

**(1994) 03 MAD CK 0008**

**In the Madras High Court**

**Case No :** Criminal Miscellaneous Petitions No's. 5686, 5688, 5690, 5692, 5694, 5696, 5698, 5700, 5702, 5704, 5706 and 5708 of 1988, March 11, 1994.

GOPAL ENGINEERING WORKS AND OTHERS

APPELLANT

Vs

C. P. THANGARAJ, SECOND Income Tax OFFICER.

RESPONDENT

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**Date of Decision :** 11-03-1994

**Acts Referred:**

Income Tax Act, 1961 — Section 132

**Citation :** (1995) 124 CTR 403 : (1995) 211 ITR 303

**Hon'ble Judges :** Pratap Singh, J

**Bench :** Division Bench

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## **Judgement**

PRATAP SINGH J. - Accused Nos. 1, 2, 4 and 5 in C.C. Nos. 231 to 233 of 1984 on the file of the Additional Chief Metropolitan Magistrate

(Economic Offences), Egmore, Madras-8, have filed these petitions u/s 482 of the Criminal Procedure Code, praying to call for the records in the

above cases and quash the same.

The short facts are - In E.O.C.C. No. 231 of 1984, the respondent has filed the complaint against five accused u/s 120B read with sections 193

and 196 of the Indian Penal Code and section 276C(1) of the Income Tax Act, 1961, for the assessment year 1976-77. The allegations in it are

briefly as follows :

The complaint is filed at the instance of the Commissioner of Income Tax, Madras. The first accused is a registered firm carrying on business in

manufacturing, purchase and sale of drums and kegs used in the paint industry, utensils, etc., and it is assessed to Income Tax. Accused Nos. 2

to 5 are the partners of the first accused firm. The return of income relating to

the first accused firm for the assessment year 1976-77 was delivered to the Income Tax Officer on October 28, 1976. The assessment was completed on March 25, 1977, on a total income of Rs. 1,61,330. On December 14, 1979, there was a search u/s 132 of the Income Tax Act, 1961. In the premises of the first accused firm, several incriminating accounts and documents were seized. A scrutiny of these accounts and documents showed that the first accused firm had deliberately inflated the purchases during the accounting year relevant for 1976-77 assessment year. This has been done by inflation of figures in the purchase accounts and introduction of bogus purchases. In the first method, the first accused has increased the amounts by round sums of Rs. 2,000 or Rs. 2,200 by interpolating the figures ""20"" or ""22"" before the actual figure in the purchase account. For example, if the purchase as per the bill originally entered in the accounts was Rs. 31.50 this has been manipulated to a subsequent addition of ""20"" to make it falsely appear as Rs. 2,031.50. The inflation on this account comes to about Rs. 97,000 : In the second method, the accused introduced fictitious purchases in the names of fictitious concerns. The inflation on account of the second method comes to Rs. 95,580. On the date of the search, a sworn statement was recorded from the second accused and he admitted the inflation of purchases. The third accused also admitted in his sworn statement that what was stated by the second accused was correct.

After the above search, the accused filed a petition dated October 8, 1980, for the settlement of the tax matters before the Commissioner of Income Tax. The first accused in effect retracted the sworn statement made at the time of the search and contended that the purchases had in fact been made. A stock tally for the various purchases on the basis of the available materials was made and tiled before the Commissioner of Income Tax. As a part of the overall statement of the case, it was agreed to adopt the purchase price of the materials by giving a margin of 20 per cent. over the control rate of commodities in spite of the manipulations referred to above, only for taxation purposes. However, the manipulations in the accounts remain as they are, despite the settlement.

All the accused have conspired and acted in concert to fabricate the account books relating to the first accused firm for the assessment year 1976-

77 with a view to defraud the exchequer of its legitimate revenue and have thus committed offences punishable u/s 120B read with sections 193

and 196 of the Indian Penal Code. In pursuance of the aforesaid conspiracy, all the accused have fabricated the account books for the assessment

year 1976-77 and have thus committed an offence punishable u/s 193 of the Indian Penal Code and all the accused have corruptly made use of the

aforesaid fabricated account books as genuine evidence in the course of the assessment proceedings and have thus committed an offence

punishable u/s 196 of the Indian Penal Code. In the course of the same transaction, all the accused have wilfully attempted to evade tax, penalty

and interest chargeable or imposable under the Income Tax Act, 1961, within the meaning of section 276C(1) and have thus committed an offence

punishable u/s 276C(1) of the said Act : The amount of tax sought to be evaded works out to roughly Rs. 1,31,743. Hence the complaint.

In E.O.C.C. No. 232 of 1984, the respondent has filed a complaint against the very same five accused for an offence u/s 120B read with sections

193 and 196 of the Indian Penal Code and sections 276C(1) and 277 of the Income Tax Act, 1961; for the assessment year 1977-78 on similar

allegations.

In E.O.C.C. No. 233 of 1984, the respondent has filed a complaint against the six accused for offences u/s 120B read with section 193 of the

Indian Penal Code and sections 276C(1), 277 and 278 of the Income Tax Act, 1961, for the assessment year 1978-79. The allegations in it are

similar to the allegations made in the previous two complaints. Regarding the sixth accused, it is alleged that he had abetted and also conspired with

the other accused in the commission of the offences. Apart from the above allegations, it is also stated that there was no entry with regard to the

payment of Rs. 1,00,000 to the Indian Oil Corporation and that only a lesser sum of Rs. 5,000 was entered as paid to S.I.D. Co.

During the pendency of these complaints, accused No. 3 in all the cases died. To quash the above complaints and prosecution thereon as against

these, these petitions are filed by the other accused.

Mr. A. K. Lakshminarayanan, learned counsel appearing for the petitioners in all these cases, would submit that subsequent to the date February

14, 1979, there was a settlement between the Income Tax Department and the

accused and that in the minutes of the settlement, it is noted that these alleged inflated purchases are all genuine purchases and in view of that finding, the premises on which these prosecutions are launched, viz., that inflated figures of purchases were entered in the account books to evade payment of Income Tax, is no longer in existence and, hence, the complaints are liable to be quashed.

The second submission is that the second accused alone had filed the returns and the allegations against the other accused are that they are partners and further there was an allegation that they had conspired and no particulars are placed to substantiate the said conspiracy and in the absence of the same, apart from the second accused, the other accused cannot be proceeded against and proceedings against them are liable to be quashed.

The third submission is that for the offence punishable under sections 276C and 277, imprisonment is mandatory, that the first accused is a partnership firm and it cannot be sentenced to imprisonment and so, as against the first accused, proceedings for the aforesaid two offences are to be quashed.

The fourth submission is that the authorisation given by the Commissioner of Income Tax to launch these prosecutions does not deal with the settlement for tax and that would show that there was non-application of mind while giving the authorisations and these prosecutions on the basis of such authorisations are invalid in law.

Per contra, Mr. K. Ramasamy, learned standing counsel appearing for the respondent, would submit that it has been specifically alleged in the complaints that despite the settlement, the manipulations in the accounts remain as they are and that the settlement is only for the purpose of tax and penalty and that they do not erase the offences alleged. He would add that even in the minutes of settlement, it is specifically stated that the decision on penalties leviable, prosecution, if any, waiver of interest under the different provisions of the Act, will be decided on the merits after the completion of the relevant assessments and while so, the minutes of the settlement cannot be a bar to the launching of these prosecutions. He would further submit that regarding the partners other than the second accused, necessary allegations are made in the complaints to make them

also liable for the offences alleged. He would further submit that though the first accused is a partnership firm, the sentence of fine can be imposed

and there cannot be a quashing of the proceedings in their entirety as against the first accused for offences under sections 276C and 277 of the

Income Tax Act. Regarding authorisation, he would submit that the authorisation is only for filing of the complaint and the purpose is very narrow

and that there is no defect or infirmity in the authorisations.

I have carefully considered the submissions made by learned counsel. I shall consider the submissions seriatim. Regarding the first submission, Mr.

A. K. Lakshminarayanan would rely upon the following portions in the minutes of the settlement. ""In other words, we have to give the finding that

all the purchases quantity-wise are genuine though they might not have been shown in the manufacturing accounts as such"". On the above finding,

learned counsel would submit that when the purchases were found to be genuine, the question of inflating the purchase figures does not arise at all

and so, the offences have not been made out. To consider this submission, the other portion in the settlement minutes also needs to be mentioned.

The last paragraph of the minutes reads as follows :

A decision on penalties leviable, prosecution, if any, waiver of interest under the different provisions of the Act are to be decided on the merits

after completion of the assessment.

This last paragraph in the minutes of the settlement would show that regarding the prosecution, it was left open.

I shall next refer to the relevant portions in the complaint in E.O.C.C. No. 231 of 1984, In paragraph 6 of the complaint, it is stated that a scrutiny

of these accounts and documents showed that the first accused firm had deliberately inflated the purchases during the accounting year relevant to

1976-77 assessment year. Then in paragraph 7, it is alleged that this has been done by inflation of figures in the purchase accounts and introduction

of bogus purchases. It is further stated that the inflation on this account comes to Rs. 97,000 and inflation on account of the second method comes

to Rs. 95,580. Regarding the settlement in paragraph 10, it is alleged that as part of the overall settlement of the case, it was agreed to adopt

the purchase price of the materials by giving a margin of 20 per cent. over the control rate of commodities in spite of the manipulations referred to

in paragraph 7, only for taxation purposes. Then it is alleged ""however, the manipulations in accounts remain as they are despite the settlement"". In

the face of the positive allegations, it can be gone into only at the time of trial as to whether the manipulations in the accounts remain as they are,

despite the settlement or the above alleged manipulations are real and genuine purchases. While so, the complaint cannot be quashed at the

threshold on the finding in the minutes of settlement, which I have extracted supra.

In R.N. Bajaj Vs. K. Govindan, Income Tax Officer, , I have held that because the firm had come forward with a proposal for settlement with

regard to the quantum of concealed income, the prosecution could not be quashed at the threshold. In the instant case, when the allegations in the

complaint make out the offence, because of the finding in the minutes of settlement, the prosecution cannot be quashed in the face of the last

paragraph in the minutes of settlement, which I have extracted above and in the face of the positive allegations made in the complaint, with regard

to the inflation of the expenses and with regard to the settlement.

Gopal Lal Dhamani Vs. Income Tax Officer, . In it, it was held that in any criminal case, before the prosecution can succeed, it must establish all

the ingredients of the offence. The learned judge has observed that ""in case any assessment or reassessment order is passed in favour of the

assessee during the criminal proceeding, the criminal court has to take notice of it and may drop the proceedings"".

In P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , the court had observed that (at page 700) :

. . . . . in appeal or reference under the Act cannot come in the way of the institution of the criminal proceedings u/s 276C and section 177 of the

Act. In the criminal case, all the ingredients of the offence in question have to be established in order to secure the conviction of the accused. The

criminal court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and in an

appropriate case, it may drop the proceedings in the light of an order passed under the Act. It does not, however, mean that the result of a

proceeding under the Act would be binding on the criminal court. The criminal court has to judge the case independently on the evidence placed

before it. Otherwise, there is a danger of a contention being advanced that whenever an assessee or any other person liable under the Act had

failed to convince the authorities in the proceedings under the Act that he has not deliberately made any false statement or that he has not

fabricated any material evidence, the conviction of such person should invariably follow in the criminal court.

So, the proceedings cannot be quashed at the threshold because of the above-extracted portion in the minutes of the settlement.

Regarding the second submission made by Mr. A. K. Lakshminarayanan, Mr. K. Ramasamy, learned counsel for the respondent, would submit

that necessary allegations are made in the complaint to make out the offences against all the accused. In the complaint in C.C. No. 231 of 1984, in

paragraph 12, it is alleged that all the accused have conspired and acted in concert to fabricate the account books relating to the first accused firm

for the assessment year 1976-77 with a view to defraud the exchequer of its legitimate revenue and have thus committed offences punishable u/s

120B read with sections 193 and 196 of the Indian Penal Code. In paragraph 13, it is alleged that in pursuance of the aforesaid conspiracy all the

accused have fabricated the account books and thus committed the offence punishable u/s 193 of the Indian Penal Code. In paragraph 14, it is

alleged that in pursuance of the aforesaid conspiracy all the accused have corruptly made use of the aforesaid fabricated account books as genuine

evidence and have, thus, committed the offence punishable u/s 196 of the Indian Penal Code and in paragraph 15, it is alleged that in the course of

the same transaction, all the accused have wilfully attempted to evade tax, etc., within the meaning of section 276C(1) and the Explanation thereto

and have thus committed an offence punishable u/s 276C(1) of the Income Tax Act. In the face of these allegations made in the complaint, I am

unable to accept the submission that necessary allegations to make out the offences against the petitioners were not made in the complaint. Similar

allegations as in the complaint in C.C. No. 231 of 1984 are made in the complaint in C.C. Nos. 232 and 233 of 1984 also.

In P.N. Subramaniam and others Vs. P.C. Chadaga, Assistant Commissioner of Income Tax, ; this court had held that (headnote) :

The complaint showed that the two petitioners, who were partners of the first accused firm, had conspired along with the other accused, with a

view to wilfully evade tax, defraud the exchequer of its legitimate revenue and deceive the concerned Income Tax Officer, in which process they had fabricated false evidence in the form of books of account containing false entries.

It was held that "these allegations were sufficient prima facie to permit the trial to be proceeded with against these two petitioners and the complaint could not be quashed at its threshold.

This ruling applies squarely to the facts of this case. I am in entire agreement with the view of Justice Arunachalam in the above case, that when the necessary allegations are available in the complaint against all the accused, that cannot be quashed at the threshold.

Regarding the third submission, Mr. K. Ramasami relied upon Manian Transports and others Vs. S. Krishna Moorthy, Income Tax Officer, . In

this ruling this court had held that (headnote) :

In construing the provisions of a statute, courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective; an attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. Where the statute prescribes a mandatory sentence of imprisonment and fine, a company or firm which cannot be sent to prison can be punished with the sentence of fine.

I am in total agreement with this view of Justice Arunachalam, given in this ruling. Taking that view of the matter, the case cannot be quashed as against the first accused for offences under sections 276C and 277 of the Income Tax Act.

I shall next pass on to the last submission of Mr. A. K. Lakshminarayanan. To consider the submission, section 279 of the Income Tax Act needs extraction, it reads as follows :

279. Prosecution to be at the instance of the Commissioner. - (1) A person shall not be proceeded against for an offence u/s 275A, section

276A, section 276AA, section 276B, section 276C, section 276CC, section 276D, section 276DD, section 276E, section 277, section 278 or

section 278A except at the instance of the Commissioner.

In C.C. No. 231 of 1984, the material part of the authorisation reads as follows :

Whereas on perusing and examining the Income Tax records and other papers relating to Messrs Gopal Engineering Works, 19/20, Lotus

Ramaswamy Street, Royapuram, Madras-13, for the assessment year 1976-77, I am satisfied that.

Thereafter, the order proceeds to state that :

Accused Nos. 1 to 5 have wilfully attempted to evade tax, etc., by, inter alia, making or causing to be made false evidence to inflate the figures of

purchases in the account books relating to the first accused firm for the assessment year 1976-77 with the intention to corruptly use them as

genuine evidence in the course of the assessment proceedings for the assessment year 1976-77 relating to the said firm.

Thereafter, the authorisation was given. The attack of Mr. A. K. Lakshminarayanan was that the settlement of tax was not referred to in this

authorisation. The words ""at the instance of the Commissioner"" occurring in section 279 of the Act do not mean that each and every aspect of the

case should be dealt with and considered and referred to in the authorisation. That apart, it is not a relevant fact which requires mention in the

authorisation. A general reference to the same as in the extracted portion above should suffice to meet the requirement of section 279(1) of the

Income Tax Act, 1961.

Parameet Singh Sawney Vs. Dinesh Verma and Another, . In that case, the prosecution was against Parmeet Singh Sawney, who was a little less

than six years old at the time of the accounting year. He was a minor and could only share the profits of the firm. It cannot be said that this Parmeet

Singh Sawney charge of and responsible for the conduct of the business of the firm at the time of the commission of the offence. The Delhi High

Court had held that this would clearly go to show that the respondents have mechanically reproduced in the complaint the wording of section 278B

with a view to meet the requirement of law on a false allegation and on that ground the proceedings were quashed. This case does not deal with the

ambit and scope of ""at the instance of the Commissioner"" occurring in section 279 of the Income Tax Act. So, I am unable to accept either this

submission of Mr. A. K. Lakshminarayanan.

Since none of the submissions made by learned counsel for the petitioners finds acceptance with me, the inevitable result is that these petitions

fail and are dismissed.