

(1988) 01 KL CK 0037

In the High Court Of Kerala

Case No : Criminal R.P. No"s. 6 and 193 of 1984

C.G. Balakrishnan and Others

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 08-01-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195, 340

Income Tax Act, 1961 — Section 277, 278

Penal Code, 1860 (IPC) — Section 109, 193, 465, 471

Citation : (1988) 171 ITR 1

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Advocate : T.V. Prabhakaran, for the Appellant; M.K. Abdullah, for the Respondent

Judgement

K.G. Balakrishnan, J.—Six accused were sent up for trial before the Chief Judicial Magistrate, Ernakulam, for the offences punishable u/s 193 read with Section 109, Indian Penal Code, Section 471 read with Section 465, Indian Penal Code, and Sections 277 and 278 of the Income Tax Act, 1961. All these accused were found guilty of having committed various offences and the first accused was sentenced to pay a fine of Rs." 1,000 for each the offences under Sections 193 and 471 read with Section 465, Indian Penal Code. The second accused was sentenced to undergo imprisonment till the rising of the court and to pay a fine of Rs. 1,000 for the offence u/s 193, Indian Penal Code, and to pay a fine of Rs. 1,000 u/s 471 read with Section 465, Indian Penal Code, and in default of payment of fine to undergo simple imprisonment for a period of 2 months each for the sentences awarded under Sections 193 and 471 read with Section 465, Indian Penal Code. Accused Nos. 3 to 6 were sentenced to undergo imprisonment till the rising of the court and to pay a fine of Rs. 1,000 each for the offences u/s 193 read with Section 109, Indian Penal Code, and to pay a fine of Rs. 1,000 each for the offences u/s 471 read with Sections 465 and 109, Indian Penal Code, with the usual default sentence of two months" imprisonment. Criminal R.

P. No. 193 of 1984 has been filed by the first accused which is a private limited company and Criminal R.P. No. 6 of 1984 has been filed by accused Nos. 2 to 6. They are members of the board of directors and the secretary. Both these criminal revision petitions were jointly heard and the matter is being disposed of by this common judgment.

2. The first accused company has its registered office at Bombay with a branch factory at Thrippunithura. On December 30, 1967, the company filed its Income Tax return before the Income Tax Officer, Bombay, for the assessment year 1967-68. Subsequently, the assessment proceedings were transferred to the Income Tax Officer, B-Ward, Company Circle, Ernakulam. In these proceedings, the first accused produced the cash book and ledger for the year ending March 31, 1967, and in the accounts produced by the first accused for the assessment year 1967-68, there was an entry relating to a receipt of Rs. 30,000 from M/s. K.R.P. Chettiar and Sons, Trichinopoly. The entry was dated March 24, 1967. The prosecution case is that this is a false entry and there was not even a concern in the name and style, M/s. K.R.P. Chettiar, Trichinopoly, and, therefore, the accused intentionally fabricated the cash book and ledger. The accused had also produced some more documents before the Income Tax Officer to make it appear that they had in fact received Rs. 30,000 from K.R.P. Chettiar and Sons.

3. On the side of the prosecution, PWs Nos. 1 to 12 were examined and several documents were marked and the trial court accepted the prosecution case and convicted the accused as aforesaid and the conviction and sentence have been upheld by the lower appellate court.

4. The revision petitioners challenge the conviction and sentence on several grounds. It has been contended that the Income Tax proceedings were pending before the Income Tax Officer, B-Ward, Company Circle, Ernakulam, and exhibit P-65 assessment order was also passed on March 22, 1972, and thereafter the entire proceedings were transferred to the office of the Income Tax Officer, Special Circle, Ernakulam, as per exhibit P-1 order dated July 18, 1982, and the prosecution has been launched against the accused by the Income Tax Officer, Special Circle, Ernakulam, who had no authority to file such a complaint, as the offence, if any, was committed before the Income Tax Officer, B-Ward, Company Circle, Ernakulam. Another contention urged by the revision petitioners is that the entire prosecution was on the basis of exhibit P-65 order dated March 22, 1972, and this assessment order was subsequently set aside by the appellate court and, therefore, the prosecution has no more independent existence since the whole matter has been reversed by the appellate court. Learned counsel for the accused also submitted that the trial court should not have taken cognisance of the offence as the prosecuting agency had not fully complied with the relevant provisions.

5. The first contention is that the entire prosecution was based on exhibit P-65 assessment order and the same was later set aside by the appellate court and, therefore, there was no basis for the initiation of the prosecution. It is not fully

correct to say that the prosecution has been launched on the basis of exhibit P-65 assessment order. The gist of the allegation against the accused was that they gave false information to the Income Tax Department to the effect that they had received Rs. 30,000 from one K.R.P. Chettiar. It is also alleged that the accused made certain false entries in their accounts and produced certain receipts regarding the payment and return of this Rs. 30,000. It is pointed out by counsel who appeared for the Income Tax Department that these allegations of false entry in the registers were not specifically dealt with by the appellate court and that, therefore, the prosecution has got independent existence. A case of this nature came up before the Supreme Court in *P. Jayappan Vs. S.K. Perumal*, First Income Tax Officer, Tuticorin, . There his Lordship Venkataramiah J., speaking for the Full Bench, held (p. 700):

"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 Income Tax Act would be binding on the criminal court. The criminal court has to judge the case independently-on the evidence placed before it."

6. Moreover, the revision petitioners herein had raised a contention before this court on an earlier occasion by filing Criminal M. P. No. 221 of 1976. This court repelled this contention in the decision in *Balakrishnan v. ITO* [1976] KLT 561, by stating that the prosecution initiated by the Income Tax Officer has independent existence irrespective of what happened to the assessment proceedings. There is a specific object in making these proceedings independent, for, where the officers feel that they cannot by themselves impose sufficient penalty in certain cases, law should provide means to enable the said officers to move appropriate courts to render appropriate punishments commensurate with the gravity of the offences. Therefore, the plea of the revision petitioners that the final assessment order was set aside by the appellate court is no ground for setting aside the conviction.

7. The next contention is that in the present case, the revision-petitioners submitted returns to the Income Tax Officer, B-Ward, Company Circle, Ernakulam, and the assessment order was also passed by the same officer. However, the complaint was filed by the Income Tax Officer, Special Circle, Cochin, and, according to the revision-petitioners, the Income Tax Officer, B-Ward, Company Circle, Ernakulam, who passed exhibit P-65 assessment order alone could have filed the complaint in view of Section 195(1)(b) of the Criminal Procedure Code. Learned counsel for the revision petitioners placed reliance on the decision in *Income Tax Officer Vs. Kerala Oil Mills and Another*, . That was a case where the complaint was filed by the Income Tax Officer, Special Circle, Ernakulam, though the Income Tax proceedings were pending before the Income

Tax Officer, B-Ward, Alleppey. This court held that the Income Tax Officer, Special Circle, Ernakulam, was not competent to file the complaint. This decision, though it arises on similar facts, cannot be made applicable to the instant case for the reason that the decision in *Balakrishnan v. ITO* [1976] KLT 561 would operate as *res judicata* and that decision that the Income Tax Officer is not a civil court and, therefore, the non-conformity of the procedure laid down u/s 340, Criminal Procedure Code, does not affect the prosecution is to be accepted.

8. The question that may arise for consideration is whether the principle of *res judicata* is applicable to the case of criminal proceedings. There is a string of decisions to the effect that the general principles of *res judicata* would apply to criminal proceedings. The Supreme Court decided a case in *The State of Rajasthan Vs. Tarachand Jain*, . That is a case where the accused in a prosecution for an offence under the Prevention of Corruption Act challenged that there was want of sanction, by the authorities. The accused initially filed an application questioning the validity, of the sanction. The Special Judge considered the matter and passed the order. The same was challenged by the accused in revision. A Division Bench of the High Court held that the order of sanction passed by the Chief Minister was correct and there was proper sanction for prosecution. After the above order of the High Court, the Special Judge considered the case and found the accused guilty. That judgment was challenged in appeal by the accused before the High Court and the question of want of sanction was also raised in the appeal. The appeal filed by the accused was accepted and the conviction was set aside on the ground of being null and void in the absence of proof of valid sanction. The Supreme Court held that the judgment of the earlier Division Bench of the High Court was binding in a subsequent proceeding of the same case. The above decision applies with full force to the facts involved in this case. A Division Bench of the Delhi High Court in *Gulab Chand Sharma Vs. H.P. Sharma etc.*, , held that the decision in a previously decided writ petition would operate as *res judicata* in a subsequently instituted suit between the same parties. The court relied on *Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat)*, , wherein it was held that the difference in the nature of the two proceedings is immaterial if the matter decided inter parties in one proceeding is the same which is to be determined in the subsequent proceedings and the parties to the suit were also parties to the writ petition. In an earlier decision, namely, *Sambusivan v. Public Prosecutor, Federation of Malaya* [1950] AC 458, it was held (See 95 ITR at p. 124):

"The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim "*res judicata pro veritate accipitur*" is no less applicable to criminal than to civil proceedings."

9. The general principles of *res judicata* are applicable to similar cases. That

apart, in this case, the revision petitioners challenged the proceedings by filing a criminal miscellaneous petition and there it was held that there was no infraction of the procedure laid down u/s 340, Criminal Procedure Code, and that the Income Tax Officer is not a civil court as envisaged u/s 195, Criminal Procedure Code. This finding is binding on the parties, especially when the decision was entered in the very same proceedings. The petitioners cannot be heard to say that this court should rely on a subsequent decision and; decide the matter accordingly without paying heed to the earlier decision between the parties. This contention cannot be accepted. If the revision petitioners had any grievance against the earlier order passed in the criminal miscellaneous petition they should have challenged the matter in higher forums. So long as it was not challenged, it has become final and the revision petitioners cannot be allowed to urge the same points at a later stage.

10. In view of the above discussion, it is clear that the conviction and sentence entered against the revision petitioners are not open to challenge on the basis that the complaint was filed by an incompetent person. All the revision petitioners have been found guilty by the courts below. The lower courts have considered the evidence in detail and I see no reason to invoke the revisional jurisdiction of this court to interfere with the finding entered against the revision petitioners.

11. Therefore, both the revision petitions fail and the same are dismissed.