

(1988) 10 P&H CK 0088

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 689 of 1986

Daropti Devi Family Trust and Others

APPELLANT

Vs

Chief Judicial Magistrate and Others

RESPONDENT

Date of Decision : 04-10-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 204, 482
Income Tax Act, 1961 — Section 194C(2), 276B

Citation : (1989) 176 ITR 519 : (1990) 49 TAXMAN 212

Hon'ble Judges : S.D. Bajaj, J

Bench : Single Bench

Advocate : V.K. Jindal, for the Appellant; Ashok Bhan and A.K. Mittal, for the Respondent

Judgement

S.D. Bajaj J.—All these petitions have separately been filed by Raja Ram and Sons either in their capacity as assesseees or as trustees of family and other trusts. The delinquent firm or trust is alleged to have got certain work done through sub-contractors. While making payment to the subcontractors amounts exceeding Rs. 5,000 in every particular case, the delinquent firm or trust is alleged not to have deducted at source in terms of Section 194C(2) of the Income Tax Act, 1961, at the rate of 1% while making payment or crediting those payments in favour of the sub-contractors in their own books of account. Hence, prosecution u/s 276B of the Income Tax Act, 1961, was initiated. It is averred in the complaint that the persons arrayed as the accused are partners of Raja Ram and Sons in one form or the other and, therefore, persons in charge of and responsible for the conduct of its business and as such are liable to be tried and punished jointly for the offences aforesaid.

2. Besides contesting the liability of deducting tax at source from the sub-contractors on merits as also the liability to be proceeded against in the complaint, filed by the Income Tax Officer, it has been urged in Criminal Writ No. 689 of 1986, that the order passed by the learned Chief Judicial Magistrate,

Chandigarh, summoning the petitioners before himself is illegal, arbitrary, without jurisdiction and has been passed in violation of Section 200/202 of the Criminal Procedure Code, because the learned Chief Judicial Magistrate did not apply his judicious mind to the factual and legal position obtaining in the case, did not record his reasons of subjective justification to the effect that there were sufficient grounds made out for proceeding against the petitioners.

3. I have heard Shri V.K. Jindal, advocate, for the petitioners, Shri Ashok Bhan, Senior Advocate, with Shri A.K. Mittal, advocate, for the respondents, and have carefully gone through the relevant record.

4. The orders summoning the petitioners passed by the learned Chief Judicial Magistrate, Chandigarh, deserve to be quashed on the short ground of being cryptic and having been made without application of mind as envisaged in the relevant provisions of Section 204 of the Criminal Procedure Code. The relevant section reads : .

"(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding and the case appears to be--(a) a summons-case, he shall issue his summons for the attendance of the accused, or (b) a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant, shall be issued against the accused under Sub-section (1) until a list of the prosecution witnesses has been filed.

(3) If a proceeding instituted upon a complaint made in writing every summons or warrant issued under Sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of Section 87."

5. It has repeatedly been held by this court that the order of the learned trial court issuing the processes must be a speaking order containing the grounds which, in the opinion of the learned trial court, are sufficient for the issuance of the processes. Application of judicious mind to the facts and circumstances obtaining in any particular case is absolutely necessary and there has to be a mention of it in the summoning order. A summoning order made without any application of mind is ab initio void and illegal and is liable to be quashed u/s 482 of the Criminal Procedure Code.

6. Some of the petitioners are ladies. Out of respect for them, it is ordered that the learned trial court would exempt them from personal appearance in the course of trial, when approached with a request for the purpose.

7. In the result, the petition succeeds and is allowed to the limited extent aforesaid. The learned trial court would now pass a fresh order in accordance with law. It may be mentioned here that the petitioners would be entitled to raise before the learned trial court in their defence all the pleas taken by them in this court for quashing the complaint annexure P-1. No order as to costs.