(1941) 01 PAT CK 0034

In the Patna High Court

Case No : Criminal Revision No. 822 of 1940

HALKHORI RAM AND OTHERS APPELLANT

Vs

KING-EMPEROR. RESPONDENT

Date of Decision : 24-01-1941

Acts Referred:
Criminal Procedure Code, 1898 (CrPC) — Section 195
Income Tax Act, 1961 — Section 22, 23, 52
Penal Code, 1860 (IPC) — Section 109, 120B, 177, 193, 195

Citation : (1941) 9 ITR 311 : (1941) 9 ITR 209

Hon'ble Judges : Manohar Lall, J

Bench : Division Bench

Judgement

MANOHAR LALL, J. - This is an application on behalf of three petitioners for quashing the proceedings pending before Mr. S. N. Hyder, Deputy Magistrate of Gaya. The learned Sessions Judge of Gaya by an order dated December 2, 1940, refused to recommend the quashing of the proceedings.

The facts may be briefly narrated in order to appreciate the question which arises for determination. On June 28, 1939, a Hindu undivided family consisting of the petitioners Halkhori Ram and Bansi Ram, two brothers living in Purani Godown in the town of Gaga, filed before the Income Tax Officer of Gaya a return for the purpose of Income Tax assessment for the year 1939-40. That return was signed and verified by Halkhori Ram as Karta of the family. The Income Tax Officer having reason to believe that the return was incorrect called upon the assessee in pursuance of the terms of notice duly issued u/s 22(4) and 23(2) of the Indian Income Tax Act to produce the accounts and other evidence in support of that return. On July 26, 1939, the assessee produced the account books which were examined by the Inspector of Accounts and which later on were actually examined by Mr. E. M. Khan. The Income Tax Officer. These accounts were produced on behalf of the assessee by Gajadhar the third petitioner, who is the munib of the firm. The Income Tax Officer suspected that during the short interval Gajadhar Ram, munib, at the instance of the assessee interpolated certain items in what is called the bilti bahi. The Income Tax Officer also found a number of other omissions of purchases showing that the accounts were incorrect and false to the knowledge of the assessee and were so prepared in order to deceive the Income Tax Department into the belief that the return filed by the assessee was correct. The assessment was accordingly made at a higher figure than what was submitted in the return; but as the return filed was found to be false and fabricated evidence was, in the opinion of the Income Tax Officer. Produced before him to support that return, the Inspecting Assistant commissioner of Income Tax, Mr. R. K. Saran, on March 28, 1940, signed the petition of complaint containing these facts and forwarded it to the Sub-Divisional Officer of Gaya, the learned Sub-Divisional Officer took cognisance upon a perusal of the complaint on April 3, 1940, in which he was asked to take action u/s 177 and 196 of the Indian Penal Code and other allied sections. The petitioners were summoned u/s 177 and 196 of the Indian Penal Code, the case was transferred to Mr. I. B. Sarkar, first class Magistrate, for disposal on April 22, 1940. After the evidence of the witnesses had been recorded for the prosecution the learned Magistrate on July 20, 1940, framed among others the following charges, Gajadhar Ram was charged a certain document to wit the entry (Exhibit 2) in the bilti bahi [Exhibit 2(a] and also having used it with intent to commit fraud on the Income Tax Department and also to cause injury to the same Department. It is unnecessary to give details of the charges framed u/s 52 of the Indian Income Tax Act which relate to the false verification in the return filed in pursuance of Section 22 of the Indian Income Tax Act and of the charges u/s 109 of the Indian Penal Code against the other accused for having abetted the offence u/s 52 of the Indian Income Tax Act and Section 465 of the Indian Penal Code. While the case was proceeding on these charges the Public Prosecutor on the 1st August, 1940, filed a petition withdrawing the charges under Sections 465 and 465-109 of the Indian Penal Code upon which the assused were acquitted of those charges as required by law. This was recorded in the eighth order on the same date.

The reason why the Public Prosecutor whithdrew the charges is stated in the petition dated July 15, 1940 filed by Mr. E. M. Khan, Income Tax Officer of Gaya. Before the Sub-Divisional Officer. In that petition he reproduces the facts which I have given already as to the manner in which the petitioners were alleged to have committed offences which were the subject of trial before Mr. I. B. Sarkar. Indeed a perusal of the petition of July 15, 1940, shows that it is a verbatim reproduction of the petition already filed by Mr. R. K. Saran. Towards the end of this petition Mr. E. M. Khan says that :

"to obviate the technical difficulty relating to the framing of the charge u/s 196, Indian Penal Code (due to the technicality in Section 195 of the Criminal Procedure Code) this complaint is laid before this Court by me."

Upon this petition the learned sub-Divisional Officer took cognisance and summoned the accused petitioners before this Court, u/s 196, Indian Penal Code, and fixed the date for August 2, 1940. On August 1, 1940, the Public Prosecutor, as already stated, put in a petition, which is at page 56 of the original record, wherein he states that although Mr. Sarkar had framed charges u/s 52 of the Income Tax Act, Section 52-109, Indian Penal code, and 465 of the Indian Penal Code and 465-109 of the Indian Penal Code but as there is a separate case against the accused for making interpolation in his account books pending in the Court of the Sub-Divisional Officer he did not want to proceed with the charges under Sections 465 and 465-109 of the Indian Penal code in that case as it might lead to complication and harassment to the accused. The case started by the Sub-Divisional Officer u/s 196, Indian Penal Code, was transferred to Mr. I. B. Sarkar, first class Magistrate, for disposal who passes orders in the case from time to time. But ultimately on August 31, 1940, on the petition filed by the Public Prosecutor, the case was transferred for trial by the learned District Magistrate to the file of Mr. S. N. Hyder, first class Magistrate.

The trial of the case which was proceeding before Mr. Sarkar was thus confined to the determination of the guilt of the petitioners u/s 52 of the Indian Income Tax Act. Mr. Sarkar delivered his judgment on August 12, 1940, acquitting all the accused. He found that it was not proved that Halkhori signed or verified the statement or the returs not that Halkhori knew anything about the return because it was proved that Gajadhar Ram had gone to Bhagbati Babu to get the return filled up by him and that Halkhori never appeared before the Income Tax Officer in connection with that return. It having been found that Halkhori was entitled to an acquittal it naturally followed that Gajadhar and Bansi could not be convicted for abetting the commission of that offence.

It is unfortunate that owing to the charge framed u/s 465, Indian Penal Code, the accused have been acquitted, but so long as that order of acquittal stands the accused cannot be put upon trial once again for the same offence, but the learned Advocate appearing for the Income Tax Department asserted that there never has been an acquittal u/s 196 of the Indian Penal Code. This is true, But it should be observed that Mr. R. K. Saran had asked the Sub-Divisional Officer to proceed against the accused u/s 196, Indian Penal Code, also. Section 196, Indian Penal Code, provides that

"Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence."

The charge framed in this case u/s 465 has already been quoted. It states that Gajadhar Ram forged a document, namely, the entry in the bilti bahi, and used it with intent to commit fraud on the Income Tax Department, in essence, therefore, the accused are being tried for the very offence on the same facts which were the subject of the charge u/s 465. In a somewhat similar case reported in Cheragali Bepari v. Satish Chandra Ghose (1924) C.W.N. 1, where the petitioners had been previously tried u/s 193. Indian Penal code, any upon a careful and exhaustive consideration of the whole evidence. Had been acquitted and were again put upon trial under Sections 465 471 and 120B, the learned Judges in the Calcutta High Court quashed the proceedings on the ground that inasmuch as the facts on which the complainant founded the present case were inseparable from those upon which the previous case was proceeded with. The proceedings, should be quashed. In the case which is now sought to be proceeded with the accused are being put upon trial upon a complaint which consists of the facts which were the foundation of the charge framed u/s 465, Indian Penal Code, in the earlier trial by Mr. Sarkar and it makes no difference that Mr. Sarkar did not proceed to investigate the facts before he acquitted the accused u/s 465, Indian Penal Code. He was bound to acquit the accused u/s 465, Indian Penal Code, on the withdrawal of the charged by the Public Prosecutor after the charges had been framed. It cannot be argued before me that the previous acquittal was by a court who had no jurisdiction to frame a charge u/s 465, Indian Penal Code, because the argument u/s 195, Indian Penal Code. Was abandoned before the learned Sessions Judge and has not been insisted upon here.

For these reasons I quash the proceedings now pending against these petitioners before Mr. S. N. Hyder, Deputy Magistrate of Gaya.

Proceedings quashed.

