

(2003) 01 PAT CK 0081

In the Patna High Court

Case No : Criminal Miscellaneous Nos. 29834, 29842, 29844, 29845 and 29884 of 2002

Gauri Shankar Prasad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-01-2003

Acts Referred:

Citation : (2003) 01 PAT CK 0081

Judgement

I.P. Singh, J.—The above mentioned criminal miscellaneous cases have been heard together and this order will govern all of them. In all these cases the parties are the same. The parties have been heard on the point of the prayer of the petitioner for stay of the criminal proceedings in different cases against him and this order at this stage will only deal with this prayer of the petitioner. By this order the aforesaid criminal miscellaneous cases are not being disposed of.

2. Five different complaint cases have been lodged against the present petitioner for having committed the offence u/s 276C of the Income Tax Act, 1961 (in short "the Act"). In all these criminal cases the learned Special Judge, Economic Offences, Patna, had passed an order taking cognizance of the offence under this provision of law and for issuing summons against the present petitioner. It is against this order passed in five different cases that the present criminal miscellaneous cases have been filed. The aforesaid complaint petitions against the present petitioner have been registered as Complaint Case No. 88(C) of 2002, Complaint Case No. 89(C) of 2002, Complaint Case No. 90(C) of 2002, Complaint Case No. 91(C) of 2002 and Complaint Case No. 92(C) of 2002. In the present petitions the petitioner has prayed that this criminal prosecution in the aforesaid cases and the entire proceeding against him including the order taking cognizance of the offence under the provisions of Section 276C of the Act be quashed. Along with this for the present, he has prayed that the aforesaid criminal proceedings against him be stayed. In this order I will take up for consideration only his prayer for the stay of the aforesaid criminal proceedings against him.

3. I will refer to the facts as disclosed in Criminal Miscellaneous No. 29834 of 2002 at present. Similar facts have been alleged in other criminal miscellaneous cases mentioned above. It appears that opposite party No. 2 had filed different complaint petitions in the court of the Special Judge, Economic Offences, Patna, making various allegations against the present petitioner. The first allegation is that he has not furnished the return of his income for various financial years beginning from 1991-92 to 1995-96. Further it has been alleged that there was no compliance by the petitioner of the notices issued against him under the provisions of Sections 142(1) and 148 of the Act. The allegation against the petitioner is that he was an official of the Animal Husbandry Department, Government of Bihar, and had made fraudulent and dishonest withdrawals of bills on the basis of fake allotment letters and false certificates showing the receipt of cattle feed, fodder, veterinary medicines and other materials. The amounts so realised were misappropriated by the present petitioner and a total income of Rs. 2,11,73,760 for the assessment year 1992-93 was suppressed (as alleged in Complaint Case No. 88(C) of 2002 in other complaint cases also similar allegations have been made). It has further been stated that no appeal was filed by the present petitioner against the assessment orders and penalty orders passed against him u/s 271(1)(c) of the Act and the appeal against the penalty order u/s 271(1)(b) was dismissed by the Commissioner of Income Tax (Appeals)-II, vide his order dated February 29, 2000. The assessment proceeding was completed for a total income of Rs. 2,11,73,760 only (in Complaint Case No. 88(C) of 2002 to the best of the judgment of opposite party No. 2 as per the provisions of Section 144 of the Act).

4. The petitioner has contended that against this order of assessment he has preferred an appeal before the Commissioner of Income Tax (Appeals)-II, Patna, contending that the additions made by the Assessing Officer were not just and proper and that the confessions being relied upon in the order of the Assessing Officer (opposite party No. 2) were obtained under duress and coercion and as such have got no evidentiary value in law. Annexure 4 will show the filing of the appeals before the Commissioner of Income Tax (Appeals)-II, Patna, on February 7, 2001. The petitioner has contended that the said appeals are pending adjudication before the Commissioner of Income Tax (Appeals)-II, Patna. In paragraph 14 of the petition the petitioner has contended that against the order in appeal passed by the Commissioner of Income Tax (Appeals) a second appeal lies to the Income Tax Appellate Tribunal which is a final fact-finding authority under the provisions of this Act. Further, the petitioner has contended that he has also filed an appeal against the order imposing penalty under the provisions of Section 271(1)(b) of the Act. Relying on the case of Commissioner of Income Tax Vs. Bhupen Champak Lal Dalal and Another Etc., , the petitioner has contended that during the pendency of this appeal before the Tribunal criminal cases pending before the competent court against the petitioner have to be stayed. Also he has placed reliance on the case of Banwarilal Satyanarain and Others Vs. State of Bihar and Another, . Under the aforesaid circumstances, he

has prayed that during the pendency of these applications further proceedings against him in different complaint cases mentioned above pending before the court of the Special Judge, Economic Offences, Patna, be stayed.

5. From annexure 5, it would appear that for the various assessment years appeals were filed before the Appellate Tribunal, Patna, on May 19, 2000, and these appeals are still pending. From annexure 6, it would appear that against the order imposing penalty under the provisions of Section 271(1)(b) of the Act appeals were filed before the Commissioner of Income Tax (Appeals)-II, Patna, and that the learned Commissioner allowed the same and had cancelled the penalty of Rs. 10,000 ordered against the petitioner u/s 271(1)(b) of the Act for the five years mentioned in the order.

6. A counter affidavit has been filed on behalf of the opposite party No. 1. He has alleged that the statements made in paragraph 6 by the present petitioner are not correct. The petitioner has not complied with the statutory notices of the Department nor has he further furnished any reason for their non-compliance. So far as the assessment is concerned the additions made in the income of the petitioner were based on undisclosed investments in movable and immovable assets and unexplained deposits in the bank accounts. The penalty imposed on the petitioner u/s 271(1)(b) of the Act have been confirmed by the Commissioner of Income Tax (Appeals)-II, Patna, vide his order dated February 29, 2000. The other allegations made in the petition have also been denied in this counter affidavit, but for the present I need not go into the details thereof. Annexure 1 has also been given along with the counter affidavit.

7. The parties have been heard at length on the various contentions raised by them before me with respect to the stay of criminal proceedings launched against the petitioner before the Special Judge as noticed above. Learned counsel for the petitioner has heavily relied on the decision in the case of Commissioner of Income Tax Vs. Bhupen Champak Lal Dalal and Another Etc., . In the said case also 12 cases were lodged against the assessee (opposite party) under the Income Tax Act before the Metropolitan Magistrate for offences punishable under the said Act. In relation to the assessments arising under the Act, appeals were preferred either before the Commissioner of Income Tax (Appeals) or the Income Tax Appellate Tribunal. On the basis of the fact that those appeals were pending the assessee (opposite party) filed applications before the learned Metropolitan Magistrate to stay the proceedings against them. The learned Magistrate after examining the position in law as to whether the findings of the appellate authorities were relevant for the purpose of the criminal proceedings and to avoid conflicting decisions of the criminal court on the one hand and the appellate authorities on the other held that it would be appropriate to grant an interim order of stay by which he allowed the work of recording of evidence to proceed but stayed the passing of the order about framing of the charge or discharge of the accused or his acquittal during pendency of the appeals filed by the accused before the Income Tax appellate authorities. Against

this order a revision was filed before the learned sessions judge who dismissed the same. Thereupon, the matter was taken to the High Court, Mumbai, which by entertaining a writ petition and noticing several decisions of the said court as also of the Supreme Court issued rule in the matter and granted an interim order staying the proceedings in the criminal cases filed before the learned Magistrate. Against this order special leave petitions were filed before the Supreme Court and the decision as cited above was passed. The Supreme Court has observed as follows (page 832) :

"The prosecution in criminal law and proceedings arising under the Act are undoubtedly independent proceedings and, therefore, there is no impediment in law for the criminal proceedings to proceed even during the pendency of the proceedings under the Act. However, a wholesome rule will have to be adopted in matters of this nature where courts have taken the view that when the conclusions arrived at by the appellate authorities have a relevance and bearing upon the conclusions to be reached in the case necessarily one authority will have to await the outcome of the other authority."

8. In this decision the Supreme Court had noticed its earlier decisions in the cases of (A) G.L. Didwania and Another Vs. Income Tax Officer and Another, ; (B) Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, ; and (C) P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, .

9. After noticing the aforesaid three decisions, the Supreme Court in paragraph 5 has observed as follows (page 832) :

"In the present case, there is no claim of quashing of the proceedings. When ultimately the result to come out of the proceedings before the appellate authorities would have a definite bearing on the cases alleged against the respondents, we find that the High Court is justified in granting the interim order it did and we do not think that such an interim order calls for interference at our hands. Learned counsel on either side relied on several decisions, but in the view we have taken it is unnecessary to refer to those decisions."

10. From this decision it appears that the Supreme Court did not think it proper to interfere with the interim order of stay of criminal proceedings passed by the High Court. While in the case of G.L. Didwania and Another Vs. Income Tax Officer and Another, and Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, , the findings were already recorded by the Income Tax Appellate Tribunal, in the case of P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, the reassessment proceedings were still pending. The Supreme Court has held that though the pendency of the reassessment proceedings under the Act will not act as a bar to the institution of the criminal proceedings but it has not observed that it will act as a bar to granting of even the order of interim stay by a court under proper circumstances.

11. In this connection my attention has been drawn to the fact that in the aforesaid case of Commissioner of Income Tax Vs. Bhupen Champak Lal Dalal

and Another Etc., , there was no claim for quashing of the proceeding though in the present case the quashing of the proceedings has also been prayed for. Learned counsel appearing on behalf of the petitioner has submitted that this will not make any difference. If the proceedings pending before the criminal court can be ordered to be stayed in a case where no prayer was made to quash the entire proceeding, it will be all the more necessary to stay the criminal proceeding when the prayer for quashing the entire proceedings has been made. He has pointed out that if the entire proceedings are quashed there would be no question of the prosecution of the petitioner. Hence, when the stay can be granted in a case in which no claim for quashing of the proceeding was made there would be no difficulty in granting of the stay in a case in which the claim for quashing the proceeding has been made since if the proceedings are quashed there would be no question of any interim stay and nothing would be left to prosecute the assessee. I find force in this contention.

12. In this connection my attention has also been drawn to Section 279(1) of the Act, according to which a person shall not be proceeded against for an offence u/s 276C or Section 277 of the Act except with the previous sanction of the Commissioner or Commissioner (Appeals) or the appropriate authority provided that the Chief Commissioner or the Director General may issue such instructions or directions to the aforesaid Income Tax authorities as he may deem fit for institution of proceedings under this sub-section. No such instruction has been brought on record. From the perusal of the complaint petition (annexure 1), filed by the Assistant Commissioner also it does not appear that the provisions of Section 279(1) which require that a person shall not be proceeded against for an offence u/s 276C of the Act except with the previous sanction of the Commissioner or Commissioner (Appeals) or the appropriate authority has been complied with since no copy of the order granting previous sanction of the aforesaid authority has been filed.

13. Also my attention has been drawn to Sub-section (1A) of Section 279 which requires that a person shall not be proceeded against for an offence u/s 276C in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under Clause (iii) of Sub-section (1) of Section 271 has been reduced or waived by an order u/s 273A. From annexure 4 it would appear that such appeal against the penalty is pending but the same does not appear to have been disposed of. In this connection my attention has been drawn to the case of P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , in which a reference has been made to the decision in the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, and it has been observed as follows (page 700) :

"It is true that as observed by this court in Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, , the prosecution once initiated may be quashed in the light of a finding favourable to the assessee recorded by an authority under the Act subsequently in respect of the relevant assessment

proceedings but that decision is no authority for the proposition that no proceedings can be initiated at all u/s 276C and Section 277 as long as some proceeding under the Act in which there is a chance of success of the assessee is pending".

14. From the aforesaid observations of the Supreme Court it will simply appear that the pendency of assessment proceeding will not be a bar to initiation of a proceeding under Sections 276C and 277 of the Act. In the present case the criminal proceedings have already been instituted and the question before the court is whether under the facts and circumstances of this case, the order for the stay of any such proceeding can be passed or not. Therefore, the question of not instituting any such proceeding is not under consideration. For the present the prayer is only for the stay. This decision was also taken into consideration by the Supreme Court in the case of Commissioner of Income Tax Vs. Bhupen Champak Lal Dalal and Another Etc., . The Supreme Court even after considering this decision did not think that the interim stay order granted by the High Court called for any interference at their hands.

15. From the detailed discussions made above it becomes clear that under the facts and circumstances of this case the petitioner has been able to make out a case for the grant of interim stay of the criminal cases pending against him. Accordingly, I grant interim stay of the proceedings in Complaint Case No. 88(C) of 2002, Complaint Case No. 89(C) of 2002, Complaint Case No. 90(C) of 2002, Complaint Case No. 91(C) of 2002 and Complaint Case No. 92(C) of 2002 pending in the court of Special Judge, Economic Offences, Patna, till further orders. This prayer is, accordingly, allowed.