
(2014) 11 RAJ CK 0076
In the Rajasthan High Court
Case No : Cr. Misc. Petition No. 2802/2014

Gehrilal Jain (Choudhary)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 300, 482
Income Tax Act, 1961 — Section 142(1), 143, 158BD, 276(C), 276(C)(2)

Citation : (2014) 11 RAJ CK 0076

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : K.K. Shah, Advocate for the Appellant

Judgement

Vijay Bishnoi, J.—This criminal misc. petition under section 482 Cr.P.C. has been filed by the petitioners with a prayer for quashing the Criminal Complaint No. 9/2014 pending in the Court of Additional Chief Metropolitan Magistrate (Economic Offence), Jodhpur Metropolitan (for short "the trial court" hereinafter) for the offences punishable under sections 276(C)(2), 276(C), 278(B)(2) of Income Tax Act, 1961 for the assessment year 1990-91 to 1999-2000 up to 7.4.1999.

2. In the complaint filed by the Assistant Income Tax Commissioner, Circle-2, Income Tax Department, Udaipur, it is alleged that the Assessing Authority of the Income Tax Department has issued assessment order dated 29.04.2003 and as per the same, a demand of Rs. 1,45,10,703/- was raised against the petitioners. The petitioners challenged the order dated 29.04.2003 before the Commissioner, Income Tax (Appeal), Jaipur (for short "the Commissioner" hereinafter), however, the same was dismissed vide order dated 11.02.2005. Being aggrieved with the same, the petitioners preferred an appeal before the Income Tax Appellate Tribunal, Jaipur Bench (hereinafter referred to as "the I.T.A.T.", and the said appeal was allowed on 29.01.2009 and the matter was remitted to the Assessing Authority for fresh assessment.

3. It is alleged in the complaint that pursuant to the remand order, the Assessing Authority again assessed the income of the petitioners vide assessment order dated 16.12.2010 and issued a demand notice to the petitioners. The said assessment order was challenged by the petitioner before the Commissioner by way of appeal, however, the appeal has been dismissed and till date, the petitioners have not satisfied the demand raised by the Income Tax Department.

4. It is further alleged in the complaint that further appeal preferred by the petitioners against the fresh assessment order dated 16.12.2010 and the order passed by the Commissioner before the I.T.A.T. has been dismissed on 22.07.2013. It is contended that despite dismissal of the appeal by the I.T.A.T., all the three petitioners, who are Directors of TPD Finance Ltd. and responsible to satisfy the demand, have not deposited the amount and, therefore, committed offences punishable under sections 276(C)(2), 276(C), 278(B)(2) of Income Tax Act, 1961.

5. The learned counsel for the petitioners has challenged the complaint filed on behalf of the respondent on the ground that the assessment order passed by the Assessing Authority on 29.04.2003 has been set aside by the I.T.A.T. in the appeal preferred on behalf of the petitioners on 29.01.2009. It is submitted that Income Tax Appeal being D.B. Income Tax Appeal No. 43/2010 filed on behalf of the Income Tax Department against the order dated 29.01.2009 has also been dismissed by the Division Bench of this Court on 21.01.2011. It is further contended by the learned counsel for the petitioners that in relation to the same demand, the Income Tax Department had earlier filed a complaint in the trial court in the year 2004, which was dismissed by the trial court vide order dated 16.09.2010 and the trial court had discharged the petitioners. The learned counsel for the petitioners has argued that the complaint filed by the respondent is not maintainable in view of the provisions of section 300 Cr.P.C., which provides that person once convicted or acquitted not required to be tried for the same offence. It is also contended by the learned counsel for the petitioners that against the order dated 22.01.2009 passed by the I.T.A.T. and the order passed by the Division Bench of this Court on 21.01.2011 in D.B. Income Tax Appeal No. 43/2010, the Income Tax Department has filed a Special Leave Petition before the Hon"ble Supreme Court, which is pending, therefore also, till the final adjudication of the SLP by the Hon"ble Supreme Court, the impugned complaint filed by the Income Tax Department is not maintainable and is liable to be dismissed.

6. Heard learned counsel for the petitioners and perused the impugned orders as well as the material placed on record.

7. The facts, which are not in dispute, read as under:

"(i) The Income Tax Department, after assessing the income of the company, of which the petitioners are Directors, has raised a demand of Rs. 1,45,10,703/- vide assessment order dated 29.04.2003.

(ii) When the petitioners failed to satisfy the demand raised by the Income Tax Department vide assessment order dated 29.04.2003, a complaint was preferred by the Income Tax Department in the Court of Additional Chief Metropolitan Magistrate (Economic Offence), Jodhpur Metropolitan for the offences punishable under sections 276CC-276(C)(2), 276D read with section 278(B) of the Income Tax Act, 1961.

(iii) That appeal preferred against the order dated 29.04.2003 was dismissed by the Commissioner vide order dated 11.02.2005.

(iv) In further appeal, the I.T.A.T. has quashed the demand raised by the Income Tax Department vide judgment dated 29.01.2009 and remitted the matter to the Assessing Authority for fresh adjudication after giving opportunity of hearing to the petitioners. While allowing the appeal, the I.T.A.T. has observed as under:

"12. Now, advertent to the maintainability of the appeals of the assessee before the CIT(A) are concerned, it is clear that the CIT(A) has not properly appreciated the aspect of service of notices as required under the provisions of the I.T. Act and hence the dismissal in limine of the appeal of assessee is found unjustified as can be seen from the report of the Assessing Officer in response to the clarification required by the CIT(A), it is established that none of the notices of sec. 158BD or 142(1) or 143 or assessment order or penalty notices or orders were served personally on the assessee as required under the provisions of the Act. Therefore, we are of the considered view that the orders passed by the CIT(A) as well as the Assessing Officer are unsustainable for legal scrutiny and hence they are hereby set aside by restoring the matters to the file of the Assessing Officer for de novo consideration of the matters by strictly following the mandatory provisions under the I.T. Act and strictly following the principles of natural justice and pass necessary consequential orders as per law, however, subject to the time limit prescribed under relevant provisions. Accordingly, these two appeals are allowed for statistical purpose.

13. In the result, both the appeals of the assessee are allowed for statistical purposes."

(v) After passing of the order dated 29.01.2009 by the I.T.A.T., the trial court has discharged the petitioners vide order dated 16.09.2010 while observing as under:

(vi) After passing of the order dated 16.09.2010, fresh assessment order has been passed by the Assessing Authority on 16.12.2010.

(vii) Against the fresh assessment order dated 16.12.2010, the appeal preferred by the petitioners before the Commissioner has been dismissed. Further appeal filed by the petitioners before the I.T.A.T. has also been dismissed on 22.07.2013.

(viii) When the petitioners have failed to satisfy the demand raised through the assessment order dated 16.12.2010, the impugned complaint has been filed by the respondent-Income Tax Department on 13.01.2014."

8. It is noticed that the I.T.A.T. has allowed the appeal preferred by the petitioners and quashed the assessment order vide its judgment dated 29.01.2009 solely on the ground that the notice issued by the Assessing Authority has not been served upon the petitioners. The I.T.A.T. has remanded the matter to the Assessing Authority for de novo consideration. Pursuant to the said directions, the Assessing Authority has reassessed the case of the petitioners for the assessment years 1990-91 to 1999-2000 up to 7.4.1999 and passed fresh assessment order on 16.12.2010. The assessment order was challenged by the petitioners before the Commissioner and before the I.T.A.T. and both the appeals failed.

9. The contention of the petitioners that as per section 300 Cr.P.C., the fresh complaint filed by the respondent-department on 13.01.2014, which is under challenge in this misc. petition, is not maintainable because the earlier complaint alleging the commission of same offences, has been rejected by the trial court, is not tenable looking to the fact that the trial court has discharged the petitioners only on the ground that the I.T.A.T. has quashed the demand against the petitioners vide its judgment dated 29.01.2009. It is noticed that while quashing the assessment order, the I.T.A.T. has given a further direction to the Assessing Authority to de novo consider the matters and to pass necessary consequential orders as per the law.

10. In compliance of the directions given by the I.T.A.T., fresh assessment order has been passed by the Assessing Authority and when the petitioners have failed to satisfy the demand raised by the Income Tax Department vide fresh assessment order, the impugned complaint has been filed.

11. Having regard to the facts and circumstances of the case, this Court is of the opinion that once fresh assessment order is passed by the Assessing Authority pursuant to the directions given by the I.T.A.T. and demand raised by the Income Tax Department has not been satisfied by the petitioners, there is no impediment in filing the impugned complaint against the petitioners. In earlier complaint, the trial court has discharged the petitioners while observing that no demand is pending against the petitioners in view of the order passed by the I.T.A.T. on 29.01.2009, therefore, no evidence was available on record to convict the petitioners. However, when the fresh assessment order is passed, the order of discharge passed by the trial court on 16.09.2010 will not come in the way of filing the fresh complaint.

12. It is also noticed that the petitioners were neither convicted nor acquitted by the trial court vide order 16.09.2010 and they were discharged by it due to insufficiency of evidence. It is noticed that the factum of discharge of an accused in a criminal complaint is entirely different thing than the conviction or acquittal of a particular offence. The discharge and conviction or acquittal are distinct happenings and have to be distinctly considered. Discharge of a person has nothing to do with the contingent situation of acquittal or conviction as has been held by the Full Bench of this Court in Narayan Lal Vs. State of Rajasthan, ,

wherein the Full Bench has observed as under:

"21. The disqualification does not refer to conviction but refers to the pendency of trial. The factum of the pendency of trial for a cognizance offence punishable with imprisonment for five years or more in which a charge has been framed by the Court at the relevant time when the nomination papers are subjected to scrutiny is by itself a disqualification and such disqualification has nothing to do with the contingent situation of acquittal or conviction."

13. In view of the above discussions, this Court does not find any force in this petition and the same is hereby dismissed. Stay petition also stands dismissed.