(2005) 02 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 584 of 1988

Gurmail Singh — APPELLANT

Vs

Union of India and another — RESPONDENT

Date of Decision : 02-02-2005

Acts Referred:
Income Tax Act, 1961 — Section 276(c), 277

Citation : (2005) 2 RCR(Criminal) 368

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : J.S. Chahal, for the Appellant; D.S. Patwalia, Advocate for Respodent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Virender Singh, J.—Vide judgment/order dated 13/21.10.1986 of learned Chief Judicial Magistrate, Jalandhar, the Petitioner stands convicted under Sections 276(c) and 277 of the Income Tax Act (for short the Act) and has been sentenced to undergo RI for one year and to pay a fine of Rs. 1,000/-, in default to undergo further RI for two months on both the counts. Both the substantive sentences were, however, ordered to run concurrently. Aggrieved by that he preferred an appeal which is also dismissed vide impugned judgment of learned Additional Sessions Judge, Jalandhar dated 22.2.1983. Hence the instant revision.

2. It has been brought to my notice that the Petitioner remained in custody for sometime during trial. The exact period of custody is not known to Mr. Chahal, learned Counsel for the Petitioner. However, at the time of dismissal of his appeal by the lower appellate Court on 22.2.1988, the Petitioner was taken into custody and according to Mr. Chahal he remained in custody upto 21.6.1988 when the present revision was admitted by this Court. In this way, he is stated to have undergone four months and a few days.

3. Initially, the Petitioner was booked along with his partner Smt. Inder Kaur and

one Rakesh Bahri, Chartered Accountant. Inder Kaur was also convicted u/s 278(b) of the Act. She was ordered to be released on probation or a period of three years. She also filed an appeal against her conviction, which was dismissed by the first appellate Court. Thereafter, she moved Criminal Miscellaneous No. 4686-M of 1989 before this Court. During the pendency of the said petition, she expired. Ultimately, the said petition stood abated vide order dated 12.5.2004 passed by this Court. The factum regarding the death of Inder Kaur, as stated by Mr. Chahal, is admitted by Mr. D.S. Patwalia, learned Counsel representing the Respondent Income Tax Department.

4. However, Rakesh Bahri was acquitted by the trial Court.

5. Since Mr. Chahal has not joined any issue on merits or the case, I do not feel the necessity of entering into details of the case. The controversy is with regard to the return filed by the Petitioner for the assessment year 1981-82 with the Income Tax Officer. District II - Jalandhar on 25.7.1981 on behalf of M/s. Himson Metal & Steel Works, Jalandhar, being its partner. In the said return, the income of the firm was declared at Rs. 49,336/-. The department found certain irregularities in it and the Petitioner was confronted with on the point of non-explanation for a sum of Rs. 62,700/-. As per the allegations, certain fictitious liabilities were created by the Petitioner on account of introduction of some secret income in the cash book etc. He was, thus, charged under Sections 276(c) and 277 of the Act.

6. At the very out-set Mr. Chahal contends that the Petitioner deserves a lenient view with regard to the quantum of sentence on the grounds that he is not a previous convict; that he is otherwise an income tax Assessee for the last several years; that he has already faced the ordeal of protracted trial since the year 1983 and by now more than 21 years have elapsed; that during the interregum he has not been involved in any other case of such nature; that even otherwise, case of the Petitioner falls under Sub-clause (ii) of Section 276(1)(c) of the Act, for which the minimum sentence awarded by the Statute is three months only, may be that it can extend to two years, as the amount allegedly evaded by the Petitioner does not exceed Rs. one hundred thousand (i.e. Rs. one lac). Mr. Chahal then contended that so is the position with regard to the quantum of sentence for the offence falling within the mischief of Section 277(1) of the Act. My attention has been drawn to the relevant provisions in this regard.

8. Mr. Chahal further contends that the Petitioner has already stayed in jail for four months and a few days and keeping in view all the facts and circumstances of this case, he deserves a concessional tilt with regard to quantum of sentence, may be by reducing the sentence to the period already undergone by him. The amount of fine, as awarded by the trial Court, already stands deposited before filing an appeal in the first appellate Court, Mr. Chahal, otherwise contends.

9. Mr. Patwalia vehemently opposes the submissions made on behalf of the Petitioner and contends that the tax evaders should be dealt with sternly and as

such the Petitioner does not deserve any sympathy with regard to quantum of sentence.

10. Since the merits have not been touched by either side, I maintain the conviction of the Petitioner as recorded by the trial Court and upheld by the first appellate Court.

11. However, on the quantum of sentence, whatever is submitted by Mr. Chahal, in my view, have to be considered as mitigated circumstances in favour of the Petitioner especially the ordeal of protracted trial faced by him spreading over to more than 20 years. Even otherwise the amount allegedly evaded for the purposes of tax is less than Rs. one lac, for which the Statute provides a minimum sentence of three months, qua both the offences punishable under Sections 276-C and 277 of the Act.

12. Undisputedly, the Petitioner has already served the substantive sentence or more than four months. This at least satisfies the minimum statutory requirement.

13. In the totality of facts and circumstances of this case, in my view, the ends of justice would be adequately met if the actual sentence (viz. one year RI) awarded is reduced to the period already undergone by the Petitioner. So ordered. However, the sentence of fine shall remain intact.

14. Resultantly, while upholding the conviction of the Petitioner, the instant petition stands dismissed except with the modification in the quantum of sentence, as indicated hereinabove.

Petition dismissed.