

(1989) 05 MAD CK 0002

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 4181 of 1988

Hema Mohnot

APPELLANT

Vs

State
Meena Kumari Mohnot Vs Chief Commissioner of
Income Tax (Admn.)

RESPONDENT

Date of Decision : 05-05-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 482
Income Tax Act, 1961 — Section 277, 278C

Citation : (1992) 198 ITR 410

Hon'ble Judges : V. Bhaskaran Nambiar, J;Padmini Jesudurai, J

Bench : Division Bench

Advocate : A. Natarajan, for the Appellant; Ramasami K., for the Respondent

Judgement

Padmini Jesudurai, J.—The petitioner, who is the 12th accused in the case pending against her in C.C. No. 179 of 1985 before the

Additional Chief Metropolitan Magistrate, E.O. ., Madras, for offences under sections 120B, 420, 467, 471, 197, 182, 181, 177, 193, 468, 196,

199, 200, 201, 380, 379, 419, 420 read with sections 511 and 109, Indian Penal Code, and section 277 of the Income Tax Act, 1961, read with

sections 120B, 100, 419, 420 read with section 511, Indian Penal Code, invoked the inherent powers of this court u/s 482, Criminal Procedure

Code, to quash the above proceedings.

2. Learned counsel for the petitioner seeks quashing on the ground that the only allegation made against the petitioner is that a cheque issued to

Hindustan Electronics of which the petitioner is the proprietress had been encashed by her and deposited in her account and that this allegation,

even if true, would not make the petitioner liable, for no charge levelled against

her.

3. Notice of this application was given to learned standing counsel for the respondent and learned counsel contended that the petitioner and the co-

accused had already filed a similar petition raising several grounds for quashing the proceedings and, not having succeeded in that, have

commenced the second round of quash petition early for the purpose of protecting the trial and preventing proper conclusions. Learned counsel

also contended that more than 25 witness have already been examined and the case stands posted for examination of the accused and, at this

stage, the petitioner, without any valid ground, has approached this court. The contentions raised by learned counsel for the petitioner ought to be

argued before the trial court when the question of framing of charges would arise.

4. As rightly contended by learned counsel for the respondent, the present petitioner and several other co-accused had earlier filed similar

applications u/s 482, Criminal Procedure Code, to quash the proceedings. In fact, the petitioner had filed CrI. M.P. No. 3412 of 1985 (see

Kumudini Subhan and Another Vs. Commissioner of Income Tax, and the same, along with connected applications, had been dismissed by this

court on January 28, 1987. In those applications, the petitioner and the co-accused had raised as many as nine contentions and all the contentions

has been answered in detail by this court. Witnesses have, thereafter, been examined and the case stands posted for questioning the accused u/s

313(a), Criminal Procedure Code. It is only thereafter that the court will decide whether the evidence that has been adduced by the prosecution

calls for either framing of charges or warrants a discharge of the accused. The proper course, therefore, is to put forward these contentions before

the trial court. Section 482, Criminal Procedure Code, cannot be invoked when there are statutory remedies provided under the Code of Criminal

Procedure itself, particularly when the question of framing of charges has actually arisen. It is obvious that this second round of quash has been filed

merely to protract the proceedings. Hence, this petition is dismissed.

Bhaskaran, J.

5. This is a petition u/s 482 of the Code of Criminal Procedure by the 11th accused in C. C. No. 179 of 1985 on the file of the Additional Chief

Metropolitan Magistrate (E.O.I.), Egmore, Madras-600 008, to call for the records

and quash the proceedings against the petitioner.

6. The impugned proceedings arose out of a private complaint filed by the respondent/Chief Commissioner of Income Tax (Administration) and

Commissioner of Income Tax, Tamil Nadu-I, Madras, against twenty persons most of whom are family members of the petitioner on the allegation

that they have committed offences punishable under sections 120B, 420, 467, 471, 197, 182, 181, 177, 193, 468, 196, 199, 200, 201, 380,

379, 419 and 420 read with sections 511 and 109 of the Indian Penal Code and u/s 277 of the Income Tax Act, 1961, read with sections 120B

and 100 of the Indian Penal Code and u/s 419 read with section 511 of the Indian Penal Code.

7. Accused Nos. 1, 4 and 5 are the sons, the 3rd accused is the husband and the 12th accused is the daughter-in-law of the petitioner/11th

accused. The 2nd accused is a Hindu undivided family represented by its karta, viz., the petitioner's husband, the 3rd accused. The allegation

against the accused is that the 1st accused is an Income Tax practitioner and he had entered into a conspiracy with the other accused, obtained

duplicate tax deduction certificate on false pretences, also obtained original T.D.S. certificates from the race club, made false documents and filed

Income Tax returns on behalf of his clients before the Income Tax authorities, obtained vouchers for refund and the amounts have been credited to

the various accounts of the accused and also the Hindu undivided family, of which the 3rd accused is the karta and the petitioner is also a member

of the Hindu undivided family.

8. It is stated that merely because the petitioner is a member of a Hindu undivided family, she cannot be made liable for the offences committed by

the karta of a Hindu undivided family, that the members of the Hindu undivided family are liable u/s 278C of the Income Tax Act, 1961, and that

no charge will lie u/s 277 of the Income Tax Act, 1961, under which these accused have been charged. It is further stated that the learned

Magistrate has taken the complaint on file without looking into the legal bar to take the complaint on file. It is also stated that some of the accused

in the private complaint has already filed quash petitions on different points and this court, in Crl. M.P. Nos. 3409, 3412, 3679, 3695, 3711 and

3879 of 1985 on January 28, 1987 (see Kumudini Subhan and Another Vs.

Commissioner of Income Tax, partly allowed those petitions. Learned counsel for the petitioner submitted that the earlier quash petition is not a bar since the present petition is on a different point and, on the materials placed by the prosecution, no charge can be made out against the petitioner. He also submitted that the petitioner is a permanent resident of the State of Rajasthan and merely because she is a member of a Hindu undivided family which her husband is the karta, that will not make her liable for any criminal act committed by any other member of the Hindu undivided family. He, therefore, prayed for quashing the impugned proceedings against the petitioner.

9. The learned Special Public Prosecutor for the Department submitted that the earlier quash petitions which were by almost all the accused were dismissed substantially and allowed in part only with regard to the criminal acts alleged to have been committed by the accused at Trivandrum and Bombay which are beyond the jurisdiction of this court, but, at the same time, making it clear that, for the purpose of proving a conspiracy, evidence can be let in regarding the occurrence that took place even outside the jurisdiction of this court. According to him, the petitioner has not made the specific ground now alleged in the earlier quash petition. Therefore, the petition is liable to be dismissed.

10. It is not necessary to go into the merits of the contentions raised by both sides at this stage and this petition can be disposed of on the short point as was done by this court in a similar petition (Crl. M.P. No. 4181 of 1988) (see Hema Mohnot Vs. State, filed by the 12th accused, who is also a woman member of the Hindu undivided family. That petition was dismissed by Padmini Jesudurai J., observing as follows (at page 411) :

As rightly contended by learned counsel for the respondent, the present petitioner and several other co-accused had earlier filed similar applications u/s 482 of the Code of Criminal Procedure to quash the proceedings. In fact, the petitioner had filed Crl. M.P. No. 3412 of 1985 (see Kumudini Subhan and Another Vs. Commissioner of Income Tax, , and the same, along with connected applications, had been dismissed by this court on January 28, 1987. In those applications, the petitioner and the co-accused had raised as many as nine contentions and all the contentions had been answered in detail by this court. Witnesses have,

thereafter, been examined and the case stands posted for questioning the accused u/s 313(a) of the Code of Criminal Procedure. It is only thereafter that the court will decide as to whether the evidence that has been adduced by the prosecution calls for either framing of charges or warrants a discharge of the accused. The proper course, therefore, is to put forward these contentions before the trial court. Section 482 of the Code of Criminal Procedure cannot be invoked when there are statutory remedies provided under the Code of Criminal Procedure itself, particularly when the question of framing of charges has actually arisen.....

11. The petitioner who is the 11th accused stands on the same footing. As pointed out by the learned Special Public Prosecutor, all the witnesses have been examined and the case stands posted for questioning the accused u/s 313(a) of the Code of Criminal Procedure. Thereafter on the basis of the materials available, the learned Magistrate has to either frame charges or discharge all or any of the accused. If no material is found against the petitioner on the evidence for framing charges, the petitioner will definitely be discharged by the learned Magistrate. The apprehension of learned counsel for the petitioner that the learned Magistrate will automatically frame charges against the petitioner without going into the evidence to find out whether there is sufficient material to frame charges is unfounded. The learned Magistrate will definitely go into the materials placed by the prosecution so far and find out whether there is sufficient material to proceed against the petitioner especially when the petitioner says that no part was played by her and that she had no knowledge in the dealings of the other members of the Hindu undivided family. It is always open to the petitioner to come to this court if she is aggrieved against the framing of charges. It is unnecessary and also not-desirable at this stage to go into the merits and find out whether there are sufficient materials to frame a charge against the petitioner. In the circumstances, it is not necessary to refer to the decisions cited by the learned Special Public Prosecutor.

12. For the foregoing reasons, the petitioner is dismissed.