(2002) 03 PAT CK 0044

In the Patna High Court

Case No : Criminal Miscellaneous No. 6300 of 2001

Dipesh Chandak APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 21-03-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 306, 306(1), 306(4)
Income Tax Act, 1961 — Section 277, 278

Citation : (2003) CriLJ 2510 : (2002) 176 CTR 139 : (2002) 256 ITR 376 : (2002) 2 PLJR 342 : (2003) 132 TAXMAN 536

Hon'ble Judges : Ashok Kumar Verma, J

Bench : Single Bench

Advocate : M.L. Lahoty, Rajendra Narain and Anju Narain, for the Appellant; L.N. Rastogi and S.K. Saran, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Kumar Verma, J.—This petition has been filed on behalf of Dipesh Chandak for quashing the entire proceedings including the order dated June 6/7, 2000, passed by the Special Judge, Economic Offences, Patna, in Complaint Case No. 157 (C) of 2000, whereby the learned special judge has taken cognizance of the case for the offences under Sections 277 and 278 of the Income Tax Act, 1961, against the accused Dipesh Chandak and for the offence u/s 277 of the said Act against the accused Hitesh Chandak, Mahavir Prasad Chandak, Mohan Lal Chandak and N. K. Chitlangia. The complaint case bearing No. 157(C) of 2000 had been filed in the court of Special Judge, Economic Offences, Patna, by the Union of India through the Deputy Commissioner of Income Tax, Central Circle-1, Patna, against the above five accused persons for commission of the offences punishable under Sections 277 and 278 of the Income Tax Act, 1961.

2. The assessee-accused, Dipesh Chandak, was a supplier of the Animal Husbandry Department, Government of Bihar, who is the accused in different cases filed by the Central Bureau of Investigation for misappropriation of funds of

the Animal Husbandry Department. The petitioner, Dipesh Chandak, had made a confessional statement u/s 164 of the Code of Criminal Procedure (hereinafter called "the Code") before the Special Judge, C. B. I, Patna, where the cases relating to the Animal Husbandry Department were proceeding. In his statement u/s 164 of the Code, Dipesh Chandak had admitted his dubious role in misappropriation of funds and fraudulent withdrawals from the State exchequer against fake bills for supply to the Animal Husbandry Department, Bihar, in connivance with the officials of the said Department. It was noticed that Sri Dipesh Chandak had categorically admitted that during the period from 1987 to 1994 he had prepared fake bills of supply to the Animal Husbandry Department, Bihar, in the names of different concerns. He had also admitted in his statement that he had prepared fake bills for purchases and documents of transportation to show that the supplies were genuine. It was found that the returns of income filed by Sri Dipesh Chandak and the documents and statements annexed with the returns for the assessment years 1989-90 to 1996-97 in his individual name as well as in the names of his Hindu undivided family and related concerns were false. In the returns filed by him, Dipesh Chandak had certified that the contents of the returns and of annexed documents and statement of accounts were true to the best of his knowledge and belief. A show-cause notice dated December 27, 1999, had been issued to Dipesh Chandak by the Deputy Commissioner of Income Tax, Central Circle-1, Patna, to show cause as to why prosecution under Sections 277 and 278 of the Income Tax Act, 1961, should not be initiated against him. The assessee, Dipesh Chandak had claimed immunity from prosecution under the Income Tax Act on the ground of assurance of pardon by the court of the Special Judge, C.B.I., Patna.

3. According to the petitioner, he had not made a statement u/s 164 of the Code of Criminal Procedure but he had made the statement u/s 306 of the Code. On August 7, 1998, the Special Judge, C.B.I., Patna, recorded the disclosures made by the petitioner which continued up to August 12, 1998. The requirements of sections 306 and 307 of the Code were complied with and the Special Judge, C.B.I., granted pardon to the petitioner on August 28, 1998. A photo copy of the order dated August 7, 1998, passed by the Special Judge, C.B.I., Patna, is annexure 2 of the petition. According to annexure 2, a petition had been filed on behalf of Dipesh Chandak before the Special Judge, C.B.I., to allow him to become an approver in the case by according him pardon in that case. After hearing the parties the learned special judge had found it just and proper to record the statement of Dipesh Chandak. It has been mentioned in annexure 2 that Dipesh Chandak had submitted before the special judge that he had been directly concerned with the offences in the case and whole circumstances relating to the offences are within his knowledge and he wanted to become an approver to make full and true disclosure of the circumstances within his knowledge in relation to the case. He had also submitted before the learned special judge that he had made his statement u/s 164 of the Code and on its basis he wants to make full and true disclosure and thus his statement should be recorded for

consideration of his prayer for allowing him to be an approver in the case by according him pardon. The learned special judge has also mentioned in his order that he finds just and proper that his statement be recorded before passing any order in this regard.

4. It is apparent that the petitioner, Dipesh Chandak, had made a statement regarding disclosures on the basis of his earlier statement made u/s 164 of the Code.

5. A supplementary affidavit had been filed on behalf of the petitioner annexing the copy of the order dated August 28, 1998, passed by the Special Judge, C.B.I., Patna, as annexure 5. According to the order dated August 28, 1998, consequent upon the filing of a petition by Dipesh Chandak with a prayer to allow him to be an approver in the case by according him pardon and his willingness for recording of his statement in this regard, his statement had been recorded by the Special Judge, C.B.I., and in his petition and the statement Dipesh Chandak had revealed the facts that he has been directly concerned and was privy to the offences covered under the case and has knowledge of the entire circumstances relating to the offences and every person concerned in commission of the offence. The Special judge, C.B.I., Patna, has mentioned in his order that in the ends of justice for obtaining the evidence of Dipesh Chandak he is tendering him pardon on condition of his making full and true disclosure of the whole circumstances within his knowledge relating to the offences and every other person concerned, whether as principal or abettor in the commission thereof in terms of Section 5(2) of the Prevention of Corruption Act, 1988. It has also been mentioned in the said order that Dipesh Chandak who was present in the court had accepted the conditional pardon so tendered and in token of his acceptance of his conditional pardon, he was ready to put his signature by making necessary endorsement. It also appears from the endorsement made on the margin of the order sheet dated August 28, 1998, that Dipesh Chandak had accepted the conditional pardon.

6. The above facts show that the Special Judge, C.B.I., Patna, had tendered conditional pardon to Dipesh Chandak which had been accepted by him.

7. According to the supplementary affidavit filed on behalf of the petitioner, he had preferred an appeal against the assessment order and by the order dated October 24, 2000, the appellate authority had allowed the appeal. A photo copy of the order dated October 24, 2000, is annexure 6 of the supplementary affidavit. Annexure 6 shows that it was in respect of the assessment year 1991-92.

8. It is relevant to mention here that the complaint case has been filed against the petitioner, Dipesh Chandak, and others, by the Union of India through the Deputy Commissioner of Income Tax, Central Circle-1, Patna, in respect to the returns filed for the years 1988-89 to 1996-97.

9. A counter affidavit has been filed on behalf of the respondent, Union of India.

According to the respondent, the petitioner was supplier of the Animal Husbandry Department, Bihar, and he is named accused in various criminal cases filed by the C.B.I in connection with misappropriation of funds from the Animal Husbandry Department and during investigation of the criminal cases, Dipesh Chandak had made a confessional statement before the Special Judge A.H.D., C.B.I., Patna, on August 12, 1998, u/s 164 of the Code of Criminal Procedure in which he had admitted his dubious role in misappropriation of funds and fraudulent withdrawals from the State exchequer against fake bills of supply to the Animal Husbandry Department, Bihar, in connivance with the officials of the Animal Husbandry Department. Dipesh Chandak had deliberately and knowingly filed false return of income by falsifying accounts. The criminal charge against the petitioner under the Income Tax Act is in no way connected with the grant of pardon tendered to Dipesh Chandak by the Special Court of the C.B.I. u/s 291 of the Income Tax Act, 1961, the Central Government only has power to grant immunity from prosecution whereas u/s 306 of the Code of Criminal Procedure, the Chief Judicial Magistrate or the Metropolitan Magistrate has power to tender pardon and the Central Government has not granted immunity from prosecution under the Income Tax Act. The order of the Commissioner of Income Tax, Patna, has been subjected to appeal to the Income Tax Appellate Tribunal u/s 253 of the Act. Further, according to the respondent, the complaint contains specific allegations against the petitioner about filing of false returns of income and abetment and inducement of Dipesh Chandak knowing full well that the returns and the annexed statement of accounts were false.

10. It was contended by learned counsel appearing on behalf of the petitioner that the petitioner has been declared an approver and u/s 306 of the Code of Criminal Procedure, his position and status has changed as that of a witness and approver. It was argued by learned counsel for the petitioner that Section 306 of the Code of Criminal Procedure puts complete embargo on any criminal proceeding against the approver. He also contended that Section 306 of the Code has some ingredients of Halsbury''s Laws of England.

11. Learned counsel appearing on behalf of the petitioner submitted that by virtue of the statement made by the petitioner and pardon granted to him by the Special Judge, C.B.I., Patna, and his becoming an approver u/s 306 of the Code of Criminal Procedure, the petitioner has acquired immunity from penalties and prosecution arising out from the facts from those statements made by him.

12. It was contended by the learned lawyer for the petitioner that a tender of pardon protects the person concerned not only against the offence in respect of which pardon is granted but also from prosecution for any other offence of which he may be guilty in the same matter and he made reference to a decision of the Allahabad High Court (Lucknow Bench) reported in [1971] CLJ 1357. But in the present case the petitioner has been granted conditional pardon. The facts and circumstances of the present case are different.

13. Section 306(1) of the Code of Criminal Procedure provides that with a view

to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof. According to Section 306(4) of the Code every person accepting a tender of pardon made under Sub-section (1)--

(a) shall be examined as a witness in the court of the Magistrate taking cognizante of the offence and in the subsequent trial, if any ;

(b) shall, unless he is already on bail, be detained in custody until the termination of the trail.

14. The above provisions show that the object of Section 306 of the Code is to obtain true evidence so that an offender may not escape from punishment for want of evidence. Section 306 of the Code provides for tender of pardon to such person who is supposed to have been directly or indirectly concerned in or privy to an offence, for obtaining the evidence of that person. The moment an accused is pardoned he becomes a witness. The examination of an approver as a witness of the prosecution during trial is essential. Section 306(4)(b) of the Code provides for the detention of such person in custody until the termination of the trial unless that person is already on bail. It appears that this provision has been made in the Code for fulfilling the terms of the pardon as an approver.

15. It was contended by the learned lawyer for the opposite party, Union of India, that the matter relating to the assessment order for the assessment year 1991-92 in respect of the petitioner, Dipesh Chandak, is at present pending before the Income Tax Appellate Tribunal.

16. It appears from the impugned order dated June 6/7, 2000, passed by the Special Judge, Economic Offences, Patna, that the official complaint case had been filed on behalf of the Union of India through the Deputy Commissioner of Income Tax, Central Circle-1, Patna, against Sri Dipesh Chandak, Sri Hitesh Chandak, Sri Mahabir Prasad Chandak, Sri Mohal Lal Chandak and Sri N. K. Chitlangia for the offences under sections 277 and 278 of the Income Tax Act, 1961, and the learned special judge had found a prima facie case under Sections 277 and 278 of the Income Tax Act, 1961, against the accused, Dipesh Chandak, and a prima facie case u/s 277 of the said Act against the accused, Hitesh Chandak, Mahabir Prasad Chandak, Mohan Lal Chandak and N. K. Chitlangia, and accordingly he had taken cognizance of the offences in the case against the above accused persons.

17. It is relevant to mention here that one of the accused Dipesh Chandak is the petitioner in this criminal miscellaneous, which has been filed for quashing the

entire proceedings of the complaint case including the order by which cognizance of the offences has been taken in the case against all the above accused persons. In his order dated August 7, 1998, the Special Judge, C.B.I., Patna, has mentioned that considering the facts and circumstances of the matter as well as the fact that Dipesh Chandak intends to make a full and true disclosure of the whole circumstances within his knowledge in relation to the offences and is ready and willing to make the statement in the court, he (Special Judge, C.B.I., Patna) finds just and proper that his statement be recorded before passing any order in this regard. Admittedly, Dipesh Chandak had accepted the conditional pardon so tendered and in token of his acceptance of the conditional pardon he had put his signature by making necessary endorsement. The petitioner was a supplier of the Animal Husbandry Department, Bihar, and he is named accused in various criminal cases filed by the C.B.I. in connection with the misappropriation of funds from the Animal Husbandry Department and during investigation of the criminal cases, Dipesh Chandak had made a confessional statement before the Special Judge, C.B.I., Patna, u/s 164 of the Code of Criminal Procedure.

18. It was submitted by the learned lawyer for the Union of India that the petitioner is accused in four cases of fodder scam and he was allowed to be an approver and he was tendered the conditional pardon by the Special Judge, C.B.I., Patna, which had been accepted by him. It was also submitted by him that all the cases are still pending for trial. The learned lawyer for the petitioner conceded that all the cases are pending. It is relevant to mention here that conditional pardon was granted to the petitioner for obtaining true evidence and the moment an accused is pardoned he becomes a witness. The related cases are still pending before the appropriate court. The examination of an approver as a witness of the prosecution during trial is essential and the approver has to fulfil his terms of the pardon. Until the approver fulfils all the terms of the pardon and until the trial of all the concerned cases are concluded and the approver is examined as a witness of the prosecution during trial of the cases, he continues to have his position as an accused. The petitioner cannot claim immunity from prosecution for any offence as he can be put back to his position as an accused, if he does not fulfil all the terms and conditions of his pardon and his allowing to be an approver.

19. In the facts and circumstances, there does not appear any reason for interference. Accordingly, the petition is dismissed.

