

(1981) 01 OHC CK 0001
In the Orissa High Court
Case No : Criminal Appeal No. 178 of 1977

D. Rahaman

APPELLANT

Vs

Bijaya Kishore Das

RESPONDENT

Date of Decision : 06-01-1981

Acts Referred:

Income Tax Act, 1922 — Section 52

Income Tax Act, 1961 — Section 131, 277

Citation : (1981) 51 CLT 179 : (1982) 136 ITR 855

Hon'ble Judges : J.K. Mohanty, J

Bench : Single Bench

Advocate : D.C. Mohanty, for the Appellant; D.P. Mohanty, for the Respondent

Judgement

J.K. Mohanty, J.—The accused-respondent was charged u/s 52 of the Indian I.T. Act, 1922 (which is almost in identical terms with Section 277 of the I.T. Act, 1961), and was tried in the court of the Chief Judicial Magistrate, Cuttack. He was acquitted by the trial court. This appeal has been preferred against the order of acquittal of the respondent passed by the C.J.M., Cuttack.

2. The accused-respondent was an assessee under the I.T. Act. He submitted a return (Ex. 1) to the ITO, Cuttack, for the assessment year 1958-59, on February 27, 1959, showing an income of Rs. 4,319.48 under the head "Business" which comprised his income out of his share in M/s. Consolidated Construction Co., Cuttack. The return was verified as required under the I.T. Act. The accused had disclosed that he had 1/3rd share in M/s. Consolidated Construction Co., Cuttack, and had no other source of income. The assessment was completed by the ITO on February 28, 1959, on the relief that no other income had actually accrued to the accused. The accused had furnished another return (Ex. 2) of his income to the ITO, Cuttack, for the very same assessment year on February 13, 1959, showing an income of Rs. 5,160 under the head "Business". This income, according to him, was derived from the sale of motor vehicles and spare parts in his proprietary business establishment, M/s. Hindustan Automobiles, Berhampur.

He had made a statement in the verification furnished in the above return that he had no other income except the aforesaid source during the relevant assessment year. The ITO completed the assessment in good faith believing the version of the accused. It is alleged that by submitting two returns the accused had made false statements, knowing or believing the same to be false with a view to avoid payment of lawful tax. It is also alleged that the accused deliberately suppressed the fact that two separate returns were filed by him and thereby succeeded in getting his false declarations accepted and acted upon by the ITO leading to two separate assessments by two different assessing officers. To avoid detection of the fraud committed by him the accused had engaged separate advocates for each case. It is alleged that if the true state of affairs had been disclosed and if the income from all the sources had been combined in one return as per the provisions of law, the accused would have been liable to pay substantially higher Income Tax and interest thereon for the said assessment year. In February, 1970, the ITO detected the alleged fraud and issued summons u/s 131 of the 1961 Act. The statement of the accused and his two advocates were recorded on oath. After obtaining sanction from the Commissioner of Income Tax, the complaint was filed by the ITO, Cuttack (P.W. 1), on January 25, 1974, alleging the accused to have committed offences u/s 52 of the 1922 Act and under various sections of the IPC. The court took cognizance of the offence u/s 52 of the 1922 Act and summoned the accused to stand his trial.

3. The plea of the accused was that during the relevant period he had his office at Calcutta. His brother, who was the partner of M/s. Consolidated Construction Co., Cuttack, died suddenly whereafter he was taken as one of the partners of the firm. The income of the firm was to be paid to the family members of the accused who were staying at Cuttack. So the accused had no knowledge of the income derived from the said firm. He was under the bona fide impression that separate returns had to be filed in respect of the incomes derived from the two business establishments. He used to put his signature on the blank form of return under the verification which was subsequently filled up and filed by the accountants of the firms through the lawyers. He had no intention of making any false statement nor had he concealed his income. After the department objected to the filing of two separate returns, the accused submitted a consolidated return in respect of the income derived from both the firms and the tax due has already been paid.

4. In order to prove the case the prosecution examined five witnesses and filed several documents. P.W. 1, the complainant, is the ITO, Cuttack, Ward-B, P.W. 2 is the ITO, Cuttack, Ward-B, who detected the alleged fraud committed by the accused. P.W. 3 is the Inspector of Income Tax, Cuttack, who has proved the signatures of the accused in Exs. 1 and 2 and P.Ws. 4 and 5 are the advocates of the accused who had filed Exs. 1 and 2 on his behalf. The learned Magistrate, after considering the evidence on record and the plea of the accused, came to the finding that the accused had no intention to defraud the I.T. Dept.; that he had not deliberately filed any false return : and that he had no mens rea.

5. In this court, Mr. D.C. Mohanty, learned counsel appearing for the appellant, submitted that an assessee is to file one return disclosing his entire source of income. The respondent filed two returns which go to show that he wanted to evade tax and the plea taken by him should not be accepted. He further submitted that the question of bona fides on the part of the accused-respondent does not arise.

6. In this case, it is the admitted fact that the accused had filed two returns in Exs. 1 and 2 for the assessment year 1958-59 and after detection he has submitted a consolidated return. Section 52 of the 1922 Act reads as follows :

"If a person makes a statement in a verification mentioned in Section 19A or Section 20A or Section 21 or Section 22 or Sub-section (2) of Section 26A or Sub-section (3) of Section 30, or Sub-section (3) of Section 33, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both."

7. So making a false statement in any verification under the I.T. Act with the knowledge or belief that it is false and with the belief that it is not true is an offence. In this case, P.W. 1 has stated that the case against the accused was not for escapement of tax but it was a case for making a false statement in a verification. Similar is the evidence of P.W. 2. P.W. 3 has proved Exs. 1 and 2 and the signatures of the accused therein. These documents are admitted by the accused. P.W. 4 has stated that he filed Ex. 2 on behalf of the accused. At the time of filing Ex. 2, he was not aware that another advocate had been engaged by the accused for filing the return for the same assessment year with respect to another concern. He filed Ex. 2 on the instruction of the accountant of the firm of which the accused was a partner. In cross-examination he has admitted that the accused was staying at Calcutta. During that year before filing Ex. 2 the accused did not come to him for any discussion. He has further stated that the accountant of the firm brought the blank form of return containing the signature of the accused which was filled up and filed (which is Ex. 2). Similarly, P.W. 5 has stated that he was the advocate of M/s. Consolidated Construction Co. and submitted Ex. 1 on behalf of the accused. He has also stated that he was not aware of the filing of Ex. 2 by P.W. 4. The other statements made by him are identical to that of P.W. 4. The learned trial court has considered the evidence of these two advocates and has observed that there was no reason to disbelieve them, who are responsible persons. Simply because they were the advocates of the accused, it cannot be said that they would make false statements before the court in favour of the accused. From their evidence, it has been satisfactorily proved that the accused was not present when Exs. 1 and 2 were filed before the I.T. authorities. On the instruction given by the accountants of the firms, in which the accused was the partner, the returns were prepared and submitted to the ITOs by P.Ws, 4 and 5. The accountant had brought the blank forms of return

wherein the accused had signed which were subsequently filled up and filed. The trial court has further held that merely because two separate advocates were engaged to file Exs. 1 and 2, one cannot jump to the conclusion that the accused had engaged them deliberately for the purpose of evading tax by misleading the ITOs. There is nothing in the evidence to suggest that the accused had deliberately engaged two lawyers to evade tax.

8. Mr. D.P. Mohanty, learned counsel appearing for the respondent, submitted that the two returns that were filed were not false. They only related to two different sources. The accused had not made any statement in the verification which was false and which he either knew or believed to be false. According to him, there was nothing in the prosecution evidence to suggest that the accused had any guilty intention while filing two separate returns. He pointed out that a consolidated return had been filed for the same year subsequently and the accused had paid the tax that was due. He further argued that there was no mens rea on the part of the accused in filing the two returns and the accused had frankly explained under what circumstances both the returns were filed and his statement had been supported by P. Ws. 4 and 5.

9. Mens rea is an essential ingredient of a criminal offence. But in this case nothing has been brought to my notice that the element of mens rea has been expressly or by necessary implication excluded by the statute. So considering the evidence on record and the plea of the accused and in the facts and circumstances of the case it cannot be held that the accused filed two returns for the assessment year 1958-59, deliberately and intentionally with a guilty mind and in order to take undue advantage or defraud the I.T. Dept.

10. Learned counsel appearing for the respondent cited a decision reported in *Bijayananda Patnaik Vs. Union of India (UOI)*, . In that case, the accused was also prosecuted for filing false statement u/s 277 of the I.T. Act, 1961. It has been held (pp. 872, 873 *infra*).

"...prosecution...must show that the statement made by the accused is false and that while making the statement the accused knew it to be false or believed it to be false or believed that it was not true...mere submission of a verified return containing a false statement does not by itself constitute an offence. The prosecution has further to show that the false statement had been made either with the knowledge of the accused that the statement was false or under the belief that the statement was false."

11. From the facts and circumstances of this case, I am of the view that the mere submission of a verified return containing a false statement does not by itself constitute an offence. The accused has explained the circumstances under which the returns were filed and there is no reason to take a view different from that taken by the learned trial court. It has also not been established that the false statement had been made with the knowledge of the accused.

12. After hearing the argument of both sides and in the facts and circumstances

of the case, I see no reason to differ from the finding arrived at by the learned trial court. The appeal has, therefore, no merit and is accordingly dismissed.