitioners from the charge u/s 276B of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), as well as for quashing of the prosecution of the petitioners in the aforesaid case.

2. Necessary facts giving rise to criminal prosecution of the petitioners are that petitioner No. 1 is a partnership firm registered as such under the Act and petitioners Nos. 2 to 5 are its partners. In the course of the assessment proceeding for the assessment year 1977-78, it transpired that the accused persons did not deduct Income Tax u/s 194A of the Act in time and the same resulted in non-payment of tax within the prescribed time to the credit of the Central Government. The amount of interest payable to seven different persons by the petitioner-firm (hereinafter referred to as "the assessee") was credited to their respective accounts on March 29, 1977, but the Income Tax thereon was deducted only on July 29, 1977, and the same was paid to the credit of the

Central Government on August 1, 1977, whereby two months' default was committed by the assessee in payment of the Income Tax deducted or to be deducted at source (hereinafter referred to as the T. D. S.).

3. Penalty proceedings were initiated u/s 201 read with Section 221 of the Act against the assessee in which notice was purported to have been served upon it and the Income Tax Officer imposed a penalty of Rs. 1,418 besides interest amounting to Rs. 113, total being Rs. 1,531. The assessee having learnt about the imposition of penalty preferred an appeal before the Appellate Assistant Commissioner of Income Tax who reduced the penalty to Rs. 500 by his order dated December 14, 1982. Being dissatisfied with the order of the Appellate Assistant Commissioner, the assessee preferred a revision before the Commissioner of Income Tax, Patna, u/s 264 of the Act. During the pendency of the said revision application on March 30, 1984, a complaint petition was filed before the Chief Judicial Magistrate, Muzaffarpur, by the Income Tax Officer at the instance of the Commissioner of Income Tax for prosecution of the petitioners u/s 276B of the Act stating therein the aforesaid facts who, by his order passed on the same day, took cognisance of the aforesaid offence and summoned the petitioners to face trial which was to be held by a Magistrate to whom the case was transferred by the very same order. Later on, after the constitution of the Special Court, the case was transferred to it.

4. In the criminal trial, in the year 1985, three witnesses were examined on behalf of the complainant and cross-examined before the framing of the charge. Thereafter, on January 17, 1986, on behalf of the petitioners, a petition for discharge was filed on grounds, inter alia, that the revision application arising out of the penalty proceeding was pending before the Commissioner of Income Tax. Subsequently, on February 13, 1986, the Commissioner of Income Tax allowed the revision application and deleted the penalty in its entirety on merits. In the revisional order, it has been stated that the explanation of the assessee for not deducting and paying the T.D.S. within time to the credit of the Central Government was that the assessee could not receive the arhatia's (commission agent's) account in time and the munim (accountant) of the assessee was lying ill as a result of which delay was caused in finalisation of the accounts. The Commissioner of Income Tax having been satisfied that the assessee had proved to his satisfaction that the default was for good and sufficient reasons deleted the penalty and the order reads thus :

"1. The revision petition filed on April 7, 1984, against the Appellate Assistant Commissioner's order dated December 14, 1982 (received by the assessee on May 30, 1983), upholding imposition of penalty by the Income Tax Officer is within time. The required fee of Rs. 25 has been deposited and the right to appeal has been waived by the petitioner.

2. In response to the departmental notice, Sri S.P. Khetan, advocate, appeared and was heard. He submitted as follows :

(i) That the Appellate Assistant Commissioner was not justified in restricting the penalty to Rs. 500 as against Rs. 1,531 imposed by the Income Tax Officer u/s 201 read with Section 221.

(ii) That no reasonable opportunity of being heard was given to the petitioner before the imposition of penalty.

(iii) That due to non-receipt of the arhatia's account in time and the continued illness of the munim, there was delay in the finalisation of accounts.

The advocate also cited the cases of the Income Tax Appellate Tribunal, Patna Bench, in the case of Dungarshi Das Mannalal Muzaffarpur (I. T. A. Nos. 679, 680 and 681 (Pat)) of 1983 and Paliwal Vastralaya, Muzaffarpur (I.T. A. Nos. 530,531 and 532 (Pat)) of 1983 in his support.

3. I have considered the facts and circumstances of this case and I think it was not a fit case for penalty. The penalty of Rs. 500 sustained by the Appellate Assistant Commissioner is deleted.

4. In the result, the petition is allowed."

5. In view of the fact that the explanation of the assessee for not deducting and paying the T.D.S. within time was accepted by the Commissioner of Income Tax in statutory revision preferred before him and the entire amount of penalty was deleted, the petitioners filed an application u/s 245 of the Code of Criminal Procedure, 1973 ("hereinafter referred to as "the Code"), before the Special Court for discharging them, which prayer has been rejected by the impugned order. Hence, this application.

6. In order to decide the point involved in this case, it would be necessary to refer to certain statutory provisions. Section 194A of the Act lays down that any person who is responsible for paying income by way of interest shall, at the time of credit of such income to the account of the payee or at the time of payment thereof, whichever is earlier, deduct income tax thereon at the rates in force, meaning thereby the rates specified under the Finance Act relevant to the assessment year. u/s 200 of the Act, such a person is obliged to pay within the prescribed time such sum to the credit of the Central Government. Rule 30 of the Income Tax Rules, 1962, framed under the provisions of the Act (hereinafter referred to as "the Rules") prescribes the time and mode for payment of such sum. Relevant portions of Sections 194A and 200 of the Act and Rule 30 of the Rules run as follows :

"Section 194A. (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income chargeable under the head "Interest on securities", shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct Income Tax thereon at the rates in force."

"Section 200. Any person deducting any sum in accordance with the provisions of Sections 192 to 194, Section 194A, Section 194B, Section 194BB, Section 194C, Section 194D and Section 195 shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs."

"Rule 30. (1) All sums deducted in accordance with the provisions of Sections 192 to 194, Section 194A, Section 194B, Section 194BB, Section 194C, Section 194D and Section 195 shall be paid to the credit of the Central Government-

(a) in the case of deduction by or on behalf of the Government, on the same day ;

(b) in all other cases-

(i) in respect of sums deducted in accordance with the provisions of Section 194A, Section 194C and Section 194D-

(1) where the income by way of interest referred to in Section 194A or the sum referred to in Section 194C or the income by way of insurance commission referred to in Section 194D is credited by a person carrying on a business or profession to the account of the payee as on the date up to which the accounts of such business or profession are made, within two months of the expiration of the month in which that date falls ;

(2) in any other case, within one week from the last day of the month in which the deduction is made ; and

(ii) in respect of sums deducted in accordance with the other provisions, within one week from the date of such deduction or date of receipt of the challan by the person making the deduction, as the case may be :

Provided that the Income Tax Officer may, in special cases, and with the approval of the Inspecting Assistant Commissioner,--

(a) in cases falling under Clause (i), permit any person to pay the Income Tax deducted from any income by way of interest, other than income chargeable under the head "Interest on securities" or any income by way of insurance commission quarterly on July 15th, October 15th, January 15th and April 15th, and

(b) in cases falling under Clause (ii), permit an employer to pay Income Tax deducted from any income chargeable under the head "Salaries" quarterly on June 15th, September 15th, December 15th and March 15th,

(3) The person responsible for making deduction under Sections 193, 194, 194A, 194B, 194BB, 194C, 194D and 195 shall pay the amount of tax so deducted to the credit of the Central Government by remitting it within the time prescribed in Sub-rule (1) into any branch of the Reserve Bank of India or of the State Bank of India-or of any authorised bank, accompanied by an Income Tax challan, blank copies of which will be supplied by the Income Tax Officer on request for the

purpose, provided that where the deduction is made by or on behalf of Government, the amount shall be credited within the time and in the manner aforesaid without the production of a challan."

7. Section 201(1) of the Act lays down that if any such person does not deduct or after deducting fails to pay the tax as required u/s 194A and other provisions of the Act referred to above, he or it shall be deemed to be an assessee in default in respect of the tax. u/s 201(1A) of the Act, such a person shall be liable to pay simple interest at the rate of 15 per cent. per annum on the amount of such tax from the date on which the same was deductible to the date on which the same is actually paid.

8. According to Section 221 of the Act, when an assessee is deemed to be in default in making a payment of tax, he shall be liable to pay by way of penalty such amount as the Assessing Officer may direct but which does not exceed the amount of tax in arrears. It has been specifically enumerated in this section that if an assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons, no penalty shall be levied under this section. Section 276B of the Act, as it stood prior to 1986, lays down that if a person, without reasonable cause or excuse, fails to deduct or after deducting fails to pay the tax as required by or under the provisions of, inter alia, Chapter XVII-B of the Act under which Sections 194A and 200 of the Act fall, shall be liable to be punished with imprisonment and fine. Relevant portions of Sections 201, 221 and 276B of the Act are quoted hereunder ;

"Section 201. (1) If any such person and in the cases referred to in Section 194, the principal officer and the company of which he is the principal officer does not deduct or after deducting fails to pay the tax as required by or under this Act, he or it shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default in respect of the tax :

Provided that no penalty shall be charged u/s 221 from such person, principal officer or company unless the Assessing Officer is satisfied that such person or principal officer or company, as the case may be, has without good and sufficient reasons failed to deduct and pay the tax.

(1A) Without prejudice to the provisions of Sub-section (1), if any such person, principal officer or company as is referred to in, that sub-section does not deduct or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest at fifteen per cent per annum on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid." (Emphasis* supplied).

"Section 221. (1) When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable under Sub-section (2) of Section 220, be liable, by way of penalty, to pay such amount as the Assessing Officer may direct, and in the case of a continuing default, such further amount or amounts as the

Assessing Officer may, from time to time, direct, so, however, that the total amount of penalty does not exceed the amount of tax in arrears :

Provided that before levying any such penalty, the assessee shall be given a reasonable opportunity of being heard :

Provided further that where the assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons, no penalty shall be levied under this section." (Emphasis* added).

"Section 276B. If a person, without reasonable cause or excuse, fails to deduct or after deducting, fails to pay the tax as required by or under the provisions of Sub-section (9) of Section 80E or Chapter XVII-B, he shall be punishable,--

(i) in a case where the amount of tax which he has failed to deduct or pay 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." (Emphasis* supplied).

9. Learned counsel, appearing on behalf of the petitioners, contended that the petitioners were entitled to be discharged from the instant criminal case, but the Special Court has committed an error of law in not discharging them and their prosecution is not fit to be continued in view of the fact that the Commissioner of Income Tax in the revision arising out of penalty proceeding, has deleted the penalty on being satisfied that the assessee was able to furnish good and sufficient reasons for failure to deduct and pay the tax within time. From a bare perusal of Sections 194A, 200, 201, 221 and 276B of the Act, it would appear that if a person fails to deduct tax u/s 194A of the Act and pay the same within the time prescribed, he or it incurs three liabilities : firstly, u/s 201(1A) of the Act, such person is liable to pay simple interest at the rate of 15 per cent. per annum on the amount of tax from the date on which the tax was deductible to the date on which the tax is actually paid. Even if a person is able to show good and sufficient reasons for failure to deduct and pay the tax within time, he is liable to pay interest under the aforesaid provisions. The liability to pay interest is incurred automatically on the failure to deduct and pay the tax within time.

10. Now, I take up the second liability incurred by such a person under which he or it has to pay by way of penalty a sum not exceeding the amount of tax in arrears. In the penalty proceeding, the Income Tax Department (hereinafter referred to as "the Revenue") has to only show that the assessee is deemed to be in default, meaning thereby that he has failed to deduct tax as required u/s 194A of the Act or pay the same within time. Beyond this, in the penalty proceeding, nothing further has to be proved by the Revenue. So far as the assessee is concerned, for absolving himself from the liability of penalty, he is

required to prove to the satisfaction of the Assessing Officer that there were good and sufficient reasons for the default. If the reasons were not good and sufficient, in that event, penalty is leviable ipso facto upon a mere finding that the assessee had failed to deduct or pay the tax within time.

11. Now, I turn to the third liability incurred by such a person and that is the liability of criminal prosecution u/s 276B of the Act. This section lays down that if a person, without reasonable cause or excuse, fails to deduct the tax u/s 194A of the Act or pay the same within time, he shall be liable to be punished with imprisonment and fine by a criminal court. A bare perusal of Section 276B of the Act would go to show that the liability under the said provision is incurred only if two conditions are satisfied. Firstly, the prosecution must show that there was failure on the part of the assessee to deduct the tax u/s 194A of the Act and/or to pay the same within the time allowed by law, but for mere failure, a person cannot be prosecuted. The second pre-requisite to be shown by the prosecution is that the failure was without reasonable cause or excuse. Under Sections 201 and 221, as stated above, an assessee is required to prove good and sufficient reasons for default whereas u/s 276B, a prosecutor is required to show that the failure was without reasonable cause or excuse. The plain language of the aforesaid statutory provisions would go to show that in the penalty proceeding, it was incumbent upon the assessee to show that there were good and sufficient reasons for his failure, but in the criminal case, an assessee was not required to prove that there was reasonable cause or excuse for his failure, rather the prosecutor had to prove that there was no reasonable cause or excuse for the failure of the assessee. It appears that the Legislature has deliberately used different expressions for penalty proceedings and criminal prosecution. In the criminal case, the prosecution has to prove its case beyond reasonable doubt. The prosecution has to fall or stand on its own legs and it cannot take advantage of the weaknesses of the defence. Since the decision of the criminal trial depends upon preponderance of probabilities, the Legislature, in its wisdom, has used different expressions in Section 276B of the Act by using only reasonable cause or excuse and not good and sufficient reasons as used in Section 201 read with Section 221 of the Act.

12. A question now arises whether, in a penalty proceeding, where an authority under the Act who has expert knowledge of the subject has recorded a finding that the assessee had furnished good and sufficient reasons for failure to deduct and/or pay the tax, within time, and dropped the penalty proceeding or deleted the same, as the case may be, it can be said that he is still liable to be prosecuted u/s 276B of the Act ? Can a criminal court, in spite of a finding by the statutory authority under the Act that the assessee furnished good and sufficient reasons for not deducting and paying the tax within time, take a different view and hold that the failure on the part of the assessee was without reasonable cause or excuse ? My answer to the question posed by me is emphatically in the negative. Keeping in mind the language of Section 276B, vis-a-vis Sections 201 and 221, I am clearly of the view that the process of a criminal court should not

be allowed to be abused in cases where an assessee has succeeded in proving good and sufficient reasons for his failure before an authority under the Act in a penalty proceeding. Of course, the penalty proceeding must be dropped or penalty must be deleted on the merits and not on any technical ground. In a case where the penalty proceeding is dropped or penalty imposed is deleted, not on the merits but for any technical reason, e.g., that the authority who had initiated the penalty proceeding had no jurisdiction to initiate the proceeding, the same will not affect the prosecution.

13. In the case in hand, during the pendency of the criminal prosecution, the penalty imposed by the Income Tax Officer and partly approved by the Appellate Assistant Commissioner has been deleted in its entirety by the Commissioner of Income Tax on merits, after having been satisfied that good and sufficient reasons were furnished by the assessee for not deducting and paying the tax within time. Learned counsel appearing on behalf of the petitioners has placed reliance upon a decision of the Supreme Court in *Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar*, . In that case, an assessee-firm was granted registration by the Income Tax Officer and one of the partners of the firm was one Janak Rani. The said Janak Rani, one of the alleged partners, asserted before the Income Tax Officer that the assessee-firm was not a genuine firm and that she was not its partner. She also denied her signature on the partnership deed. The Income Tax Officer accepted the assertion of the said Janak Rani and held that the firm was not a genuine one and, accordingly, he cancelled the registration of the firm and the cancellation was affirmed by the Appellate Assistant Commissioner in appeal, but on further appeal being taken, the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") set aside the orders of the Income Tax Officer and the Appellate Assistant Commissioner, referred to above, and held that the firm was a genuine one. In the meantime, the Revenue filed a complaint case against the partners of the assessee-firm for their prosecution u/s 277 of the Act. After the order of the Tribunal, the accused persons moved the learned Magistrate for discharging them from the criminal case which prayer was rejected, whereafter the matter was taken to the High Court of Punjab and Haryana for quashing the prosecution in the exercise of the inherent powers of the court u/s 482 of the Code. The High Court, refused to quash the prosecution on the ground that a criminal court is to independently go into the allegation mentioned in the complaint on the basis of evidence to be adduced before it by the Revenue as prosecutor and it is open to the accused persons to take any defence to prove their case. Thereafter, when the matter was taken to the Supreme Court, at the time of grant of special leave to prefer appeal, the appeal was allowed and the criminal prosecution of the accused persons was quashed. The order of the Supreme Court runs thus (at p. 910) :

"Heard counsel, special leave granted. In view of the finding recorded by the Income Tax Appellate Tribunal that it was clear on the appraisal of the entire material on the record that Shrimati Janak Rani was a partner of the assessee-

firm and that the firm was a genuine firm, we do not see how the assessee can be prosecuted for filing false return. We, accordingly, allow the appeal and quash the prosecution. There will be no order as to costs." (Emphasis* added).

14. From a bare perusal of the aforesaid judgment of the Supreme Court and the judgment of the Punjab and Haryana High Court, which has been also reported in the Very same volume of UTTAM CHAND AND OTHERS Vs. Income Tax OFFICER, CENTRAL CIRCLE (II) AMRITSAR., , it would be clear that the apex Court has laid down the law that in cases where an authority under the Act having expert knowledge, after considering the entire materials on the record, has come to a conclusion in favour of the assessee, he cannot be prosecuted under the provisions of the Act for the same default. In my view, if, in such circumstances, an assessee cannot be prosecuted, his prosecution which has already been launched prior to the ultimate order by the statutory authority under the provisions of the Act by which the penalty was deleted on merits, cannot continue further and the same has got to be discontinued from that stage.

15. Learned counsel appearing on behalf of the Revenue contended that the decision of the Supreme Court in the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, is quite distinguishable as in that case the only question to be considered was whether the firm was genuine or not and whether there was no penalty proceeding. According to learned counsel, their Lordships of the Supreme Court had quashed the prosecution on the facts of that case and have not laid down any bald law that a person cannot be prosecuted under the provisions of the Act if a statutory authority under the Act has recorded an order in his favour. In my view, the submission is quite misplaced and it is not possible to accept the same. The Supreme Court has laid down the law that after an order is passed by the statutory authority under the Act in favour of the assessee, which order has attained finality, criminal prosecution under the provisions of the Act for the same default is not permissible. The Supreme Court has reversed the judgment of the Punjab and Haryana High Court which had laid down that a criminal court is to go independently into the allegations mentioned in the complaint on the basis of the evidence to be adduced by the Revenue before it and that it would be open to the accused to take any defence to prove its case before the learned Magistrate.

16. Learned counsel appearing for the Revenue also contended that, subsequently, the Supreme Court has laid down a contrary law in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, . In that case, the return of the assessee was accepted and, later on, a search was conducted at the residence of the assessee u/s 132 of the Act which resulted in seizure of several documents and account books revealing suppression of purchase of certain articles, existence of certain bank accounts, fixed deposits, investments in the names of his wife and daughters and several bank accounts not shown in the statements filed along with the return. On the basis of the aforesaid materials, reassessment proceedings were started and during the pendency of the same, a complaint was

filed for prosecution of the assessee under Sections 276C and 277 of the Act along with Sections 193 and 196 of the Indian Penal Code (hereinafter referred to as the "Penal Code") on the allegations that the assessee had deliberately filed a false return and had kept a false account with intention to use them as genuine evidence in the assessment proceedings. The assessee unsuccessfully moved the High Court of Madras for quashing his prosecution on the ground that during the pendency of the reassessment proceeding, prosecution could not have been launched. Thereafter, the matter was taken to the Supreme Court where the order of the High Court was affirmed and the prosecution of the assessee was allowed to continue. The apex Court in the light of the aforesaid facts laid down the law as follows (at p. 700) :

"It is true that, as observed by this court in *Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar*, , the prosecution once initiated may be quashed in the light of a finding favourable to the assessee recorded by an authority under the Act subsequently in respect of the relevant assessment proceedings but the decision is no authority for the proposition that no proceedings, can be initiated at all u/s 276C and Section 277 as long as some proceeding under the Act in which there is a chance of success of the assessee is pending. A mere expectation of success in some proceeding in appeal or reference under the Act cannot come in the way of the institution of the criminal proceedings u/s 276C and Section 277 of the Act. In the criminal case, all the ingredients of the offence in question have to be established in order to secure the conviction of the accused. The criminal court no doubt 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 it may drop the proceedings in the light of an order passed under the Act. It does not, however, mean that the result of a proceeding under the Act would be binding on the criminal court. The criminal court has to judge the case independently on the evidence placed before it. Otherwise, there is a danger of a contention being advanced that whenever an assessee or any other person liable under the Act had failed to convince the authorities in the proceedings under the Act that he has not deliberately made any false statement or that he has not fabricated any material evidence, the conviction of such person should invariably follow in the criminal court." (Emphasis* added).

17. From a bare perusal of the aforesaid observations of the Supreme Court in the case of *P. Jayappan Vs. S.K. Perumal*, First Income Tax Officer, Tuticorin, , it would appear that the law laid down in the case of *Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar*, , has been reiterated and it has been observed that that decision cannot be an authority for the proposition that in a case where a reassessment proceeding is pending, a criminal prosecution cannot be launched. Their Lordships were of the view that a mere expectation of success in some proceeding cannot make criminal prosecution premature. Their Lordships have laid down that the criminal court has to give due regard to the result of the proceeding under the Act having a bearing on the question in issue and in

appropriate cases, a criminal proceeding may be liable to be dropped in the light of an order passed by an authority under the provisions of the Act. This observation of their Lordships does not run counter to the contention raised on behalf of the petitioner but rather, the same supports the petitioner and reiterates the law laid down in the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, . In their Lordships' opinion, in appropriate cases, criminal prosecution should be dropped only where the authorities under the Act have decided in favour of the assessee. In my view, their Lordships have used the expression "appropriate cases" with some purpose. In cases where the authorities under the Act have not decided in favour of the assessee on merits but because of some technical reason, e.g., that the proceeding was not validly initiated under law or the same was initiated by an authority who had no jurisdiction to initiate the same, such cases only their Lordships meant as not appropriate cases for dropping the criminal proceeding ; otherwise, where the authorities under the Act have decided the matter on merits, in that event, the ratio laid down in the case of P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , does not run counter to the law laid down in the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, , rather the same is in consonance with the law laid down in the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, .

18. In the case of P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , their Lordships have further observed that the result of a proceeding under the Act would not be binding upon the criminal court which has to judge the case independently on the evidence placed before it, otherwise there will be a danger of a contention being advanced that whenever an assessee or any other person liable under the Act had failed to convince the authorities in the proceedings under the Act that he has not deliberately made any false statement or that he has not fabricated any material evidence, the conviction of such person should invariably follow in the criminal court. These observations have been made by the highest court keeping in mind the contingency as to what will happen in a case where the departmental authorities have passed orders against the assessee. In that context, the Supreme Court has said that the decision of the statutory authority under the provisions of the Act will be a piece of evidence and that the same will not be binding upon the criminal court. In such cases, the criminal court will be entitled to take a view different from the one taken by the departmental authorities on the materials made available before it and it has to apply its mind independently on the evidence placed before it. Therefore, these observations of the Supreme Court in the case of P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , are fully explained and cannot be said to lay down a law contrary to that laid down in the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, . Thus, I do not find any substance in the contention of learned counsel appearing on behalf of the Revenue.

19. Learned counsel appearing on behalf of the Revenue referred to the provision of Section 279(1A) of the Act which lays down that a person shall not be

proceeded against for an offence u/s 276C or Section 277 in relation to the assessment for an assessment year in respect of which penalty imposed or imposable on him under Clause (iii) of Sub-section (1) of Section 271 has been reduced or waived by an order u/s 273A of the Act. On the basis of this provision, it was contended that in cases covered by the aforesaid provision, the Revenue is completely debarred from launching prosecution and since the offence u/s 276B is not enumerated in Section 279(1A), it cannot be said that the Revenue is debarred from launching prosecution against the petitioners merely because the penalty has been deleted on merits. So far as Section 279(1A) of the Act is concerned, the petitioners are not claiming any protection under the same. Section 279(1A) is a bar to the launching of prosecution and with regard to cases covered by the said provision, no prosecution can at all be launched in any eventuality. Provisions have been made in different statutes, e.g., Section 50 of the Indian Electricity Act, 1910, proviso to Clause 6 of the Bihar Essential Articles (Display of Prices and Stocks) Order, 1977, issued u/s 3 of the Essential Commodities Act, 1955, and Section 20 of the Prevention of Food Adulteration Act, 1954, wherein it has been laid down that no prosecution shall be launched except with the sanction of the authority concerned. Likewise, under various statutes, e.g., Sections 195, 196, 197, 198 and 199 of the Code and Section 6 of the Prevention of Corruption Act, 1947, a bar has been put upon the powers of the court to take cognisance unless a complaint has been filed by a particular person or prosecution has been launched after obtaining requisite sanction. These provisions are not exactly on the terms of Section 279(1A) of the Act but the same are nearer to the said provision. Under the aforesaid provision, if the conditions are not fulfilled, prosecution will not lie and cognisance will not be taken. The case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, , is not based upon this principle but upon the principle that if a statutory authority passes an order under the Act on merits in favour of the assessee, for the same very default, his prosecution cannot continue further. Therefore, this submission of learned counsel appearing on behalf of the Revenue has also got to be rejected.

20. Learned counsel appearing on behalf of the petitioners submitted that the law laid down in the cases of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, and P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , has been followed by various High Courts in different circumstances and the prosecution of the accused has been discontinued. In SEQUOIA CONSTRUCTION CO. P. LTD. AND OTHERS Vs. P. P. SURI, ITO, CENTRAL CIRCLE XX, NEW DELHI., , a learned single judge of the Delhi High Court was considering a case where deductions were made u/s 194A of the Act, but the tax deducted at source was deposited after more than two months. For the said default, penalty proceeding was initiated and penalty was levied, whereafter a criminal prosecution was launched against the assessee u/s 276B of the Act. The Commissioner (Appeals) deleted the penalty on merits whereafter a petition was filed before the criminal court for discharge which was rejected and

against the same, the matter was taken u/s 482 of the Code of Criminal Procedure for quashing the prosecution. The learned judge, following the decisions of the Supreme Court in the cases of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, and P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , quashed the prosecution and laid down the law very succinctly.

21. In Parkash Chand Vs. Income Tax Officer, A-Ward, , a complaint was filed for prosecution of the assessee u/s 277 of the Act and various sections of the Indian Penal Code. During the pendency of the criminal prosecution, the penalty imposed u/s 271(1)(c) of the Act by the Inspecting Assistant Commissioner prior to the filing of the petition of complaint was cancelled by the Tribunal on merits. Thereafter, a petition was filed before the High Court of Punjab and Haryana for quashing the criminal proceeding aforesaid which was quashed in the light of the judgment of the Supreme Court in the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, .

22. In Income Tax Officer Vs. Kaluram, , the Madhya Pradesh High Court was considering a case where prosecution was launched u/s 277 of the Act along with other sections of the Penal Code on the ground that false return was filed and certain income which was assessable to tax was concealed. For income escaping assessment, action was taken against the assessee by issuing notice u/s 148 of the Act. In that case, the Tribunal recorded a finding in favour of the assessee that there was no concealment at all of his income by the assessee. After the order of the Tribunal, an application was filed on behalf of the accused before the criminal court for discharge and the prayer was allowed against which, when the matter was taken to the High Court, the order of discharge was upheld.

23. In Kanshi Ram Wadhwa Vs. Income Tax Officer, , the Punjab and Haryana High Court was considering a case where, during the assessment proceeding, the Income Tax Officer passed an order imposing penalty on the assessee but the same was deleted by the Appellate Assistant Commissioner on merits in appeal. After imposition of penalty by the Income Tax Officer, prosecution was launched against the assessee u/s 277 of the Act. After the deletion of penalty by the Appellate Assistant Commissioner on merits, the assessee, who was an accused, made a prayer before the criminal court for discharging him on the ground that the explanation furnished by him has been accepted by the statutory authority, that is, the Appellate Assistant Commissioner, in appeal, but the prayer was rejected by the learned Magistrate. On the matter being taken to the High Court, it following the decision of the Supreme Court in the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, , quashed the prosecution.

24. In D.N. Bhasin and Another Vs. Union of India (UOI) and Others, , the very same High Court was considering a case where, in a reassessment proceeding, which was initiated as a raid was conducted and serious irregularities were found, the Income Tax Officer made additions to the income of the assessee and, therefore, a prosecution was launched under Sections 276C and 277 of the Act.

During the pendency of the criminal prosecution, on appeal being taken by the assessee against the order of the Income Tax Officer in reassessment proceeding, the Commissioner (Appeals) deleted the additions on merits and accepted the incomes returned initially by the assessee as correct. Thereafter, the assessee moved the High Court for quashing the criminal proceeding in exercise of its writ jurisdiction. It was contended in that case on behalf of the Revenue that against the order of the Commissioner (Appeals), an appeal was taken to the Tribunal and the same was pending disposal and the said appeal remained pending till the disposal of the writ petition by the High Court. The High Court quashed the prosecution of the accused following the aforesaid two decisions of the Supreme Court in the cases of *Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar*, and *P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin*, but made an observation that if the order of the Commissioner (Appeals) is set aside by the Tribunal, it will be open to the Revenue to file a fresh complaint on the same facts.

25. From a conspectus of the case law discussed above, I hold that prosecution of an accused under the provisions of the Act is liable to be discontinued if the statutory authority under the Act has passed any order on merits in favour of the assessee who is an accused in a criminal trial in relation to the very same default which is the subject-matter of a criminal trial as well and the order has attained finality. I may indicate that there may be various modes of discontinuance. The criminal court, on being moved, is bound to discharge the accused. If an application is filed on behalf of the Revenue for withdrawal from prosecution before the learned Magistrate where the criminal trial is pending, the Magistrate, on these grounds, shall have no option but to accord permission for withdrawal. The other mode for discontinuance of the criminal proceeding is by moving this court and on this ground, the proceeding is liable to be quashed.

26. Learned counsel appearing for the Revenue contended that the Commissioner of Income Tax, in his order passed u/s 264 of the Act, has not deleted the penalty on merits, but deleted the same because no reasonable opportunity of hearing was afforded to the assessee before the imposition of penalty by the Income Tax Officer. It would be evident from the order of the Commissioner of Income Tax that this was one of the submissions urged on behalf of the assessee before him, but if this ground would have weighed with the Commissioner of Income Tax, in that event, after setting aside the order imposing penalty passed by the Income Tax Officer and confirmed by the Appellate Assistant Commissioner, he would have remanded the matter to the Income Tax Officer for a fresh consideration after giving an opportunity of hearing to the assessee. But since the Commissioner of Income Tax has not remanded the matter, it cannot be said that that ground has weighed with him in passing the order deleting the penalty. Therefore, the submission of learned counsel appearing for the Revenue that the penalty has not been deleted on merits has no legs to stand,

27. It was also contended that from the order of the Commissioner of Income Tax u/s 264 of the Act, it would appear that the assessee, at the highest, might have furnished good and sufficient reasons for not deducting the amount of tax u/s 194A of the Act, as it is stated that the commission agent's account was not received in time and that the accountant of the assessee-firm was continuously lying ill as a result of which delay was caused in the finalisation of the accounts, but these facts could not have shown that the assessee had any reason at all, much less good and sufficient, for not paying the tax within time. The submission, in my view, is quite fallacious. The question of paying the amount of the tax liable to be deducted arises only if the same is deducted. If there is good and sufficient reason for not deducting the tax in time, it is equally good and sufficient reason for not paying the same within time. Therefore, this contention has also got to be rejected. I have absolutely no doubt that the Commissioner of Income Tax deleted the penalty after being satisfied that the assessee had shown good and sufficient reasons to his satisfaction for not deducting the tax and paying the same within time.

28. Learned counsel for the Revenue next contended that the Commissioner of Income Tax, while passing order u/s 264 of the Act, has not even referred to, much less considered, the order passed u/s 279(1) of the Act which lays down that a prosecution can be launched only at the instance of the Commissioner of Income Tax which would mean that the Commissioner of Income Tax, after applying his mind and having been fully satisfied that the assessee had no reasonable cause or excuse for not deducting and paying the tax within time, had accorded sanction for launching prosecution in the present case. It was submitted that there is nothing to show that the order according sanction u/s 279(1) of the Act, passed by the predecessor-Commissioner, was produced before the successor-Commissioner, while considering the revision application against penalty order and, as such, the order deleting penalty on merits is ipso facto illegal and can be of no avail to the accused in a criminal case, even if the decision of the Supreme Court in the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, holds the field. There are three difficulties in accepting this submission. Firstly, the order u/s 279(1) of the Act, according sanction, is an administrative order whereas the order passed u/s 264 of the Act by the Commissioner of Income Tax is a quasi-judicial order in a revision arising out of a penalty proceeding which is quasi-criminal in nature. Secondly, the order passed u/s 264 of the Act deleting the penalty on merits by the Commissioner of Income Tax after accepting the explanation of the assessee that he had good and sufficient reasons for not deducting and paying the tax within time is final and the correctness thereof could not have been challenged under the provisions of the Act, and as such, the said order has attained finality. Thirdly, the order passed u/s 264 of the Act which is quasi-judicial in nature will necessarily nullify the administrative order according sanction passed u/s 279(1) of the Act. After the passing of the order u/s 264, the order u/s 279(1) of the Act becomes non est in the eye of law. I should not be misunderstood to have said

that the order passed u/s 279(1) of the Act is an empty formality. It must be shown that the Commissioner of Income Tax, before according sanction, has applied his mind to the facts of the case. The order u/s 279(1) of the Act is an order which is necessary for launching a valid prosecution and the satisfaction of the Commissioner of Income Tax in the said order cannot be of any avail to the Revenue before a criminal court for proving its case. In view of these facts, I hold that the order u/s 279(1) of the Act could have no bearing upon the quasi-judicial proceeding u/s 264 of the Act by which, in exercise of the statutory revisional powers, the Commissioner of Income Tax has deleted the penalty on merits. This being the position, I do not find any force in this contention as well of learned counsel for the Revenue.

29. Learned counsel for the Revenue further contended that the order passed u/s 264 is bad because the same does not show that the assessee had led any evidence either oral in the shape of affidavits or documents to prove that he had good and sufficient reasons for not deducting and paying the tax within time. In my view, it was for the Commissioner of Income Tax to have been satisfied about the explanation furnished by the assessee and if he would have doubted the veracity or otherwise of the explanation furnished by the assessee, he might have directed him to produce evidence in support thereof. The fact that the Commissioner of Income Tax has not given any such direction to the assessee to produce evidence in support of the explanation goes to show that he had not doubted the veracity or otherwise of the explanation furnished by the assessee and the explanation furnished by the assessee was ipso facto acceptable to the Commissioner of Income Tax. Therefore, this submission, in my view, has no force.

30. Learned counsel appearing on behalf of the Revenue alternatively contended that even if this court holds that the decision of the Supreme Court in the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, holds the field, in the present case, the petitioners cannot take advantage of that decision as the same shall not apply to this case because their Lordships were dealing with Section 276B of the Act as it stood prior to the amendment of 1986. It is said that by the amendment of 1986, the words "without reasonable cause or excuse" have been omitted from Section 276B of the Act ; as such, after the amendment, an accused incurs liability of prosecution no sooner it is shown that he has failed to deduct and/or pay the tax within time irrespective of the fact whether he had reasonable cause or not for not deducting and paying the tax within time. It is submitted that the amendment is retrospective. On the other hand, on behalf of the petitioners, it has been submitted that the amendment is neither retrospective nor could the same have been given retrospective operation, as a penal statute cannot be made retrospective. In my view, it is not necessary to decide this question in the present case as to whether the amendment is prospective or retrospective and this question can be decided in a proper case, and, as such, I refrain from deciding the same. I now proceed to consider the submission of learned counsel appearing on behalf of the Revenue

on the assumption that the amended Section 276B shall apply to the present case. In this connection, it may be stated that by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 (Act 46 of 1986) (hereafter referred to as "the Amending Act"), the words "without reasonable cause or excuse" have been omitted from Section 276D and various other sections of the Act and Section 278AA has been inserted in the Act. By the very same Amending Act, Section 278E has been also inserted in the Act. Sections 278AA and 278E read as follows :

"278AA. Notwithstanding anything contained in the provisions of Section 276A, Section 276AB, Section 276B, Section 276DD or Section 276E, no person shall be punishable for any failure referred to in the said provisions if he proves that there was reasonable cause for such failure." (Emphasis* added).

"278E. (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.--In this sub-section "culpable mental state" includes intention, motive or knowledge of a fact, or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability." (Emphasis* added).

31. Upon a bare perusal of Section 276B of the Act, as it stood prior to the amendment of 1986, it would appear, as stated above, that a person was liable to be prosecuted under that section if two conditions were fulfilled : firstly, if the prosecution was able to show that the accused had failed to deduct tax u/s 194A of the Act or pay the same within the time prescribed by law ; secondly, if the prosecution could show that such failure was without reasonable cause or excuse. It was necessary for the prosecution to allege in the petition of complaint both the ingredients so as to constitute an offence u/s 276B of the Act. It was necessary for the prosecution to prove also during the trial both the ingredients of the offence. If the prosecution was able to prove only the first ingredient and had either led no evidence or the evidence led was not found sufficient, in that event, an accused was not liable u/s 276B of the Act.

32. Now, it has to be seen as to what is the effect of the amendment. Can it be said that, after the amendment, the question whether an accused had any reasonable cause or not for not deducting and paying tax within time is only of academic importance and not relevant for a criminal court ? My answer is emphatically in the negative. Section 278AA is nothing else but a proviso to Section 276B of the Act, but a separate section has been inserted in the Act, as similar provisions have been made with respect to prosecution under Sections 276A, 276AB, 276DD and 276E. The cumulative effect of the amendment, in my

view, is that in case of prosecution u/s 276B of the Act, two things have to be shown : firstly, that there was failure on the part of the assessee in deducting or paying the tax within time and, secondly, that the failure was without any reasonable cause.

33. So far as the first pre-requisite is concerned, even after the amendment, the prosecution has to prove the same, but so far as the second pre requisite is concerned, the prosecution is not required to prove the same as the effect of the amendment is that now there is a presumption in favour of the prosecution that the accused has no reasonable cause for his failure ; of course, the presumption is not explicit, but the same becomes implicit if Section 276B is read along with Section 278AA. Why I say so will be apparent from Section 278AA which lays down that no person shall be punished for such failure, if he proves that there was reasonable cause for such failure.

34. The fact that, u/s 278AA, an accused has to prove that there was reasonable cause for his such failure would go to show that there is a presumption in favour of the prosecution that the failure of the assessee was without any reasonable cause, otherwise, there was no occasion to insert Section 278AA in the Act. It is said that if this interpretation is given, the amendment by which the words "without reasonable cause or excuse" have been omitted from Section 276B becomes redundant. In my view, it cannot be said so. If these words would not have been omitted from Section 276B, in that event, the provisions of Sections 276B and 278AA would have been conflicting. The prosecutor, in such a case, would have to prove that the accused had no reasonable cause or excuse for his failure ; whereas u/s 278AA, an accused was required to prove that there was reasonable cause for such failure. If the prosecution itself failed to prove that the failure was without any reasonable cause or excuse, in that event, there would have been no occasion for the accused to prove that there was reasonable cause for such failure. If it could have been said that the accused was liable to be prosecuted only when the prosecution was able to show that there was failure on the part of the assessee in deducting and paying the tax, in that event, there was no necessity for inserting Section 278AA in the Act. This provision, in that case, would have become redundant and it is a well-settled canon of interpretation that Legislature does not use redundant words and make redundant provisions in a statute.

35. A question arises as to whether the presumption against the accused for criminal prosecution u/s 276B of the Act that he had no reasonable cause for his failure to deduct and pay the tax in time, stands rebutted by an order in his favour passed on merits by a statutory authority under the provisions of the Act relating to the same default by which it was held that the assessee had good and sufficient reasons for not deducting the tax or paying the same within time and the said order has attained finality. If, according to the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, , the prosecution case that the accused had no reasonable cause or excuse for his failure stands

dispelled by the finding of the statutory authority under the provisions of the Act, I do not think why, on the same analogy, after the amendment of 1986, a presumption in favour of the prosecution that the accused had no reasonable cause for his failure does not stand rebutted and the burden to prove, upon the accused, that there was reasonable cause for his failure does not stand discharged by an order of the statutory authority under the Act passed on merits relating to the very same default. Before the statutory authority, the burden to prove reason for failure was higher and heavier. There, the assessee was required to furnish good and sufficient reasons for his failure whereas in the criminal prosecution, much more lighter proof an accused is required to discharge, namely, that there was reasonable cause for the failure.

36. In order to appreciate the import of the words "good and sufficient reasons" within the meaning of Section 201 read with Section 221 of the Act, "reasonable cause or excuse" as used in Section 276B prior to the 1986 amendment and "reasonable cause" as used in Section 278AA, it would be necessary to refer to the dictionary meanings of the expressions "reasonable", "good" and "sufficient". In the Oxford English Dictionary (first edition, published in 1933, and re-printed in 1961--Volume VIII), the expression "reasonable" has been defined to mean "fair, not absurd, not irrational and not ridiculous". Likewise, the expression "good" has been defined in the said dictionary in Volume IV to mean "adequate, reliable, sound". Similarly, the expression "sufficient" has been defined under the very same dictionary in Volume X to mean "substantial, of a good standard."

37. From the definitions referred to above, it would appear that "reasonable cause or excuse" is that which is fair, not absurd, not irrational and not ridiculous. A cause which is reasonable within the meaning of Sections 276B and 278AA of the Act may not be sufficient and good reason within the meaning of Sections 201 and 221 of the Act as sufficient reason would mean a substantial reason or a reason of good standard and good reason would mean a reason which is adequate, reliable and sound. A cause may be reasonable but the same may not be necessarily good and sufficient. On the other hand, if a reason is good and sufficient, the same would necessarily be a reasonable cause. These facts show that the obligation which an accused has to discharge in a criminal prosecution u/s 276B of the Act in showing that he had reasonable cause for not deducting the tax or paying the same within time is much lighter than the obligation to be discharged by him in a penalty proceeding u/s 201 read with Section 221 of the Act.

38. Learned counsel appearing on behalf of the Revenue contended that Section 278AA of the Act casts an obligation upon an accused to prove before the criminal court during the course of criminal trial by leading oral and documentary evidence that there was reasonable cause for his failure and merely because he was able to prove before a statutory authority under the Act that he had good and sufficient reason for his failure, the obligation upon the accused u/s 278AA of the Act does not stand discharged. From a bare perusal of Section 278AA of the

Act, it does not appear that the accused is required to prove before a criminal court by leading independent evidence in relation to reasonable cause for his failure. Such a contingency may arise in a case where no penalty proceeding is initiated, but a criminal prosecution is only launched. In that case, of course, to the satisfaction of the criminal court, the accused has to discharge his statutory obligation by leading evidence in support of his case that he had reasonable cause for failure.

39. By the very same Amending Act by which Section 278AA was inserted, Section 278E was also inserted in the Act. From a bare perusal of the language of these two sections, it would appear that the Legislature has used different language therein. In Section 278E of the Act, it has been laid down that culpable mental state on the part of the accused shall be presumed with regard to such offences under the Act where the same is required and it shall be a defence for the accused to prove the fact that he had no such mental state. Section 278E of the Act uses the expression "defence for the accused" whereas, in Section 278AA, no such expression has been used. It appears that the Legislature was very much conscious in using different expressions in two different provisions both of which have been inserted in the Act by the very same Amending Act. Nothing prevented the Legislature to say in Section 278AA that it shall be a defence for the accused to prove that there was reasonable cause for his failure ; as such, it is not possible to accept the contention of learned counsel appearing for the Revenue that, after the amendment, the accused has to independently prove in the criminal trial by leading evidence that there was reasonable cause for his failure and an order of a statutory authority on merits relating to the very same default cannot be a ground for discontinuing the prosecution.

40. In my view, the amendment does not in any way affect the principle of law laid down by the Supreme Court in the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, and reiterated in that of P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, . As such, in cases where a statutory authority under a provision of the Act has passed an order on merit in favour of the assessee in relation to the very same default which is the subject-matter of a criminal prosecution and the order has attained finality, the prosecution of an accused is fit to be discontinued irrespective of the fact whether prosecution was launched after the amendment of Section 276B of the Act in the year 1986 or the same was pending from before such amendment.

41. For the foregoing reasons, I am of the view that the prosecution of the petitioner in the present case is not fit to continue as continuance thereof would amount to an abuse of the process of the court and to prevent the same, it would be just and expedient to quash the proceeding.

42. In the result, this application is allowed, the impugned order refusing to discharge the petitioners is set aside and their prosecution pending in the court of the Special Court in the instant case is hereby quashed.