(1997) 08 PAT CK 0017

In the Patna High Court

Case No : Criminal Miscellaneous No. 4633 of 1991

Bhola Nath Keshri APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 20-08-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1998) 100 TAXMAN 188

Hon'ble Judges : Naresh Kumar Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Naresh Kumar Sinha, J.—The petitioner is the proprietor of Raj Ratan Jewellers, Patna. On a complaint filed by the Assistant Commissioner, opposite party No. 2, cognizance was taken under sections 276CC and 276D of the Indian income tax Act, 1922 (''the Act'') by the impugned order dated 17-12-1990 passed by the Presiding Officer, Special Court (Economic Offence), Muzaffarpur, in Case No. 0218 of 1990. This application u/s 482 of the Code of Criminal Procedure, 1889 has been filed for quashing the aforesaid order of cognizance as also the criminal prosecution of the petitioner.

2. As per the allegation contained in the complaint petition, copy of which is Annexure-1, the petitioner had been served with a notice u/s 139(2) of the Act for filing of return of income for the assessment year 1981-82. The petitioner, it is said, did not file the return. It was further alleged that the petitioner was asked to produce the books of account under the authority of section 142(1) of the Act but he failed to produce the same. In short, the allegation was that the petitioner had wilfully failed to furnish in due time the return of income tax for the assessment year in question and had also failed to produce the books of account as per demand notice issued u/s 142(1).

3. The learned counsel for the petitioner stated that certain developments had

subsequently taken place after filing of the application. It has been stated in supplementary affidavit enclosing copy of the order passed by the Commissioner (Appeals), Patna, which is Annexure-2 of the Supplementary affidavit, that the petitioner had challenged the penalty proceeding u/s 271(1)(c) initiated against him by the Assistant Commissioner, income tax vide Annexure-2 which is a copy of the order dated 16-2-1995. The appeal was allowed and the entire penalty was deleted.

4. The learned counsel for the revenue referred to the order of this Court dated 19-12-1996 passed in Cr. Misc. No. 4514 of 1991 by a Bench of this Court whereby the application filed by this petitioner-assessee for quashing a similar prosecution on the basis of almost identical facts for a different assessment year, had been dismissed. In that case also, this petitioner had prayed for quashing of his prosecution under sections 276CC and 276D of the Act. That case was in respect of the assessment year 1983-84 whereas the present case is in respect of the assessment year 1981-82. In that case also, the Commissioner had allowed the appeal and cancelled the penalty. It was argued on behalf of the revenue that since a Bench of this Court by the aforesaid order had refused to quash the criminal proceedings against the petitioner in almost identical circumstance, there was no good reason why the prosecution which is sought to be quashed in the present application should not be allowed to continue. The learned counsel for the petitioner is very fair to state that the facts of the present case are similar to the case which had been dismissed. As a matter of fact, the counsel very fairly conceded that he was representing the petitioner in the case dismissed on 19-12-1996. In other words, the facts of the case of the present assessee are squarely covered by the order of this Court dated 19-12-1996. Thus, I am of the view that the impugned order taking cognizance as also the criminal prosecution of the petitioner initiated under the Act cannot be quashed. This application has, thus, no merit and is dismissed.