

(1995) 10 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 2448 of 1994

Harikishan

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 11-10-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 269SS, 276DD, 279

Citation : (1996) 217 ITR 582 : (1996) JLJ 544

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : Saboo, for the Appellant; D.D. Vyas, for the Respondent

Judgement

N.K. Jain, J.—By this petition u/s 482, Criminal Procedure Code, 1973, the petitioners seek quashing of proceedings of Criminal Case No. 50 of 1992 instituted against them in the Court of the Additional Chief Judicial Magistrate (Economic Offences), Indore, filed u/s 276DD of the Income Tax Act, 1961, as it stood before coming into force of the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986.

2. The complaint in question against the petitioners has been made on the ground that the petitioners during the financial year 1986-87 (assessment year 1987-88) had taken/accepted certain deposits to the tune of Rs. 44,500 otherwise than by account payee cheques or drafts and which was in violation of the provisions of Section 269SS of the Act. The sanction for prosecution u/s 279 was accorded on March 30, 1992, and the complaint to the court was made in March, 1992. However, in the meantime, the Amendment Act, 1987, was enacted whereby Section 276DD was omitted and consequential changes were also made in Section 279 with effect from April 1, 1989. The petitioners moved an application before the learned magistrate seeking dropping of the prosecution on the ground that on the date when the complaint was made, the penal Section 276DD did not exist on the statute book. The learned magistrate, however, vide

its order dated August 31, 1994, rejected the petitioners' application holding that the amendment was not retrospective in effect and that the prosecution in question was saved under the provisions of Section 6 of the General Clauses Act, 1897.

3. The petitioners have assailed the impugned order and contended that no prosecution could be launched nor any sanction be accorded after Sections 276DD and 279 of the Act were omitted.

4. As against this, learned counsel for the respondent, Union of India, contended that Section 6 of the General Clauses Act did protect the prosecution.

5. The decision of this petition turns on the answer to the question as to whether or not sanction for prosecution could be accorded and the prosecution be launched in the court for the offence committed u/s 276DD on a date on which the section was in existence but omitted subsequently before the sanction for prosecution was accorded and the prosecution was actually launched.

6. The answer to the question, I may respectfully submit is found in the Supreme Court decision in *Rayala Corporation (P.) Ltd. v. Director of Enforcement* AIR 1970 SC 494, wherein their Lordships clearly held that Section 6 only applies to repeals and not to omissions. In a similar situation, in which a person was sought to be prosecuted for violating a particular rule of the Defence of India Rules, 1962, which though in force at the time of violation, was omitted before the prosecution could actually be launched, their Lordships of the apex court held that the complaint made for the offence under the said rule after the same was omitted has to be held invalid.

7. In another case of *T. Barai Vs. Henry Ah Hoe and Another*, , the Supreme Court reiterating the aforesaid principle observed (at page 157) :

"It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that in so far as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex-post facto law nor can the enhanced punishment proscribed by the amendment be applicable. But in so far as the Central Amendment Act reduces the punishment for an offence punishable u/s 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex-post facto law of such a type should be applied to initiate the rigour of the law. The principle is based both on sound reason and common sense."

8. In the case before us the amendment brought in force by the Act of 1987 was a beneficial legislation intended to benefit the assessee and to mitigate the rigour

of law inasmuch as the law now does not make the default in question a crime but only provides for imposition of penalty in terms of money. In view of the matter and as observed by their Lordships in the case of T. Barai Vs. Henry Ah Hoe and Another, , "the rule of beneficial construction requires that even ex-post facto law of such a type should be applied to mitigate the rigour of the law". The petitioners/assesseees cannot be, therefore, deprived of the benefit of the amendment.

9. In the result, the petition succeeds and the proceedings before the Additional Chief Judicial Magistrate (Economic Offence), Indore, in Criminal Case No. 50 of 1992 against the petitioners are hereby quashed.