
(1975) 12 AHC CK 0023
In the Allahabad High Court
Case No : Criminal Revision No. 923 of 1972

Dr. D.N. Munshi

APPELLANT

Vs

N.B. Singh

RESPONDENT

Date of Decision : 17-12-1975

Acts Referred:

Income Tax Act, 1961 — Section 271, 271(4A), 277, 279(1A)

Citation : (1988) 112 ITR 173

Hon'ble Judges : Hari Swarup, J

Bench : Single Bench

Advocate : Polak Basu, for the Appellant; R.R. Misra, for the Respondent

Final Decision : Dismissed

Judgement

Hari Swarup, J.—This revision is directed against an order of the 1st Civil and Sessions Judge by which he dismissed the revision filed against the trial court's order refusing to discharge the accused on his plea that the prosecution could not legally proceed.

2. A complaint was filed by the Income Tax Officer for an offence u/s 277 of the Income Tax Act (hereinafter to be referred to as "the Act"). The complaint made the allegation that for the assessment year 1963-64, the accused had filed a return in which he had concealed the particulars of his income. The summonses were issued to the accused but before the charge was framed an objection was taken to the further proceeding of the trial in view of Section 279 of the Act. It was urged that the complaint had not been filed at the instance of the Commissioner and that the case could not proceed against the accused in view of the penalty being waived within the meaning of Section 279(1A) of the Act. The contentions were not accepted by the Magistrate and the 1st Civil and Sessions Judge dismissed the revision.

3. Certified copy of the judgment of the Tribunal in the appeal arising out of the penalty proceeding and of the Appellate Assistant Commissioner of Income Tax

dismissing the appeal against the original assessment order as infructuous have been filed as additional evidence in this court.

4. The facts leading to the case as have finally emerged out are the following. A particular income was returned by the assessee. The Income Tax Officer found that the return was not correct and hence completed the assessment at a higher figure. He was further of the opinion that penalty was imposable u/s 271(1)(c) of the Act but as the amount of penalty had to be greater than Rs. 1,000 he referred the matter to the Inspecting Assistant Commissioner of Income Tax. The Inspecting Assistant Commissioner imposed a penalty. Against that order an appeal was preferred before the Tribunal. The Tribunal allowed the appeal and set aside the order imposing the penalty. The Income Tax Officer issued notice under Section 147 and made a supplementary assessment for the escaped income. The Income Tax Appellate Tribunal set aside that assessment and remanded the case to the Income Tax Officer for fresh consideration after giving opportunity of leading evidence to the assessee. With respect to the original assessment, the assessee filed an appeal before the Appellate Assistant Commissioner of Income Tax. That appeal was dismissed as infructuous. The Appellate Assistant Commissioner appears to have thought that the appeal had become infructuous because of the order of the Income Tax Appellate Tribunal passed in appeal arising out of the supplementary assessment made by the Income Tax Officer u/s 147 of the Act.

5. The effect of the various orders is that the appeal against the original assessment has been dismissed as infructuous; the case u/s 147 of the Act has been remanded to the assessing authority by the Income Tax Appellate Tribunal and the penalty imposed on the basis of original assessment has been set aside. On the basis of these facts it has to be seen whether the prosecution can continue or it has to be quashed.

6. According to Sub-section (1) a person can be proceeded against for an offence u/s 277 only at the instance of the Commissioner. The evidence produced in the case shows that the Commissioner had authorised the prosecution. In view of the law laid down by the Supreme Court in the case of T.S. Baliah Vs. T.S. Rengachari, "at the instance of the Commissioner" must mean "at the authorisation of the Commissioner". The prosecution cannot, therefore, be held to be without authority of law by reason of Sub-section (1) of Section 279 of the Act.

7. Sub-section (1A) of Section 279 of the Act provides :

"A person shall not be proceeded against for an offence u/s 277 in relation to the assessment for an assessment year in respect of which the penalty imposable upon him under Clause (iii) of Sub-section (1) of Section 271 has been reduced or waived by an order under Sub-section (4A) of that Section." Learned counsel for the accused has contended that once the penalty has been held to be not imposable, the accused cannot be prosecuted for an offence u/s 277 of the Act.

The contention is that the reduction or waiver contemplated by Sub-section (1 A) is reduction or waiver of the penalty and that such waiver or reduction need not necessarily be by the Commissioner under Sub-section (4A) of Section 271 of the Act but may be even when it is held to be not imposable by the Tribunal. According to the learned counsel, the Commissioner is bound by the order passed by the Tribunal and, therefore, he must be held to be bound to hold that the penalty was not imposable. If the penalty was not imposable, according to the learned counsel, the question of his continuing the prosecution cannot arise. Of course, if the penalty is not impossible upon an assessee u/s 271(l)(c) of the Act, it may not be possible to hold that he has committed an offence u/s 277 of the Act. But the question that arises for decision is whether the criminal court can refuse to proceed with the complaint on the finding given by the Income Tax Appellate Tribunal. The further question that arises is whether the order of the Income Tax Appellate Tribunal setting aside the penalty is equivalent to the order reducing or waving the penalty contemplated by Sub-section (1A) of Section 279 of the Act.

8. Taking the second question first, it seems that the order of the Tribunal is not contemplated by Sub-section (1A) of Section 279. Sub-section (1A) contains a bar to the institution or continuance of the prosecution against an assessee u/s 277. The import of this provision is that in case the Commissioner himself waives the penalty under Sub-section (4A) of Section 271, the prosecution should not be initiated or continued. Sub section (4A) of Section 271 provides for reduction or waiver of penalty by the Commissioner on the satisfaction reached by him on matters enumerated in that sub-section. They are of the character of good conduct of the assessee. In such situations, the legislature thought that it is not appropriate to let the Commissioner prosecute the person who has satisfied him in respect of the conditions which permit the reduction or waiver of the penalty. The Income Tax Appellate Tribunal when it allows an assessee's appeal really does not act on the basis of the law contemplated under Sub-section (4A) of Section 271, but does so on the basis of the existence of the conditions on which penalty may be imposable. If it finds that the penalty is not legally imposed, it sets aside the order. The order of the Income Tax Appellate Tribunal is really the order of the assessing authority not imposing a penalty. That order is not contemplated by Sub-section (1A) of Section 279 as the order mentioned in that sub-section is the order which is passed under Sub-section (4A) of Section 271 and not the order not imposing the penalty. It contemplates waiver and not non-imposition of penalty. The first question, therefore, must be answered against the accused.

9. It is not denied that it is open to the Commissioner to prosecute a person for an offence u/s 277 even if the penalty is not imposed. It can also not be disputed that the assessing authority may take proceedings for imposition of penalty and, at the same time, the Commissioner may take proceedings for prosecution of an assessee u/s 277 of the Act. The moment at which the complaint was filed, therefore, there was no bar to the institution of the prosecution. The criminal

court thus got jurisdiction to proceed with the complaint. That complaint has now to be disposed of in accordance with the procedure laid down in the Criminal Procedure Code. The accused can be acquitted or discharged in accordance with the provisions of the Code of Criminal Procedure. If the law permits, the order of the Income Tax Appellate Tribunal may be utilised as a piece of evidence to show that there was no offence committed by the accused. But that cannot take away the right of the prosecution to prove the case. The prosecution has a right to lead evidence before the criminal court in support of the complaint. It will be then for the criminal court to come to the conclusion whether the offence had been made out or not. If it finds that the conditions do not exist for the imposition of penalty, then it has to hold that the offence is not made out. The finding given by the income tax Appellate Tribunal cannot by itself be sufficient to direct the dismissal of the complaint or acquittal or discharge of the accused under the provisions of the Code of Criminal Procedure.

10. Learned counsel contended that in Section 279(1A) the words "waived by an order under Sub-section (4A) of that Section" should be read as "cancelled by an order of the Income Tax Appellate Tribunal" as this is the intention of the law. When the words of a provision of law are specific and clear, it is not open to a court to go behind the section to discover the intention of the legislature. The acceptance of the contention of the learned counsel will mean not interpretation but legislation in the sense that another condition will be deemed to be added in Sub-section (1A) of Section 279 to the effect that a person shall not be proceeded against for an offence u/s 277 provided the penalty imposed is subsequently cancelled by an appellate authority. Waiver and cancellation being two things, the reading of additional condition will be foreign to the existing provision. The same cannot, therefore, be read as implied in the section.

11. Learned counsel for the applicant urged that this court should exercise its powers u/s 561A of the Code of Criminal Procedure and quash the prosecution in view of the findings recorded by the Income Tax Appellate Tribunal. In support of his contention, the learned counsel relied on the decision of R.P. Kapur Vs. The State of Punjab, . Learned counsel has relied on the third category of cases mentioned by the Supreme Court where it was held that if there is no legal evidence adduced in support of the case of the prosecution or the evidence adduced clearly or manifestly fails to prove the charge, the powers can be exercised. That stage, however, has not yet been reached. Learned counsel has admitted that no charge has yet been framed and evidence has not yet been led. It cannot, therefore, be held that there is no evidence in support of the prosecution case so that the proceedings may be quashed in exercise of the powers by this court u/s 561A of the Code of Criminal Procedure.

12. In the circumstances of the case, it would not be possible to hold that Section 279(1A) of the Act bars the further proceedings of the case against the applicant. The revision accordingly fails and is dismissed.