

(1990) 10 MAD CK 0032

In the Madras High Court

Case No : Criminal Miscellaneous Petitions No's. 3364 and 3366 of 1984

Dr. (Mrs.) M.S. Dhowani

APPELLANT

Vs

J. Ranganathan Second Income Tax Officer, City Circle-V

RESPONDENT

Date of Decision : 31-10-1990

Acts Referred:

Constitution of India, 1950 — Article 14

Income Tax Act, 1961 — Section 131(1A), 276, 276C, 276C(1), 276CC

Citation : (1992) 194 ITR 690

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : G. Ramakrishnan, for the Appellant; K. Ramaswami, for the Respondent

Judgement

Arunachalam, J.—The petitioner is the same in both the petitions, and the questions raised are also common. Hence, both the petitions are

disposed of together by a common order. The petitioner is being prosecuted in C. C. No. 152 of 1984, on the file of the erstwhile Sub-Divisional

Judicial Magistrate, Poonamallee, at the instance of the Second Income Tax Officer, City Circle-V, Madras, for alleged commission of offences

punishable under sections 193 and 420 read with section 511 of the Indian Penal Code and section 276C(1) and 277 of the Income Tax Act,

1961 (hereinafter referred to as "the Act"). This prosecution relates to the assessment year 1982-83.

2. In C. C. No. 153 of 1984, on the file of the same Magistrate, the petitioner is being prosecuted for the alleged commission of offences

punishable under sections 193 and 177 read with section 511 of the Indian Penal Code and section 276C(1) of the Income Tax Act, 1961. This

prosecution relates to the assessment year 1983-84.

3. In C. C. No. 153 of 1984, the petitioner had not filed her return of income but her representative, P. C. Krishnan, had handed over to the

respondent signed a typewritten statement giving details of the petitioner's income from salary and gross and net professional income from private

consultancy practice. The regular return of income in Form No. 2 had been signed by the petitioner without particulars of income having been filled

up therein.

4. In C. C. No. 152 of 1984, the petitioner had filed a return on July 7, 1983. After filing of the return, inquiry and investigation were conducted

by the Income Tax Department, u/s 131(1A) of the Act, at the premises of the petitioner, on November 11, 1983. It was found during such

inquiry and investigation that the petitioner, as an authorised medical attendant, had certified and received various amounts from the employees or

their dependents of the Ordnance Clothing Factory, Avadi, Heavy Vehicles Factory, Avadi, and the Indian Air Force, Avadi. It was also noticed

that, against the declared gross professional income of Rs. 8,969 for the assessment year 1982-83, the petitioner had received from the employees

of the Ordnance Clothing Factory, Avadi, alone Rs. 31,826 - vouchsafed by the ""A"" certificates signed and issued by her. A sworn statement was

also recorded on this aspect from the petitioner; it is, thereafter, that these prosecutions were initiated.

5. In these petitions filed u/s 482 of the Criminal Procedure Code to call for the records and quash the pending prosecutions as not maintainable

and as an abuse of the process of court, Mr. G. Ramakrishnan, learned counsel appearing on behalf of the petitioner in each one of these petitions,

contended that the complaints laid by the Income Tax Department were premature. He specifically argued that offences will be non-existent before

the assessment was completed and, therefore, there was a total prohibition at the threshold to initiate these prosecutions. He also contended that

notice before initiation of prosecution was mandatory. He would also submit that initiation of prosecutions at this stage was against the principles of

natural justice. The next contention was that sanction to prosecute was not in accordance with law. Finally, he contended that section 276C was

not constitutionally valid since there was no rational classification. Lack of such

classification contravenes the equality guaranteed under article 14

of the Constitution of India. He also submitted that the respondent had no territorial jurisdiction.

6. In respect of C. C. No. 153 of 1984, referable to Crl. M. P. No. 3366 of 1984, he submitted that once returns had not been filed for the

relevant assessment year, notice must have been given to the assesseees to file the returns, and that not having been done, the prosecution initiated

was totally invalid. He further contended that Form No. 2 returns not having been signed, those forms cannot be made use of to form the basis to

initiate the prosecution. Crl. M. P. No. 3364 of 1984 relates to C. C. No. 152 of 1984.

7. I have carefully considered all these contentions after hearing Mr. K. Ramasami appearing on behalf of the Income Tax Department. To

appreciate the contentions of learned counsel for the petitioner, a perusal of sections 276C and 277 of the Act will be necessary. Section 276C

seeks to punish any person who wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable under the Act. This

punishment, obviously, in a prosecution is without prejudice to any penalty that may be impossible in the assessment proceedings under other other

provisions of the Act. Section 277 punishes a person who makes a statement in any verification under the Act or under any rule made thereunder

or delivers any account or statement which is false and which he either knew or believed to be false or did not believe to be true. The wording of

section 276C(1) of the Act apparently contemplates initiation of prosecution against a person for wilfully attempting in any manner whatsoever to

evade tax, penalty or interest, irrespective of and without prejudice to penalty proceedings under the other provisions of the Act. Once a return

had been submitted or a statement had been made in any verification, if those statements were false, the provisions of section 277 will be attracted

and prosecution will be feasible. None of these sections contemplate any show-cause notice being issued before initiation of prosecution. I am

unable to agree that the offences under sections 276C(1) and 277 of the Act will be non-existent unless and until the assessment is contemplated.

As long as there is no provision for a mandatory notice before prosecution, I am unable to uphold the contention that the principles of natural

justice have been violated. The petitioner will have sufficient opportunity to put forth his defense before the trial magistrate and the principles of

natural justice are thus abundantly safeguarded. In *P. Jayappan Vs. S.K. Perumal*, First Income Tax Officer, Tuticorin, , the Supreme Court, while

considering the feasibility of a prosecution for false evidence and willful attempt to evade tax, when reassessment proceedings were pending on the

basis of material seized in search, stated that prosecution cannot be held to be premature and the criminal court had to judge the case

independently, though it had a discretion to adjourn or postpone proceedings depending upon the peculiar facts and circumstances of a given case.

This principle laid down by the Supreme Court will squarely apply to assessment proceedings as well. There is no provision of law which provides

that prosecution for offences u/s 276C and section 277 of the Act cannot be launched until assessment proceedings initiated against the assessee

were completed.

8. However, the criminal court is bound to give due regard to the result of any proceeding under the Income Tax Act, having a bearing on the

question in issue and, in an appropriate case, may drop the proceeding in the light of an order passed under the Act. It does not mean that the

result of a proceeding under the Act would be binding on the criminal court, for the criminal court has to independently judge the case on the

evidence placed before it.

9. The argument, on the invalidity of sanction, has no merit. Section 279 of the Act, as it stood at the relevant time, contemplated initiation of a

prosecution at the instance of the Chief Commissioner or Commissioner. Nowhere did that section prescribe that sanction was a pre-requisite for

initiation of prosecution. This ground will have to be rejected in time. The argument on constitutional validity of section 276C(1), to my mind, has to

be stated only to be rejected. The basis of the argument was that section 276C(1) provided for a minimum imprisonment of six months. Under

clause (2), the minimum sentence prescribed was only three months and, therefore, the concept of equality was violated. Since the sub-sections

operate in different fields, I am unable to hold that there is no rational classification and, therefore, the equality contemplated under article 14 of the

Constitution had been violated.

10. The argument that the respondent had no territorial jurisdiction had not been substantiated. It is admitted that returns were filed before the respondent by the petitioner. If that be so, this argument apparently has no merit.

11. As far as C. C. No. 153 of 1984 referable to CrI. M. P. No. 3366 of 1984 is concerned, it is impossible to accede to the argument that notice will have to be given to the petitioner calling upon her to file her returns. Section 276CC punishes a person who wilfully fails to furnish a return of income, which he is required to file under the relevant provisions of the Act. When a duty is cast on the assessee to file a return, and that duty had not been performed, which non-performance itself is an offense. I am unable to see any violation of the principles of natural justice. Since the petitioner had not filed her return for the assessment year 1983-84 in C. C. No. 153 of 1984, she is not being prosecuted for the commission of offense u/s 277 of the Act.

12. The prosecution u/s 276C(1) of the Act is certainly maintainable, for any willful attempt to evade in any manner whatsoever tax, penalty or interest chargeable or imposable under the Act, would fall within the fold of that section. The prosecution also cannot be quashed at this stage. The question of mens rea will have to be relegated to the trial court, since it relates to the realm of appreciation of evidence, to be brought on record. That question cannot be gone into the exercise of inherent powers.

13. Learned counsel sought to place reliance on authorities to substantiate the proportion that notice was mandatory before initiation of prosecution. All those cases need no serious scrutiny, since they relate to notice in assessment proceedings and do not refer to prosecutions.

14. I am unable to agree with any of the contentions urged. In the result, these petitions shall stand dismissed.