**(2003) 08 P&H CK 0036**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Revision No. 125 of 1990 6 August 2003

Hardayal Singh APPELLANT

Vs

ITO RESPONDENT

**Date of Decision :** 06-08-2003

**Acts Referred:**

Constitution of India, 1950 — Article 20
Criminal Procedure Code, 1973 (CrPC) — Section 401, 482
Income Tax Act, 1961 — Section 143, 148, 271, 277, 278
Penal Code, 1860 (IPC) — Section 276C, 34

**Citation :** (2004) 1 RCR(Criminal) 952 : (2004) 136 TAXMAN 187

**Hon'ble Judges :** V.M. Jain, J

**Bench :** Division Bench

**Advocate :** J.B. Singh, for the Assessee N.L. Sharda, for the Revenue, for the Appellant;

## Judgement

This revision petition has been filed by the accused-petitioners u/s 401/482 Cr. P.C., seeking quashment of the criminal complaint u/s 277 of the Income Tax Act, 1961, comply Annexure P-1 and also quashing the order dated 19-1-1990 copy Annexure P-3 passed by the Additional Sessions Judge, vide which order dated 22-5-1989 copy Annexure P-2 passed by the learned Chief Judicial Magistrate discharging the accused was set aside and the case was ordered to be sent to the Chief Judicial Magistrate for further inquiry into the matter.

2. The acts which are relevant for the decision of the present petition are that the Income Tax Officer filed a complaint for the offence u/s 277 of the Income Tax Act, read with section 34 of the Indian Penal Code against the accused-petitioners and others. It was alleged that M/s. Vishkarma Motors, accused No. 1, was a partnership concern of which accused Nos. 2 to 4, namely, Hardayal Singh, Rakha Singh and Smt. Punna Devi were the partners having the share to the extent of 1/3 each. It was alleged that the accused submitted Income Tax Return for the assessment year 1973-74 on 18-7-1973 and that the assessment was completed u/s 143(3) of the Income Tax Act on 10-9-1973. It was alleged

that subsequently, the Income Tax Officer impounded certain books of account relating to the assessment year 1973-74 and notice u/s 31 of the Income Tax Act was served on accused No. 1. It was alleged that on the basis of the information collected, the Income Tax Officer served notice u/s 148 of the Income Tax Act upon accused Nos. 2 and 3 for re-opening the assessment for the assessment year 1973-74. It was alleged that after perusing the account books and other material, the Income Tax Officer made re-assessment on 12-3-1980. It was alleged that against the said re-assessment, the accused filed appeal before the Commissioner and thereupon the assessment order dated 12-3-1990 was set aside by the Commissioner (Appeals) on 7-1-1983 and the Income Tax Officer was directed to pass fresh order after hearing the assessee. Thereafter, the Income Tax Officer passed fresh order of assessment dated 19-3-1984 and a penalty notice u/s 271(1)(c) of the Income Tax Act for concealment of income was also issued. It was alleged that the accused had knowingly made wrong verification on the Income Tax Return, declaring the income at a lower figure and further delivered knowingly wrong accounts and false statements of account believing the same to be false and did not believe the same to be true and as such had committed the offence punishable u/s 277 of the Income Tax Act. It was alleged that accused Nos. 2 to 4 had been arrayed as accused being responsible to the conduct of the business of the firm.

3. After the aforesaid complaint was filed by the Income Tax Officer, the accused were summoned and thereafter the complainant produced pre-charge evidence. Thereafter the learned Chief Judicial Magistrate after hearing both sides vide order dated 22-5-1989 copy Annexure P-2 found that no case was made out against accused No. 2, Hardayal Singh and accused No. 4, Smt. Punna Devi as they were not incharge and were not having the control of the business, whereas accused No. 3 Rakha Singh was the incharge and was having control on the business. Accordingly, accused No. 2. Hardayal Singh and accused No. 4, Smt. Punna Devi were discharged whereas accused No. 3 had been declared as proclaimed offender. It was directed that the file be consigned and the same shall be requisitioned as and when accused No. 3, Rakha Singh was arrested. Aggrieved against this order passed by the Chief Judicial Magistrate, the Income Tax Officer (complainant) filed revision petition in the sessions court. The learned Additional Sessions Judge, vide order dated 19-1-1990, copy Annexure P-3 found that u/s 278B of the Income Tax Act even the Firm is guilty of the offence if the offence had been committed by the firm. It was found that accused Hardayal Singh, prima facie appeared to be guilty for the commission of the offence alleged in this case and could not be discharged as ordered by the trial court. It was also found that so far as Smt. Punna Devi was concerned, she was only a sleeping partner of the firm and the revision petition was not directed against her discharge on that account. Resultantly, while accepting the revision petition, the learned Additional Sessions Judge, directed the trial court for further inquiry into the matter. Aggrieved against this order of the learned Additional Sessions Judge, Hardayal Singh (partner) and M/s. Vishkarma Motors filed the present

 

revision petition in this court u/s 401/482 Cr. P.C. vide order dated 27-2-1990, the revision petition was admitted and further proceedings before the trial court were stayed.

4. I have heard the learned counsel for the parties in detail and have gone through the record carefully.

5. The learned counsel appearing for the petitioners submitted before me that the learned Magistrate had rightly ordered the discharge of the accused-petitioners and that the learned Additional Sessions Judge had erred in law in setting aside the order of discharge qua the present petitioners. It was submitted that the criminal complaint copy Annexure P-1 was filed by the complainant, namely, Income Tax Officer on the ground that while filing the Income Tax Return on 18-7-1973 for the assessment year 1973-74, the accused had made a wrong verification on the return declaring income at a lower figure and had submitted wrong accounts and false statements of account believing the same to be false and not believing the same to be true and in this manner as per the complainant the accused had committed the offence u/s 277 of the Income Tax Act. It was submitted that in this manner, as per the complainant, the accused and committed the offence on 18-7-1973, at the time when the accused had allegedly filed a false Income Tax Return for the assessment year 1973-74. It was submitted that the law which was prevalent at the relevant time i.e., on 18-7-1973 would apply in this case and the amendments which were made subsequently would have no application to the present case and as such neither the firm M/s. Vishkarma Motors nor its partner Hardayal Singh could be prosecuted for the offence u/s 277 of the Income Tax Act. Reliance has been placed on the law laid down by a Division Bench of this court, in the case of Commissioner of Income Tax Vs. Jagdish Lal Behl and Others, and the law laid down by a Single Bench of this court, in the case of Smt. Prem Lata Vs. Income Tax Officer, .

6. On the other hand, the learned counsel for respondent No. 1 (complainant) has submitted before me that the accused had furnished fresh Income Tax Return for the assessment year 1973-74, subsequently and as such on the basis of the said return, the accused could be prosecuted under the amended Act.

7. Section 278 of the Income Tax Act (after its amendment with effect from 1-4-1964) as it stood on 18-7-1973, the date on which the Income Tax Return was filed by the accused, was as under :

"Abetment of false return, etc.If a person abets or induces in any manner another person to make and deliver an account, statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe to be true, he shall be punishable with rigorous imprisonment for a term which may extend to two years :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months."

8. With effect from 1-10-1975, section 278 of the Income Tax Act, 1961, was amended to read as under :

"Abetment of false return, etc-If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 276C, he shall be punishable,

(i) in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine :

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

9. With effect from 1-10-1975 section 278B, was also added in the Income Tax Act, which reads as under :

"Offences by companies.(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shah be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.For the purposes of this section,

(a) company means a body corporate, and includes

(i) A firm; and

(ii) an association of persons or a body of individuals whether incorporated or not; and

 

(b) director, in relation to-

(i) a firm, means a partner in the firm;

(ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.

10. In Jagdish Lal Behl''s case (supra), it was held by a Division Bench of this court, as under.

"So far as the liability of the directors of the company is concerned, we might add that section 278B which was brought on the statute book with effect from 1-10-1975, by the Taxation Laws (Amendment) Act, 1975, makes only the director who was in charge of the business of the company guilty of the offences in question. Since the offences were committed in the year 1965-69, we cannot apply the principle enshrined in this section to create ex post facto offences. To do so would tantamount to acting contrary to the clear mandate contained in article 20 of the Constitution. Mr. Awasthy has submitted that even prior to the coming into force of section 278B of the Act, position of law was the same. We are however, of the view that if the legislature itself thought of clarifying the position of Jaw; it would not be proper for us to assume something to be in existence and then to go on to punish a person for a criminal offence. We, therefore, affirm the view taken by the learned Chief Judicial Magistrate and decline to allow the appeal as against the respondents Nos. 1 to 3. . . ."(p. 624)

The law laid down by the Division Bench in the above said authority was followed by a Single Bench of this court in Smt. Prem Lata s case (supra).

11. From a perusal of the above, in my opinion, it would be clear that accused-petitioner, Hardayal Singh, could not be prosecuted for having committed the offence on 18-7-1973, inasmuch as section 278B of the Income Tax Act was introduced only with effect front 1-10-1975 whereas the offence was allegedly committed prior thereto i.e., on 18-7-1973. The submission of the learned counsel for the respondent that the accused had furnished fresh Income Tax Return for the assessment year. 1973-74 even subsequently and on that basis the accused could be prosecuted tinder the amended Act, in my opinion, is misconceived. Copy of the criminal complaint filed by the Income Tax Officer is available on the record as Annexure P-1. There is not even a word in he entire criminal complaint that any other Income Tax Return was filed by, the accused after 18-7-1973 for the assessment year 1973-74. In this view of the matter it cannot be said that the accused had committed any offence on the ground that the accused had allegedly filed a subsequent Income Tax Return, especially when the criminal complaint is silent in this regard.

12. With regard to the prosecution of the Firm-M/s. Vishkarma Motors as accused, in my opinion, the prosecution against the firm is also liable to be quashed on the short ground that at the relevant time, i.e., on 18-7-1973 when the offence was allegedly committed, the accused could only be punished with

 

rigorous imprisonment for a term which may extend to 2 years. There was no provision for sentencing the accused to pay fine. In my opinion, the firm could not be prosecuted since the firm could not be sentenced to undergo rigorous imprisonment. Reliance in this regard may be placed on the law, laid down by a Division Bench of Allahabad High Court in the case of Modi Industries Ltd. v. B. C. Goel 1981 Tax LR 990 in which it was held that a juristic person like a Company could not be awarded punishment of imprisonment.

13. In view of the above, in my opinion the criminal complaint and all subsequent proceedings arising therefrom against the accused-petitioner, namely, Hardayal Singh and the firm are abuse of the process of law and are liable to be quashed. Accordingly, I accept the present petition, set aside the order dated 19-1-1990, Annexure P-3, passed by the Additional Sessions Judge and quash the criminal complaint copy Annexure P-1 u/s 277 of the Income Tax Act, read with section 34 IPC and all subsequent proceedings taken thereon against the accused-petitioners.

Petition allowed.

 