(1984) 07 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 6406-M of 1983

Bhagat Singh and Others	APPELLANT
Vs	
Income Tax Officer	RESPONDENT

Date of Decision : 26-07-1984

Acts Referred:
Income Tax Act, 1961 — Section 277

Citation : (1985) 44 CTR 258 : (1985) 152 ITR 82

Hon'ble Judges : K.P.S. Sandhu, J

Bench : Single Bench

Advocate : B.K. Jhingan, for the Appellant; A.K. Mittal, for the Respondent

Judgement

Sanuhu, J.—Criminal Misc. No. 6406-M of 1983 u/s 482 of the Code of Criminal Procedure has been filed by seven petitioners, namely, Bhagat Singh, Kirpal Singh, Darshan Singh, Nirmal Singh, Jaswant Singh, Smt. Manjit Kaur and Smt. Swaran Kaur, while Criminal Misc. No. 6409-M of 1983 u/s 482 of the Code of Criminal Procedure has been filed by eight petitioners whose names are Kirpal Singh, Nirmal Singh, Balwant Singh, Jaswant Singh, Smt. Manjit Kaur, Smt, Swaran Kaur, Smt. Ravin-der Kaur and Smt. Surinder Kaur. Some of the petitioners are common in both the petitions and these petitions can be disposed of by this very order, since the law point involved in both the petitions is the same.

2. The petitioners in both the petitions are partners of a firm known by the name and style of Messrs. Janta Oil Stores, Ferozepur Cantt. The partners of this firm had been carrying on in the (accounting) years 1973-74 and 1974-75, the business of sale and purchase of petroleum products like high speed diesel, petrol and other lubricants. Besides these petitioners, Piara Singh, son of Daulat Singh, was also a partner of the aforesaid firm. In both the aforesaid years, the return of income of the firm was filed under the verification made by Piara Singh aforesaid. The income shown in the return filed by the firm for the year 1974-75 was Rs. 86,757, while the income shown in the return for the year 1975-76 was

Rs. 1,15,802. As far as the income for the year 1974-75 is concerned, the Income Tax authorities came to a finding that the firm had deliberately concealed an income of Rs. 12,528 and as regards the income for the year 1975-76, the Income Tax authorities came to a finding that the firm had deliberately concealed an income of Rs. 20,866. After obtaining due sanction from the CIT, the Income Tax authorities filed two separate complaints against the petitioners, one u/s 277 of the I.T. Act against the firm and the partners and the other u/s 278 of the I.T. Act against Sarwan Singh, accountant. Piara Singh, partner, who verified the returns and Sarwan Singh, accountant, against whom a complaint u/s 278 of the I.T. Act has been filed, have not chosen to challenge the order of the learned Magistrate summoning them. However, the aforesaid petitioners in both the petitions have come up to this court praying for the quashing of the complaint and the order of summoning passed by the trial Magistrate on April 22, 1983.

3. The controversy in these petitions centres round a very short point. Mr. B. K. Jhingan, learned counsel for the petitioners, has contended that, admittedly, the verification in both the returns was made and the documents were delivered to the Department by Piara Singh, partner, alone. Therefore, no criminal liability u/s 277 of the I.T. Act can be fixed on these petitioners. I do not find any merit in the contention raised by the learned counsel. For facility of reference, Section 277 of the I.T. Act is reproduced under:

" 277. False statement in verification, etc.--If 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."

4. Undoubtedly, the first part of the section speaks of the liability of a person who verifies a statement, but the second part speaks of a person who delivers a statement which is false. The perusal of the records regarding both the returns shows that in the return for the year 1974-75, all the petitioners in Criminal Misc. No. 6406-M of 1983 have signed the balance-sheet annexed to the return and all the petitioners in Criminal Misc. No. 6409-M of 1983 have signed the balance-sheet annexed to the return for the year 1975-76. Apart from this, it has been clearly alleged in para. 12 of the complaint regarding the return for the year 1974-75 and in para. 11 of the complaint regarding the return for the year 1975-76, " that all the accused with the common intention of them all, with a view to avoid tax liabilities, not only delivered to the ITO statement of account, balance-sheet, etc., which they knew not only to be false but had reasons to

believe it to be false and untrue. " The learned trial Magistrate was only to see from the complaints and the documents as to whether a prima facie case had been made out for summoning the petitioners. I think that there was sufficient material on the file in the shape of the allegations contained in the aforesaid paras and the balance-sheets filed with the returns duly signed by the petitioners to come to a finding that a prima facie case for summoning the petitioners was made out. I, therefore, find no illegality in the orders which are impugned in both the petitions. These petitions, consequently, fail and are hereby dismissed. However, the petitioners would be at liberty to raise these objections at the stage of framing charge in the trial court, if so advised. The parties are directed through their counsel to appear before the trial court on August 27, 1984.