

(1972) 07 DEL CK 0012

In the Delhi High Court

Case No : Criminal Revision No's. 49 to 55 of 1971

D.C. Goel and Others

APPELLANT

Vs

B.L. Verma and Others

RESPONDENT

Date of Decision : 10-07-1972

Acts Referred:

Citation : (1974) 93 ITR 63

Hon'ble Judges : P.S. Safeer, J

Bench : Single Bench

Advocate : K.L. Arora, for the Appellant; D.C. Mathur, R.N. Dixit, H.K.L. Sabharwal, C.L. Prem and Y. Dayal, for the Respondent

Judgement

Pritam Singh Safeer, J.—These seven petitions being Criminal Revisions Nos. 49 to 55 of 1971, which this order will dispose of, result from the recommendation made by an Additional Sessions Judge, Delhi, on 18th July, 1971, u/s 438 of the Criminal Procedure Code that the sentences awarded to the respondents be enhanced so as to make them in conformity with the provisions of Section 276B of the Income Tax Act, 1961 (hereinafter called " the Act ").

2. There are distinguishing features, which will be noticed, but the common contentions raised in these matters deserve to be dealt with in one place.

3. The first of these petitions, i.e., Criminal Revision No. 49 of 1971, arises out of a complaint dated the 31st of March, 1970, preferred under Sections 276(d)/276B read with Sections 192(1) and 200 of the Act in which Shri D. C. Goel, Income Tax Officer, figured as the complainant and the accused were Messrs. Gurdas Kapur and Sons (Private) Ltd. and Shri B. L. Verma, who was described as secretary-cum-general manager of accused No. 1. In paragraph 1 of the complaint it was stated that the Commissioner of Income Tax, Delhi, had directed the complainant u/s 279 of the Act to prosecute the accused. The complainant alleged that the accused who were responsible for paying salaries to their employees were required by Section 192(1) of the Act to deduct Income

Tax at the source which they were under a statutory obligation to deposit within the prescribed period to the credit of the Central Government and that period, it was asserted, according to Rule 30(1)(b) of the Income Tax Rules, 1962, was of one week from the date of deduction.

4. In paragraph 6 of the complaint it was alleged that during the financial year 1967-68; the accused had deducted a sum of Rs. 4,586 out of the salaries paid to the employees. No details of the dates of deductions or the names of employees to whom the salaries had been paid were given.

5. Although the tax deducted from the salary of each employee was to be deposited to the credit of the Central Government within the prescribed period instead of stating the details of offences which were as many as the defaults in making the deposits, in paragraph 6 of the complaint only the periods of deductions, and the amounts of tax deducted were mentioned. In the ultimate column therein it was stated that the entire amount of Rs. 4,586 which had become due had been deposited on the 11th of June, 1968. That was much before the 31st of March, 1970, on which date the complaint was purported to have been signed by the Income Tax Officer. There was no Explanation in the complaint as to why as soon as the defaults in making the requisite deposits to the credit of the Central Government occurred, the prosecution in respect of each of the offence was not launched. On a bare reading of the concerned provisions it becomes clear that whenever a deduction of Income Tax at the source is made from the salary of a particular employee, which is to be deposited to the credit of the Central Government, within the prescribed period and the deposit is not made, the person responsible for the default incurs a distinct liability for being punished under the Act. The complaint did not contain a narration of the commission of the offences which were numerous and each one of which remained undescribed.

6. In paragraph 10 of the complaint it was stated that the complainant was instituting the complaint as a public servant in his official capacity and as he had to attend to important Government work, his personal attendance deserved to be dispensed with and that the case be proceeded with in his absence.

7. The complaint was not filed by the Income Tax Officer. It was filed by the counsel engaged by him. On the filing of the complaint, the Judicial Magistrate dealing with it passed the following order on 31st March, 1970:

"Presented to-day by Shri K. L. Arora, advocate, for the complainant. This is a complaint by a public servant in his official capacity as Income Tax Officer. No preliminary enquiry is, Therefore, necessary before summoning the accused. Accused be summoned for May 4, 1970.

Personal attendance of the complainant is exempted and he is permitted to appear through his counsel."

8. If it be taken that the court had passed the afore-quoted order after

considering the prayer contained in paragraph 10 of the complaint, then it would be safe to conclude that the court granted a conditional exemption.

9. While directing that the summons be issued for 4th May, 1970, considering that the complaint was filed by a public servant in his official capacity, the court dispensed with the personal attendance of the complainant imposing the condition that he was permitted to appear through his counsel.

10. There is no subsequent order on the record disclosing that at any other stage the trial court passed any order of exemption. The afore-quoted order passed on 31st March, 1970, did not accept the request to proceed with the case in the absence of the complainant. Even if an extended meaning is given to the order, the court was to proceed with the complaint only when the complainant was to be present through his counsel. The order did not provide that the complaint was to be tried in the absence of the complainant as well as his counsel. The afore-quoted order was passed as soon as the complaint was presented. Section 247 of the Code which may be noticed is:

"247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance, and proceed with the case."

11. The provision would apply where summons has been issued on a complaint and the date is one appointed for the appearance of the accused. It would also apply to any subsequent date to which the hearing may have been adjourned.

12. The order passed on 31st March, 1970, while directing that summons be issued, was not an order u/s 247 of the Code.

13. Turning to the provisions under which the complaint had been filed Section 276(d) of the Act was amended by Act 19 of 1968 with effect from 1st April, 1968. Originally clause (d) in Section 276 was as follows:

"276. If a person fails without reasonable cause or excuse--...

(d) to deduct and pay tax as required by the provisions of Chapter XVII-B or under Sub-section (2) of Section 226."

14. The effect of the amendment was that the words "by the provisions of Chapter XVII-B or" were deleted. While causing the deletion the following provision was inserted in the Act as Section 276B :

"276B. If a person, without reasonable cause or excuse, fails to deduct or after

deducting fails to pay the tax as required by or under the provisions of Sub-section (9) of Section 80E or Chapter XVII-B, he shall be punishable with rigorous imprisonment for a term which may extend to six months, and shall also be liable to fine which shall be not less than a sum calculated at the rate of fifteen per cent. per annum on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid."

15. It came into effect from the 1st of April, 1968.

16. In paragraph 6 of the complaint out of which Criminal Revision No. 49 of 1971 arises no distinction was observed as to whether by the defaults which continued till the 11th of June, 1968, the accused had become punishable u/s 276B of the Act or for some prior period they remained liable u/s 276(d) thereof.

17. While passing the order on 31st March, 1970, which is in similar language in all these cases, the trial court did not state as to for which offence the accused were being summoned.

18. The record shows that the accused appeared on 4th May, 1970. Section 247 of the Code became applicable at that stage. A notice was given to the accused by the Magistrate on that date, the terms whereof are almost similar in all these cases. It was stated in the notice :

"It is alleged against you that you were under a statutory obligation to deduct Income Tax from salaries of the employees while making payment and deposit the same within seven days of such deduction in the Government account.

It is further alleged that for the financial year 1967-68, a sum of rupees 4,586 was deducted as Income Tax from the salaries of the employees but the same was not deposited in Government account within seven days from the date of the deduction but was actually deposited on June 11, 1968.

It is further alleged that thereby you are guilty of an offence u/s 276(d) read with Section 276B of the Income Tax Act, 1961.

Therefore, you are require (sic) to show cause why you should not be convicted of the said offence and punished accordingly.

Sd.

(Manjula Mahajan)

Judicial Magistrate, 1st Class,

Delhi.

Dt. 4-5-70."

19. The notice did not state the particulars as to on which dates salaries were paid to any particular employees and any specified amounts were deducted at the source towards Income Tax. The complaint itself lacked the requisite

particulars. It was stated that a total sum of Rs. 4,586 had been deducted from the salaries but was not deposited in Government account within seven days from the date of deduction, but it was not stated in the notice as to when each separate offence had been committed by making the default in not depositing within the requisite period the amount deducted at the source towards Income Tax from the salary of any particular employee.

20. The amount of Rs. 4,586 consisted of numerous deductions, each one of which was to be separately deposited within the requisite period and each default constituted a separate offence. Without stating the particulars of even a single offence, on the basis of a defective allegation it was asserted that an offence had been committed u/s 276(d) read with Section 276B of the Income Tax Act, 1961. The accused were then required to show cause why they should not be convicted. If anything, the notice was full of illegalities. No person could be at the same time guilty of an offence u/s 276(d) as well as u/s 276B of the Act. Even where a default had been committed before the 1st of April, 1968, if the tax deducted remained undeposited before the 1st April, 1968, the offence became one u/s 276B of the Act. The court below never paid any attention to sections 276(d) and 276B of the Act.

21. It is significant that the record does not show the presence of either the complainant or his counsel on the 4th of May, 1970, when the afore-quoted particulars were stated to the accused. Section 242 of the Code is as follows:

"242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted ; but it shall not be necessary to frame a formal charge. "

22. When would the accused appear before the court where summons has been issued ? That would be on the date appointed in the summons issued upon taking cognizance of the complaint. Section 247 of the Code became applicable at the stage at which the court was to state u/s 242 thereof, the particulars of the offence to the accused in order to ask him if he had any cause to show why he should not be convicted.

23. With the benefit of the order passed on 31st of March, 1970, allowed to the complainant, he was to appear through his counsel in the course of the proceedings initiated by his complaint. The combined effect of Sections 247 and 242 of the Code was that the complainant or his counsel should have been present before the Magistrate at the time when the obligations of Section 242 of the Code were to be discharged. On the 4th of May, 1970, when disregarding Section 246 particulars of the offence were stated to the accused, in the absence of the complainant and his counsel, Shri B. L. Verma, accused No. 2, made the following statement:

"I plead guilty to the offence. It is a technical lapse. The firm have always been regular in paying the tax deducted but it appears due to some mistake of an

employee who was responsible for doing it a little delay has occurred. Even before the complaint was filed the entire amount was paid."

24. Even where a confession is made it is the duty of a court to acquaint itself with the particular provision under which an accused person can be convicted. In complete disregard of Section 276B of the Act the trial court recorded the following judgment on 4th May, 1970 :

"JUDGMENT:

Accused has pleaded guilty to the allegations contained in the notice above voluntarily. I, Therefore, hold him guilty u/s 276(d), Income Tax Act, and sentence him to pay a fine of rupees 25 or in default to undergo S.I. for 2 days. Out of this half of the amount realised will go to the Income Tax department.

Sd.

(Manjula Mahajan)

Judl. Magistrate, 1st Class,

Delhi.

Dt. 4-5-70."

25. It is a case in which the default had, according to the allegations contained in the notice given to the accused, ended on the 11th of June, 1968, more than two months after the coming into force of Section 276B of the Act and as such the accused could not have been convicted u/s 276(d) of the Act.

26. The proceedings before the trial court give the impression that the notice was given and the plea of guilt came forth in an atmosphere where it was expected that a small fine in default whereof the accused was to undergo simple imprisonment for a few days only will be imposed.

27. It was in the foregoing background that the petition u/s 435 of the Code was filed before the Sessions Judge, Delhi, praying that it may be recommended to the High Court that the sentence be enhanced. While dealing with the recommendations made u/s 438 of the Code, the High Court acts u/s 439 thereof, Sub-section (6) whereof is:

"439. (6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under Subsection (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction."

28. No order can be made u/s 439(2) of the Code enhancing the sentence without giving an opportunity to the accused of being heard in his defense. While exercising his right under Sub-section (2) of Section 439 the accused can within the scope of Sub-section (6) urge that he be acquitted.

29. The second petition, i.e., Criminal Revision No. 50 of 1971, arises out of Case No. 302/3 of 1970, which was registered on a complaint preferred u/s 276B of the Act read with Sections 192(1) and 200 thereof. The complainant and the accused were the same as in the case with which Criminal Revision No. 49 of 1971 was concerned. On 31st of March, 1970, an order similar to the one noticed while dealing with Criminal Revision No. 49 of 1971 was recorded summoning the accused for 4th May, 1970. Personal attendance of the complainant was similarly exempted with the condition that he was permitted to appear through his counsel. On the 4th May, 1970, sections 247 and 242 of the Code being applicable, accused No. 1 appeared through accused No. 2, Shri B.L. Verma, and the notice given was similar to the one in the former case. For the financial year 1968-1969, it was alleged that Rs. 4,163 had been deducted as Income Tax from the salaries of the employees but had not been deposited in the appropriate account within seven days of the dates of the deductions and had been deposited on two separate dates, viz., 16th April, 1969, and 20th September, 1969. The accused were alleged to have committed an offence u/s 276B of the Act. The court recorded a similar plea of guilt as noticed in the former case and by its judgment made on the same day convicted the company as well as Shri B.L. Verma u/s 276B of the Act passing a sentence of fine of Rs. 25, or in default to undergo simple imprisonment for two days each. On the 4th May, 1970, when particulars of the offence were sought to be stated u/s 242 of the Code and when having recorded the confession the court passed the judgment, the record shows that the complainant and his counsel both were absent.

30. The third petition, Criminal Revision No. 51 of 1971, arises out of trial court Case No. 272/3. The complainant, Shri O. P. Gupta, Income Tax Officer, preferred the complaint under Sections 276(d)/276B of the Act read with Sections 192(1) and 200 thereof. The accused were Messrs. Printers House (Private) Ltd., and Shri K. D. Kohli, their managing director. The complaint, dated the 30th January, 1970, was not instituted by the complainant himself. It was presented by the counsel. The order passed on 20th March, 1970, summoning the accused for the 16th of April, 1970, was similar to that passed in the course of the trial of the case out of which Criminal Revision No. 49 of 1971 arises and which order has been noticed earlier. Personal attendance of the complainant was exempted on the condition that he was permitted to appear through his counsel. It was not mentioned in the order as to for which offence the accused were to be summoned. When the complaint was taken up on the 16th of April, 1970, Shri K. Mehta on behalf of the department was present for Shri K. L. Arora, advocate, while Shri J. L. Sabharwal was present on behalf of the company and Shri K. D. Kohli. The presiding officer being on leave the case was adjourned to 6th May, 1970. On 6th May, 1970, while acting u/s 242 of the Code the court did not take into consideration the absence of the accused and the particulars of the alleged offence were stated to Shri J. L. Sabharwal, advocate, who appeared for the accused. The record does not show that the complainant or his counsel were present. According to Section 242 of the Code the court should have stated the

particulars of the offence to the accused and then asked them to show cause against their liability to conviction. Section 247 was applicable to the proceedings held on 6th May, 1970, and as the complainant was absent, the court should have complied with its requirements.

31. It was alleged in the notice stating the particulars of the offence that the accused were under the statutory obligation to deduct Income Tax while paying the salaries to the employees and were under similar obligation to deposit the amounts within seven days of the deductions. It was nowhere stated as to from the salary of which of the employees and on which date any deduction had been made in respect whereof the accused committed the default in not depositing it within the prescribed period to the credit of the Central Government. It was alleged that during the financial year 1967-68, the sum of Rs. 36,632.48 was deducted but not paid in Government account, and that the amounts had been deposited on 5th October, 1967, and 26th October, 1968. The first deposit was before the 1st of April, 1968, and the second thereafter. The accused being absent and the notice having been given to their counsel, Shri J. L. Sabharwal, he made the following statement:

"The accused pleads guilty. The amount deducted had actually been paid but a little delay which is only of a few days has occurred due to a regrettable lapse on the part of the employee who was responsible for this job. Before the complaint was filed the entire amount due has actually been deposited and the default is thus merely technical. And the Income Tax department has also separately levied penalty for this lapse departmentally. This amount has also been paid.

Sd.

(Manjula Mahajan)

Judl. Magistrate, 1st Class,

Delhi.

Dt. 6-5-70."

32. After recording the statement the trial court passed the judgment.

"JUDGMENT:

Accused has pleaded guilty to the allegations contained in the notice above voluntarily. I, Therefore, hold him guilty u/s 276B, Income Tax Act, and sentence him to pay a fine of rupees 30 or in default to undergo S.I. for 3 days. Out of this half of the amount realised will go to the Income Tax department.

Sd.

(Manjula Mahajan)

Judl. Magistrate, 1st Class,

Delhi.

Dt. 6-5-70."

33. In respect of all those defaults for which the amount of Rs. 3,137.72 had been deposited to the credit of the Central Government on the 5th of October, 1967, the accused could not have been convicted u/s 276B of the Act which provision came into force only with effect from the 1st of April, 1968. Sections 276 and 276B being punitive provisions in a fiscal enactment like the Income Tax Act, the trial court should have paid utmost attention to their scope.

34. The fourth petition being Criminal Revision No. 52 of 1971 arises out of trial court Case No. 271/3. The complaint in which Shri O. P. Gupta, Income Tax Officer, was described as the complainant was against the same accused as in the preceding case. It was filed u/s 276B read with Sections 192(1) and 200 of the Act. In paragraph 6 of the complaint lump sums deducted during the various months in different years were described and it was stated that the requisite amounts were deposited to the credit of the Central Government for the year 1968-69--the first of the deposits being on 13th of September, 1968. On the dates of the deposits Section 276B of the Act was in vogue. The complaint was not presented by the Income Tax Officer himself but by his counsel and the accused were summoned for 16th April, 1970, by an order similar to the one noticed while dealing with Criminal Revision No. 49 of 1971. The personal attendance of the complainant was exempted imposing the condition that he was permitted to appear through his counsel. On the 16th of April, 1970, the proceedings were adjourned and the order on the record is that the case may be taken up with the connected case on the 6th 6f May, 1970. On that date the complainant and his counsel both, according to the record, being absent, notice was given to the two accused through Shri J. L. Sabharwal, advocate. It was mentioned in the notice stating the particulars of the offence u/s 242 of the Code that during the financial year 1968-69, a sum of Rs. 44,104 was actually deducted but not paid to the Government account and that the deposits had been made as mentioned in column 3 of paragraph 6 of the complaint. It was notified u/s 242 of the Code to the accused that they were guilty u/s 276B of the Act and they were called upon to show cause against conviction. The accused being absent Shri J. L. Sabharwal, appearing both for Messrs. Printers House (Private) Ltd. as well as for Shri K. D. Kohli, made the following statement:

" The accused pleads guilty. The amount deducted had actually been paid but a little delay which is only of a few days has occurred due to a regrettable lapse on the part of the employee who was responsible for this job. Before the complaint was filed the entire amount due has actually been deposited and the default is thus merely technical. And the Income Tax department has also separately levied penalty for this lapse depart-mentally. This amount has also been paid.

Sd.

(Manjula Mahajan)

Judl. Magistrate, 1st Class,

Delhi.

Dt. 6-5-70."

35. After recording the statement made by their counsel the trial court passed the following judgment:

"JUDGMENT:

Accused has pleaded guilty to the allegations contained in the notice above voluntarily. I, Therefore, hold him guilty u/s 276B Income Tax Act, and sentence him to pay a fine of rupees 30 or in default to undergo S.I. for 3 days. Out of this half of the amount realised will go to the Income Tax department.

Sd.

(Manjula Mahajan)

Judl. Magistrate, 1st Class,

Delhi.

Dt. 6-5-70."

36. The trial court's record of these cases gives the irresistible impression that the proceedings were held in an accepted atmosphere in which notices were issued as a matter of formality and the plea of guilt was offered expecting that only fine would be imposed.

37. The complainant and his counsel as well as the accused being absent it was significant that the absentee accused were sentenced not only to a fine of Rs. 30 each, but also to undergo simple imprisonment for three days in case default was made in paying the fine. The trial court did not at all apply its mind to what was being done and it was not taken into consideration as to how Messrs. Printers House (Private) Ltd. were to be imprisoned for three days if the fine was not paid.

38. The fifth petition, Criminal Revision No. 53 of 1971, arises out of trial court Case No. 331/3. The Income Tax Officer, Shri Rajeshwar Tyagi, figured as the complainant while the accused were described as Messrs. Tyagi Anand and Company Private Ltd., and Shri H.R. Tyagi, managing director, thereof. The complaint was made under Sections 276(d)/276B of the Act read with Sections 192(1) and 200 thereof. The Income Tax Officer did not file the complaint himself. It was presented by his counsel. An order similar to those noticed in the other cases was passed on the 4th of April, 1970, summoning the accused for 8th May, 1970, without stating as to for which offence they were to be summoned. The personal attendance of the complainant was exempted permitting him to appear through his counsel. On 8th May, 1970, when Sections 242 and 247 of the Code were applicable to the proceedings a composite notice was issued to the two accused alleging that they were under the statutory

obligation to deduct Income Tax from the salaries of the employees and to deposit the same within seven days of the deductions and that for the financial year 1964-65 having deducted Rs. 1,730.40 they had not paid the same within the prescribed period but had actually deposited this amount on 28th March, 1969, and that they had committed the offence punishable u/s 276(d) read with Section 276B of the Act. The complaint, it may be noticed, bearing the date 4th April, 1970, was instituted in respect of the deductions made before the 31st of March, 1965. There was a lapse of five years in filing the complaint. The amount had been deposited on 28th March, 1969. No prosecution was, however, launched till the filing of the complaint in April, 1970. As observed in respect of other cases, there being no allegation regarding any specific offence in the complaint, the notice given u/s 242 of the Code, did not state as to which were the employees to whom salaries were paid on particular dates from which deductions were made for depositing them to the credit of the Central Government.

39. In the absence of the complainant and his counsel, Shri H.R. Tyagi, accused No. 2, the managing director of accused No. 1, made the following statement:

" I plead guilty to the offence. The reason for delay was that the (sic) ciname started in 63 and some of the employees paid the Income Tax directly. We did not know about the rules. As soon as we received the knowledge about it the tax was deducted and paid immediately.

Sd.

(Manjula Mahajan)

Judl. Magistrate, 1st Class,

Delhi.

Dt. 8-5-70."

40. on that statement the trial court passed the following judgment:

"JUDGMENT:

Accused Messrs. Tyagi Anand and H.R. Tyagi have pleaded guilty to the allegations contained in the notice above voluntarily. I, Therefore, hold them guilty u/s 276(d), Income Tax Act, and sentence them to pay a fine of rupees 25 each or in default to undergo S.I. for 3 days. Out of this half of the amount realised will go to the Income Tax department.

Sd.

(Manjula Mahajan)

Judl. Magistrate, 1st Class,

Delhi.

Dt. 8-5-70."

41. A sentence of imprisonment in default of payment of fine was being imposed, although the company could not have been sent to the prison.

42. The sixth petition being Criminal Revision No. 54 of 1971 arises out of the trial case No. 293/3. The complainant was the same as in the former case and the accused were Messrs. Dina Industries (Private) Ltd. and Shri Gobind Sharan Gupta, the managing director thereof. The complaint was made under Sections 276(d)/276B of the Act, read with Sections 192(1) and 200 thereof. It was not presented by the Income Tax Officer but by his counsel and on 31st March, 1970, an order similar to those noticed earlier was passed by the trial court summoning the accused for the 5th of May, 1970, and exempting the presence of the complainant on the condition that he was being permitted to appear through his counsel. On the 5th of May, 1970, the counsel for the parties being present, the proceedings were adjourned to 18th of May, 1970, because the presiding officer was on leave. The proceedings on being taken up were again adjourned to 23rd May, 1970, and on the 26th May, 1970, the notice u/s 242 of the Code was given to both the accused through their advocate, Smt. Shanti Gupta. The record does not show that the complainant or his counsel were present on the said date. It was alleged in the notice that for the financial year 1964-65, a sum of Rs. 3,808 had been deducted but had not been paid within the specified period and that deposits were made on 6th August, 1969, and 23rd September, 1969. The accused, whose counsel alone was present, were called upon to explain as to why they should not be held guilty under Sections 276(d) and 276B of the Act. No particulars were given in the notice describing the employees from whose salaries on any particular dates deductions had been made which were to be deposited to the credit of the Central Government within seven days.

43. The advocate appearing for the accused made the following statements :

"1. I have understood the particulars of the offence as read out to me. On behalf of both the accused I plead guilty. Both the accused have instructed me to plead guilty on their behalf. The complaint was filed actually after the entire amount had already been paid. The delay was due to inadvertence on the part of the employees who were directed to obey all the regulations."

44. The trial court then passed the following judgment:

"JUDGMENT:

Accused Dina and Gobind Sharan Gupta (sic) has pleaded guilty to the allegations contained in the native (sic) above voluntarily. I, Therefore, hold them guilty u/s 276(d)/276B Income Tax Act and sentence them to pay a fine of rupees 25 each or in default to undergo S.I. for 3 days. Out of this half of the amount will go to the Income Tax department.

Sd.

(Manjula Mahajan)

Judl. Magistrate, 1st Class,

Delhi.

Dt. 26-5-70."

45. The court did not at all apply its mind to Sections 276B and 276(d) of the Act. While acting in the absence of the complainant, his counsel and of the accused on 26th May, 1970, the court ignored the provisions of Sections 242 and 247 of the Code.

46. The seventh petition being Criminal Revision No. 55 of 1971 arises out of trial court Case No. 294/3 and the complaint was preferred by the same Income Tax Officer as in the preceding case. The accused were also the same. The complaint was filed under the same provisions as in the earlier case, and similar orders were passed. Similar notice was given on 26th May, 1970, to the same advocate appearing for the two accused containing all the infirmities noticed earlier. The counsel made a similar statement and a similar judgment was passed on 26th May, 1970, convicting both the company as well as Shri Govind Sharan Gupta under Sections 276(d) and 276B of the Act and imposing a fine of Rs. 25 each or in default to undergo simple imprisonment for three days. The court acted in complete disregard of the concerned provisions contained in the Code as well as in the Act and imposed an alternative sentence of simple imprisonment on Messrs. Dina Industries Private Ltd.

47. I have heard the counsel for the petitioners in support of the order recommending that the sentences imposed be enhanced. I have also heard the counsel for the various respondents in these seven petitions.

48. It is urged on behalf of the petitioners that the sentences imposed are inadequate and that if the trial court was to take into consideration the punitive part of Section 276 of the Act, then the respondents were punishable with fine which could extend to ten rupees for every day during which the default continued. It is submitted that the sentences imposed were not in accordance with law. It is, however, Section 276B of the Act which has been reproduced earlier on which greater emphasis is laid and it is contended that the sentences be enhanced.

49. It is urged on behalf of the petitioners that as soon as Section 276B became applicable with effect from the 1st of April, 1968, the respondents, who incurred the liability there under were to be punished with rigorous imprisonment which could extend to six months and were also to be liable to fine which was not to be less than a sum calculated at the rate of fifteen per cent. per annum on the amount of such tax from the date on which it was deductible to the date on which such tax was actually paid.

50. The learned counsel was unable to show after referring to the complaints

that it was mentioned therein that a particular deduction out of the salary of a particular employee had been made on a particular date so as to permit the calculations under the second part of Section 276B of the Act for imposition of fine which was not to be less than the sum calculated at the rate of fifteen per cent. per annum on the amount of the tax from the date on which it was deductible at the source to the date on which it was actually paid. The complaints did not disclose any basis for imposing the fine contemplated by Section 276B of the Act. The scope of Section 276B which is now emphasised for supporting the recommendation by the Additional Sessions Judge was never urged before the trial court.

51. As to the imposition of imperative imprisonment, that aspect will be dealt with while disposing of the contentions raised on behalf of the respondents.

52. The first contention raised on behalf of the respondents is that the complaints were not validity instituted. It is submitted that the complaints could have been instituted only by the Commissioner. Section 279(1) of the Act, which is referred to, is :

" 279, (1) A person shall not be proceeded against for an offence u/s 275A or Section 276 or Section 276A or Section 276B or Section 277 or Section 278 except at the instance of the Commissioner."

53. The argument is that the Code applied in terms of Section 5(2) thereof and the proceedings could be initiated against the respondents only on taking cognizance of a complaint filed by the Commissioner. Proceedings against the accused, it is urged, could have been started by a criminal court only at the instance of the Commissioner. The power given by Section 279(1) it is emphasised, could not have been delegated to any Income Tax Officer. If the meaning of the word "instance" given in Webster's Third New International Dictionary, volume II, 1961 edition, is taken into consideration, then it is stated therein as " the institution and prosecution of a law suit: a legal proceeding or process ".

54. In Chamber's Twentieth Century Dictionary, the words "at the instance of "is given as "at the motion or solicitation of ". The words actually used in Section 279(1) are "at the instance of the Commissioner". Whatever may be the import in the provision and whatsoever aid the dictionary meaning may be given to the argument, the controversy stands settled by the observations made by the Supreme Court in T.S. Baliah Vs. T.S. Rengachari, where dealing with similar words used in Section 53 of the Indian Income Tax Act, 1922, it was observed:

"The clause "at his instance" in Section 53 of the 1922 Act only means "on his authority" and it is, Therefore, sufficient compliance of the statutory requirement if the complaint petition is filed by the respondent on being authorised by the Inspecting Assistant Commissioner."

55. It is, however, contended that even if it be concluded that the Commissioner

had validly authorised the Income Tax Officers to file the complaint the same could have been filed only by them and not presented by their counsel. In elaboration of the argument aid is sought from the observations made by Prakash Narain J. in his judgment dated the 3rd of September, 1969 (Kohli Finance Private Ltd. v. Rishipal Singh), by which Suit No. 573-Arb. of 1966 was disposed of. While dealing with the contention that the petition u/s 20 of the Arbitration Act had not been competently instituted, it was observed :

" The filing of a petition in court is a positive act which must be done by the parties suing or by some authorised agent. In the present case the authority to file has been given to Walaiti Ram Kohli but P.W. 1 does not say that he in fact filed the petition. On a perusal of the record of the case, I find that it is the counsel for the petitioner who had presented the petition in court. The authority of the counsel has also not been proved inasmuch as the signature on the vakalatnama has not been proved and nobody says on behalf of the petitioner that the vakalatnama in favor of the learned counsel was given by Walaiti Ram Kohli or someone else. Accordingly, I hold that the petition is signed and verified by a duly authorised person, but it has not been proved that it has been instituted by any duly authorised person."

56. It is submitted on behalf of the respondents that there is no proof that the Income Tax Officers authorised to file the complaints actually executed the powers of attorney in these seven cases in favor of the counsel delegating to him the authority to file the complaints within the meaning of the words "at the instance of the Commissioner"

57. While Sub-section (6) of Section 439 of the Code allows it to the respondents to urge that their convictions are unmerited, it must be noticed that the objection now raised was never preferred before the trial court. If it had been taken the petitioners may have adduced evidence that the powers of attorney on the basis whereof the complaints were filed had been duly executed. I must, however, observe that in a complaint covered by Section 279(1) of the Act it remains the duty of the trial Magistrate to take cognizance only on being satisfied that he is being moved at the instance of the Commissioner. The complainant is also under an obligation to satisfy the court that the complaint is being competently preferred under the said provision. In these cases disregard was shown to the significance of the said provision.

58. The second contention is that the orders summoning the accused could not be taken to have been competently passed u/s 204 of the Code as it could not be said that the court had applied its mind to the complaints and had taken cognizance within the meaning of Section 190(1). It is pointed out that while passing the orders the court did not even mention the offences for which the accused were to be summoned.

59. An order passed u/s 204 of the Code is open to revision. It should be a speaking order, the validity whereof may be questioned before the courts of

superior jurisdiction. The orders passed on the seven complaints are almost identical. The trial Magistrate noting that the complaints had been filed by a public servant, as Income Tax Officer, passed the order summoning the accused. The order does not disclose that the court knew what the allegations against the accused were and that they were to be summoned for the offences committed under Sections 276(d)/ 276B of the Act. It is, however, not possible to conclude positively that the omission in the order is one which can be held to be vitiating the trial. Section 537 of the Code applies to cure the omission in the order.

60. The third contention is that Section 247, which has been reproduced earlier, applied at the stage when the accused appeared and the particulars of the offences alleged were stated in order to give the opportunity to explain as to why the accused be not convicted and that the complainant being absent, the trial court should have either acquitted the accused or recorded an order giving the reasons for adjourning the hearing of the case to some other day. The court could have within the proviso in Section 247 of the Code proceeded with the case on recording its opinion as to why the personal attendance of the complainant was not necessary.

61. In order to meet the contention, the counsel for the petitioners has relied on Mool Chand Vs. The State, and Premkumar Vs. The State, . I do not find that the observations made therein can be availed of. In the first of these citations it is observed:

"It is clear from the provisions of this section that if the summons has been issued on complaint and a date is fixed for appearance of the accused, then the complainant must also appear on that day. If the hearing is adjourned to any subsequent date, then on such date also the complainant should appear and if he fails to do so, then the Magistrate should acquit the accused unless for some reason the Magistrate thinks it proper to adjourn the hearing of the case to some other day."

62. In the case with which I am dealing, the record does not show that the complainant or his counsel were present on the date when particulars of the offence were stated for purposes of Section 242 of the Code. Such of the accused as were present or the counsel who appeared for them made statements pleading guilty and judgments were then passed imposing fine and imprisonment in the event of default in paying it. In the trials out of which Criminal Revision Petitions Nos. 51, 52, 54 and 55 of 1971 arise, the accused were not present before the court and the particulars of the alleged offences were stated to the counsel, who appeared on their behalf.

63. The observations made by the Rajasthan High Court, in the two cases cited before me, do not support the following of the procedure which the trial court adopted while acting u/s 242 in the absence of the complainant as well as the accused. There is no parallel in any recorded case justifying the manner in which the trial was held in the cases out of which the abovementioned four petitions

arise.

64. The counsel appearing for the respondents have pointed out that in terms of Section 279(2) of the Act the Commissioner, at whose instance the accused could have been proceeded against, had at all stages the authority to compound the offence. Sub-section (2) of Section 279 is :

"279. (2) The Commissioner may either before or after the institution of proceedings compound any such offence."

65. It is contended that if the complainant had been present at the stage when the particulars of the offences were to be stated u/s 242 of the Code to the accused opportunity would have remained with him to compound the offence under the authority of the Commissioner who had authorised the institution of the complaint.

66. Claiming acquittal, the respondents, firstly, rely on Daulat Ram Vs. Ram Kishan and Others, wherein it was observed that on the failure of the complainant to appear, the Magistrate is under an obligation to dismiss the complaint unless he is of the opinion that the case should be adjourned to another date.

67. State of U.P. Vs. Lal Bahadur and Others, is also referred to. The observation made therein was that in case of non-appearance of the complainant the discretion to adjourn the hearing of the case must be judiciously exercised and the court should record the reason for adjourning the case. It was pointed out by the Allahabad High Court that the normal course on non-appearance of the complainant is to acquit the accused u/s 247. The personal attendance of the complainant can be exempted but, then, the discretion has to be judiciously exercised.

68. The observations made in Mohd. Yamin Vs. Zafar Mohammad and Others, are also brought to my notice. The court observed therein that no arbitrary action should be taken and that the complaint should not be dismissed in haste and that chance should be given to the complainant to be present. The rules contained in Chapter I-F, volume (III), High Court Rules and Order were noticed in paragraph 5 of the judgment and it was observed:

"the Magistrate has to exercise his judicial discretion in making an order u/s 247 of the Code. Rule 3(ii) contains the broad instructions for the guidance of the Magistrate, prominently bringing out the grave responsibility which rests on the trying Magistrate when deciding whether to adjourn the case or to proceed with the trial, even in the absence of the complainant or to acquit the accused. They completely rule out arbitrariness or fixed automatic rigidity of action on the part of the Magistrate."

69. I am in respectful agreement that the trial courts are to act judiciously and are not to dismiss the complaints in haste. At the same time grave responsibility rests on them to decide whether the case is to be adjourned or proceeded with in

the absence of the complainant and if no order to either effect is recorded then the accused is to be acquitted.

70. The reference to Bhageeraihi Ramamani v. Radhamma, [1971] Cr. LJ. 115 affirms me in the view that while exercising the discretion u/s 247 the court has to show in its order as to why the case deserves to be adjourned or proceeded with in the absence of the complainant. In the absence of an order which can be placed u/s 247 of the Code, there would be no legal justification for a trial court to state the particulars of an offence u/s 242 of the Code to the accused who appears on the appointed date in response to the summons, the stage being one to which Section 247 is applicable.

71. In the course of the seven trials, out of which these petitions arise, no heed was paid by the trial Magistrate either to Sections 242 and 247 of the Code or the rules mentioned above. The court had exempted the personal attendance of the complainants imposing the condition that they were permitted to appear through their counsel. Section 200(aa) of the Code, which is relied upon by the learned counsel appearing for the petitioners, has no relevance to the controversy. There under the court may not require the examination of a complainant in any case instituted on a complaint made by a court or by a public servant acting or purporting to act in the discharge of his official duties. If it be said that while filing the complaint under the authority of the Commissioner delegated u/s 279(1) of the Act the Income Tax Officers were acting in the discharge of their official duties, they were not required to be examined before summoning the accused, but their personal attendance for subsequent proceedings was exempted under the condition that they were permitted to appear through their counsel. It is urged by the petitioner's counsel that he was present on all dates. This court has, however, to be guided by the record. If the counsel for the petitioners was present, the trial court should have recorded that he was present and should have then stated particulars of the offence to the accused in compliance with Section 242 of the Code. The trial court record pertaining to none of the seven complaints out of which these petitions arise shows that either the complainant or his counsel were present on the dates when the accused appeared in response to the summons as contemplated in Section 247 of the Code and when the trial court stated in its own way the particulars of the offence to the accused u/s 242 thereof.

72. While dealing with section 342 of the Code, the Supreme Court in Bibhuti Bhusan Das Gupta v. State of West Bengal, AIR 1969 S.C. 361 held that even where the trial court had dispensed with the personal appearance of the accused, a pleader could not represent him for purposes of that provision except where the accused was a company or a juridical person and for that reason could not be examined personally. It was emphasised that in all cases where the accused was not a juridical person the examination of a pleader could not be a sufficient compliance with Section 342 of the Code.

73. Section 242 of the Code requires of the Magistrate that he should state the

particulars of the offence to the accused and should ask him to show cause why he should not be convicted. Unless the accused is a company, particulars of the offence cannot be stated to its principal officer or any counsel representing the accused.

74. A scrutiny of the trial court records discloses that in no case any order was ever passed u/s 205 of the Code exempting the presence of the accused. The trial court, wherever it purported to state the particulars of the offence to the counsel instead of stating them to the accused, acted in contravention of Section 242 of the Code. The confessed convictions in that situation remained illegal.

75. It is worth noticing that in all the seven cases the sentence imposed was that in default of payment of fine the accused were to suffer imprisonment. On behalf of the petitioners a reference has been made to Section 366 of the Code but that provision, has no kinship with Section 242 thereof and no judgment imposing imprisonment can be made in the absence of the accused. u/s 388 of the Code if the fine is not paid forthwith the discretion allowed to the court can be exercised only if the accused is present before it. In passing the judgments no distinction was made between the accused who were mere juridical persons and those who were present in blood and bone.

76. The counsel for the petitioners relied on Section 537 of the Code.

77. Wherever a court is called upon to utilize that provision it must act within its scope. The curable errors, omissions or irregularities falling under it cannot be equated with illegalities committed in violation of statutory provisions in accordance with which the trial is to be held. By resorting to Section 537 the courts cannot legislate amendments in the statutory provisions and legalise that which may be illegal under the Code.

78. Section 242 requires that the particulars of the offence should be stated to the accused and where his presence is not exempted u/s 205 of the Code and where the accused is not a juridical person, the court acts without jurisdiction in stating the particulars to a counsel representing the accused. Section 537 of the Code will not come in to cure such an illegality.

79. I have perused the trial court records in these cases with utmost care and many times.

80. As soon as the complaints were presented by the counsel on behalf of the complainants, stereotyped orders were passed in the seven cases that the complainants being public servants no preliminary inquiry was necessary, and the accused be summoned. The summons could have been issued within Section 204 of the Code only on a satisfaction of the court that there was sufficient ground for proceeding against the accused. Section 200(aa) of the Code, which relieves the complainants being public servants from being examined before process is issued u/s 204, calls for caution that the court must apply its mind to the complaint, the presentation whereof is different from taking its cognizance. The

orders by which on presentation of the complaints the accused were summoned, do not show that the court was cognisant of the allegations contained therein and had appreciated whether any specific offence either u/s 276(d) or Section 276B of the Act had been committed.

81. The fourth contention on behalf of the respondents is that the default having occurred before the incoming of Section 276B of the Act the accused could not have been called upon to show cause as to why they should not be convicted there under.

82. Tax at the source was to be deducted u/s 192 of the Act at the time of the payment of the salary to each employee and was payable to the credit of the Central Government u/s 200 of the Act read with Rule 30(1)(b)(i)(2) of the Income Tax Rules, 1962. It was to be paid within one week from the last day of the month in which the deduction had been made. The relevant part of rule 30 may be quoted because there is a confusion in the complaints wherein it is stated that under the rule the prescribed period was one week from the date of deduction or the date of the receipt of the challan by the person making the deduction. The relevant rule is:

" 30. Time and mode of payment to Government account of tax deducted at source:--

(1) All sums deducted in accordance with the provisions of Sections 192 to 194, Section 194A and Section 195 shall be paid to the credit of the Central Government-

(a) in the case of deduction by or on behalf of the Government, on the same day;

(b) in all other cases,--

(i) in respect of sums deducted in accordance with the provisions of Section 194A-

(1) where the income by way of interest is credited by a person carrying on a business or profession to the account of the payee as on the date up to which the accounts of such business or profession are made, within two months of the expiration of the month in which that date falls ;

(2) in any other case, within one week from the last day of the month in which the deduction is made;...."

83. In the case of the deductions with which these petitions are concerned, Rule 30(1)(b)(i)(2) was applicable.

84. An omission in making the deposit as required by the foregoing provisions was punishable u/s 276 of the Act before the incoming of Section 276B.

85. The omission was an offence within Section 3(38) of the General Clauses Act, which is as follows :

"3. In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,--...

(38) "offence" shall mean any act or omission made punishable by any law for the time being in force."

86. As soon as an omission to deposit the tax deducted at the source out of the salary of a particular employee occurred on account of the default in complying with the requirements of Section 200 of the Act read with Rule 30, the offence took place. The duration of the omission could be terminated only by making the deposit. Wherever the omission was subsisting, after the 1st of April, 1968, it became an offence u/s 276B of the Act. This view finds support from the terms employed at the end of Section 276B of the Act which is clear that the period as from the date on which such tax was deductible to the date on which such tax was actually paid, was to be the basis for calculating the fine which was to be imperatively imposed. The offence was, Therefore, to continue till the actual payment of the particular deduction to the credit of the Central Government, If the default was still there when Section 276B became applicable, it became punishable there under.

87. The allegations in paragraph 6 of the complaint out of which Criminal Revision No. 49 of 1971 arises were that the entire amount of Rs. 4,586 deducted out of the salaries of unnamed employees on various dates was deposited on 11th June, 1968. The defaults persisted after Section 276B of the Act came into force on 1st April, 1968.

88. In case of Criminal Revision No. 50 of 1971, it was mentioned in the complaint that two deposits were made on 16th of April, 1969, and 20th of September, 1969, respectively, towards the amounts deducted out of the salaries of undisclosed employees. The defaults, if punishable, attracted Section 276B of the Act.

89. It was stated in paragraph 6 of the complaint out of which Criminal Revision No. 51 of 1971 arises that the accused had deducted a sum of Rs. 36,632.48 out of the salaries paid to unnamed employees on undisclosed dates. The amount, according to the allegation, was not deposited as required by law and Rs. 3,137.72 were deposited on 5th October, 1967, while Rs. 33,500.76 were deposited on 26th October, 1968. The allegation was never looked into carefully. It was a case in which the trial court should have insisted on a proper complaint being filed disclosing the various dates on which the fractional deductions creating the total amount were made out of the salaries paid to specified employees and care should have been taken to notice that defaults in respect of certain deductions were over before the incoming of Section 276B while the offence persisted in respect of other deductions till the deposit of Rs. 33,500.76 was made on 26th October, 1968, on which date Section 276B was applicable.

90. Paragraph 6 of the complaint out of which Criminal Revision No. 52 of 1971

arises shows that all the deposits were made on dates beginning with the 13th of September, 1968, and ending with 7th of May, 1969, and the defaults precisely established were to be punished u/s 276B of the Act.

91. Paragraph 6 of the complaint, out of which Criminal Revision No. 53 of 1971 arises, deserve special comment. It is stated in paragraph 6:

"That during the financial year 1964-65 the accused deducted a sum of Rs. 1,730.40 from the salaries of its employees. The accused had been making the deductions of tax every month from the salaries of the employees but were not depositing the same within the prescribed time in accordance with the aforementioned provisions of Section 192(1) read with Section 200 of the said Act and Rule 30 of the Income Tax Rules, 1962. The said amount was, however, paid on 28-3-1969."

92. According to the afore-quoted allegations, during the financial year 1964-65 the accused had deducted a sum of Rs. 1,730.40 from the salaries of its employees. No allegations were made as to how many deductions from the salaries of specified employees made the total sum of Rs. 1,730.40 and on which dates the deductions had been made the defaults in making the deposits in respect whereof constituted distinct offences under the law. The deductions having been admittedly made during the financial year 1964-65, complete disregard was shown to the provisions of the Act and no proceedings were instituted against the accused during the years 1966, 1967, 1968 and 1969, and the complaint was filed under the date 4th April, 1970. Section 276 of the Act prescribed that the punishment could be with fine, which could extend to Rs. 10 per day during which the default continued. With such a provision being there, I cannot imagine as to why the concerned prosecutors were interested in the continuation of the defaults and the multiplication of the fine which could have been imposed u/s 276.

93. Criminal Revision No. 54 of 1971 arises out of a complaint, in paragraph 6 whereof a broad allegation is made that the accused had paid salaries amounting to Rs. 49,144 to the employees, out of which a sum of Rs. 3,808 was to be deducted in order to be paid to the credit of the Central Government in accordance with the provisions of the Act and rule 30 of the Income Tax Rules, 1962, and that the amount was paid in two Installments on 6th of August, 1969, and 23rd September, 1969, The amount was alleged to have been deducted during the financial year 1964-65 and the complaint bears the date 31st March, 1970. If prosecuted promptly the accused would have faced Section 276 of the Act and requisite deposits may have been secured earlier. The defaults having occurred no action was taken during the intervening years till it was decided to file the complaint almost after two years of the incoming of Section 276B of the Act.

94. In the case of Criminal Revision No. 55 of 1971, the concerned allegation in paragraph 6 of the complaint is that during the financial year 1966-67 a sum of

Rs. 1,260 had been deducted out of the salaries paid to the employees of the company but the deposit was made on 23rd September, 1969. The complaint is dated the 31st March, 1970. If the prosecution had immediately followed the defaults, Section 276 would have been applicable.

95. Along with the fourth contention it would be appropriate to consider the fifth one which is that the trials were in gross violation of Section 234 of the Code. The provision is :

" 234. (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law :

Provided that, for the purpose of this section, an offence punishable u/s 379 of the Indian Penal Code, shall be deemed to be an offence of the same kind as an offence punishable u/s 380 of the said Code, and that an offence punishable under any section of the Indian Penal Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence."

96. It is urged that no cognizance could have been taken of the complaints and that the trial court had acted without even reading them. It is emphasised that whenever salary was paid to a particular employee, every deduction of tax at the source being not deposited to the credit of the Central Government within the prescribed period constituted a distinct offence and that in order to obtain the trial the complainants should have specifically alleged the names of the employees, the dates on which salaries were paid to them, the amounts which were deducted towards the tax and it should have been clarified as to when the offence became punishable because of non-compliance with rule 30 of the Income Tax Rules, 1962. The omission to make the deposit being an offence restricted to a particular deduction, it could terminate only on the making of the payment to the credit of the Central Government. The argument is that only the offences not exceeding three could have been tried together.

97. If Section 234 of the Code is kept apart, Section 242 requires that the particulars of the offence be stated to the accused. There is no sanction that where numerous hidden offences make the sum total of an allegation the court can be held to have complied with Section 242 where it abstains from stating the particulars of each offence. In the seven trials with which these petitions are concerned, the court never stated the particulars of any specific deduction of tax out of the salary of any named employee on any given date in respect whereof no deposit was made to the credit of the Central Government within the requisite period.

98. It is undeniable that each distinct deduction from the salary of an employee and the omission to deposit the amount to the credit of the Central Government within the prescribed period constituted a separate offence. It is nobody's case that in the case of a single default it could not have been punishable either u/s 276 or 276B of the Act whichever applied. None of the seven complaints contains specific allegations regarding the offences and it cannot be said that competent cognizance was taken by the trial court in these seven trials of any particular offence committed under the Act. If anything, these complaints show that no distinction was drawn that each default constituted a distinct offence and sufficient period was allowed to pass in the course whereof the amounts deducted accumulated and deposits covering them were made in lump sums. I am not persuaded that the complaints as filed spell out any distinct offence committed with respect to any distinct default.

99. This takes me to the sixth contention raised on behalf of the respondents that the punishment u/s 276 or 276B could have been awarded only to a person, who without reasonable cause or excuse had failed to deduct the tax at the source or had failed thereafter to deposit the same. It is submitted that the statements made by or on behalf of the accused offered reasonable Explanations and as such sentences did not deserve to be enhanced. I am persuaded that the trials vitiated by illegalities resulting into confessed convictions and impositions of fine were traded transactions. The trial court could not have otherwise fallen into the error of showing complete disregard to the concerned provisions in the Act and the Code. The unnamed assesseds out of whose salaries deductions were made were numerous. Defaults in respect of depositing each of the amounts deducted constituted separate offences. Cognizance could have been taken only of specific offences.

100. The provisions in the Act do not warrant that a complaint be preferred merely stating that during a particular financial year a particular amount was deducted which was not deposited. What is made punishable is the default to deposit within the prescribed period a specific amount of tax deducted on a particular date out of the salary of a particular employee. The law does not contemplate that an omnibus allegation be made that a lump sum had been deducted during a particular financial year but had not been deposited. The record pertaining to the seven trials shows that the trial court knew while stating whatever it stated u/s 242 of the Code that a confession would be forthcoming and the accused or the counsel appearing for the accused knew that there would be an imposition of fine.

101. That apart, while passing the sentence the trial court in each case imposed fine in default of payment whereof the accused were to undergo imprisonment. There is no doubt that fine could have been imposed where the accused were juridical persons, but no trial could have been held within the scope of Section 276B of the Act of juridical persons as they could not have been sentenced to imprisonment. In this view I am fortified by the observations made by this court

in Rameshwar Dass Chottey Lal and Others Vs. Union of India and Others, . I may also refer to State of Maharashtra Vs. Jugamander Lal, wherein Section 3(1) of the Suppression of Immoral Traffic in Women and Girls Act, 1956, was considered. That provision used the words:

"Any person who keeps or manages or acts or assists in the keeping or management of a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years, and not more than five years and also with fine which may extend to two thousand rupees."

102. The Supreme Court took the view that the expression "punishable" did not confer a discretion whether to award the punishment or not and it was impossible to construe Section 3(1) of the concerned Act as giving any discretion to the court in the matter of determining the nature of sentences to be passed in respect of a contravention of the provision. It was observed:

"By using the expression "shall be punishable" the legislature has made it clear that the offender shall not escape the penal consequences. "

103. Section 276B of the Act provided that a person failing without reasonable cause or excuse to deduct or after deducting to pay the tax as required by the provisions mentioned therein "shall be punishable with rigorous imprisonment for a term which may extend to six months, and shall also be liable to fine which shall be not less than a sum calculated at the rate of fifteen per cent. per annum on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid. "

104. An imposition of rigorous imprisonment even for a fraction of the six months was imperative under the provision.

105. A company or a firm being a juridical person was not liable to be prosecuted u/s 276B of the Act inasmuch as it could not have been imprisoned. The provision left no discretion to the court to impose the fine contemplated by it as an alternative to imprisonment. The accused was in any case to be punished with rigorous imprisonment for a term which could extend to six months. A juridical person could not have been imprisoned and could not have been prosecuted for the purpose of being convicted u/s 276B of the Act. The trial court showed complete disregard to that aspect of Section 276B of the Act.

106. In each of the complaints one of the accused was a juridical person. The seven composite trials stand vitiated by illegalities and it is immaterial that the accused were lured into confessions. The argument that they deserve the protection of the Probation of Offenders Act does not call for consideration. The recommendation in each of the seven petitions is declined. Exercising the powers given by Sections 439(6) and 561 A of the Code the convictions in these seven

cases are set aside.

Convictions set aside.