

(1986) 01 PAT CK 0026

In the Patna High Court

Case No : Criminal Miscellaneous No. 550 of 1979 (R)

Gajanand Chotelal and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-01-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 473, 482
Income Tax Act, 1961 — Section 139, 139(1), 276C

Citation : (1986) 54 CTR 136 : (1986) 159 ITR 101

Hon'ble Judges : Anand Prasad Sinha, J

Bench : Single Bench

Advocate : P.S. Dayal and A.S. Dayal, for the Appellant; Kameshwar Nath and Lalji Sahay, for the Respondent

Judgement

Anand Prasad Sinha, J.—This application is directed against the impugned order dated December 23, 1974, passed by the learned Chief Judicial Magistrate, Ranchi, in Case No. CIII 208 of 1974, by which the learned Magistrate has taken cognizance against the petitioners for an offence u/s 276C of the Income Tax Act (hereinafter to be referred to as " the Act").

2. The case has been initiated on the basis of a complaint which has been filed through S.N. Prasad, Income Tax Officer, Special Circle, Ranchi, It has been stated that petitioner No. 2, Chhotelal Khemka, carried on business in the name and style of the firm, M/s. Gajanand Chotelal, which happened to be the Hindu undivided family business. The firm was an assessee under the Act and the entire transaction of the same business including the filing of return was being done by petitioner No. 2 as karta of the Hindu undivided family. During the assessment proceeding for the assessment year 1971-72, the return had been filed on November 19, 1973, i.e., much after the due date and, consequently, the Department issued various notices under Sections 142(1) and 143(2) of the Act. No response has been made to those notices. The accused persons also failed to file return and also to produce the books of account and documents in spite of

the service of the said notice. By way of illustration, it has been stated that the return for the assessment year 1970-71 was filed on January 25, 1973, and the return for the assessment year 1972-73 was filed on November 19, 1973, which were long after the due dates and thus he was in the habit of filing belated returns.

3. The petitioners have been alleged to have contravened the provisions of Section 139(1) of the Act which is punishable u/s 276C of the Act. The prosecution had been sanctioned by the Commissioner of Income Tax, Bihar, u/s 279(1) of the Act and the sanction order has been annexed to the complaint petition.

4. There is a statement made in the complaint petition that due to departmental proceedings, the petition of complaint could not be filed earlier and it is humbly prayed that the delay may be condoned u/s 473 of the Code of Criminal Procedure (hereinafter to be referred to as "the Code").

5. Learned counsel for the petitioner has submitted that the impugned order of cognizance is barred by limitation as contemplated u/s 468 of the Code. This point has been resisted by the learned counsel appearing on behalf of the Income Tax Department by stating that, as a matter of fact, this point cannot be said to be available to him because of the amendment made in Section 468 of the Code by introducing the allied Act, i.e., the Economic Offences (Inapplicability of Limitation) Act, 1974 (Act No. 12 of 1974). The submission is that the Income Tax Act has been excluded from the purview of Section 468 of the Code.

6. It has been contended on behalf of the petitioner that, as a matter of fact, this allied Act has come into force on April 1, 1974, and, therefore, it was not applicable to the facts of this case and thus the impugned cognizance was barred by limitation as contemplated u/s 468 of the Code.

7. It appears from a perusal of the complaint petition that the complainant has alleged that there has been delay in the filing of the complaint and thus had made a prayer to condone the delay as contemplated u/s 473 of the Code. In support of this, I do not find any supporting order as to whether the Magistrate concerned, at the time of cognizance, has considered the matter of condonation as contemplated u/s 473 of the Code. It also does not appear from the impugned order that the question of limitation has been considered at all. When there was definite statement in the complaint petition itself that there has been delay and the delay be condoned, it was incumbent upon the learned Magistrate to hear the parties over the limitation matter and pass an appropriate order. It is because, if in fact cognizance has been taken after the period of limitation, then naturally a valuable right had accrued to the petitioners and that has not been considered at all which becomes failure of principles of natural justice and statutory obligation upon the court taking cognizance.

8. There is another aspect worth consideration in the instant case. The complaint has been filed on December 23, 1974, about 12 years back and cognizance has

been taken on that date. Summons to the petitioners had been issued after much delay. Although service return had not been received on May 7, 1975, warrant of arrest has been issued against the petitioners. That being so, in the absence of any service report with regard to the summons, the issuance of the warrant of arrest does not appear to be proper. However, the petitioners appeared in the month of August, 1975. Thereafter, in spite of the dates fixed for evidence, neither any witness nor any evidence has been produced on behalf of the complainant. There appears from the different order sheets that the complainant had completely failed to produce any evidence in spite of the definite order for the production of the witness. Further, from the order sheet dated February 24, 1978, it appears that although a last chance had been given, still the complainant had not produced any witness whatsoever. However, thereafter, some witnesses have been examined and the complainant has been examined ex parte at the back of the petitioners. Ultimately, further proceeding has been stayed by this criminal miscellaneous application which has been admitted on May 29, 1979.

9. Therefore, from the facts stated above, it appears that a criminal prosecution has proceeded for about 12 years and the complainant had failed to examine any witness whatsoever for about four years.

10. It may be appreciated that the vital question of limitation had also not been examined. It has been rightly argued by the learned counsel that, in the facts and circumstances of the case, the petitioners have been punished enough in the process of trial itself. It is really unfortunate from the facts stated above that in such a case the complainant had failed to examine any witness whatsoever for such a long period and the court has been a simple spectator and the petitioners had to undergo all the rigours of criminal prosecution for such a long time. In view of the discussions made above, certain vital questions which ought to have been considered before taking cognizance or even before the examination of witness, has not been considered and in all fairness if the case is remanded, then it will amount that the petitioners are further made to undergo the strain of criminal prosecution which has been hanging over their heads for the last 12 years. In this view of the matter, unless strict measures are adopted, I am afraid, neither will there be awareness on the part of the prosecutor nor will the court be alert to see that an accused is entitled for justice in the process of trial itself. Learned counsel for the petitioners has further submitted that, in the facts and circumstances of the case, the prosecution deserves to be quashed and I entirely agree that a good cause of action has been made out and in the background of the discussions made above, this application is allowed and the criminal prosecution in question including the order taking cognizance against the petitioner is hereby set aside.