

(1993) 04 CAL CK 0026
In the Calcutta High Court
Case No : Criminal Rev. No. 908 of 1991

Hiralal Banka and Others

APPELLANT

Vs

Mr. P.S. Bose and Others

RESPONDENT

Date of Decision : 08-04-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195
Income Tax Act, 1961 — Section 136, 147, 277, 278, 279
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471

Citation : (1995) 1 ALT(Cri) 7 : (1993) 2 CALLT 299 : 98 CWN 396

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : B.N. Sen, Milan Mukherjee and Sudhir Mehta, for the Appellant; Uma Sanyal and Amit Talukdar, for the Respondent

Final Decision : Allowed

Judgement

G.R. Bhattacharjee, J.—This revisional application has been filed for quashing the First Information Report (F.I.R.) dated the 27th June, 1989 in RC/9/SCB/89 Calcutta and all proceedings initiated thereunder in the Court of the learned Sub-Divisional Judicial Magistrate (South), Alipore, Calcutta. The said First Information Report is Annexure-E to this revisional application. The F.I.R. was recorded at the Delhi Special Police Establishment, CBI, SCB, Calcutta branch on 27th June, 1989 Under Sections 120B/420/468/471 I.P.C. and Sections 277/278 of the Income Tax Act, 1961 on the basis of information reported in writing by one Sri P.S. Bose, Inspector of Police, CBI, SCB, Calcutta who also took up the investigation of the case as per order of the SP, CBI, SCB, Calcutta. In the formal part of the F.I.R. the name of the complainant has been noted as "source" and the date and time of occurrence has been recorded as "during the years 1985 and 1986". Seven persons including the 4 petitioners herein have been named as accused in the F I.R.

2. The gist of the allegations of the F.I.R. is noted below. Mahesh Kumar @

Mahesh Chand Bhagchank and the 4 petitioners, namely, Hiralal Banka, Sumit Banka, Nisha Agarwala @ Nisha Banka and Sudesh Banka, all of Calcutta, earned huge sums of money through unauthorised sources resulting in accumulation of large sums of unaccounted money which they were required to disclose to the concerned income tax authorities, but they avoided to do so for evading payment of income tax liabilities as has been reliably learnt. It was further disclosed by the source that the above named persons in contact with Omparkash Mittal and Gopal Chowdhury, both of Siliguri and Udayram Agarwala of Gangtok and others, mutually agreed to commit illegal acts and adopt illegal means to account for the unaccounted/undisclosed/ unexplained amounts of money under false and fictitious cover of receipt of gifts from the contact man, said Udayram Agarwala of Gangtok, Sikkim where the provisions of Income Tax Act, 1961 do not apply. In furtherance of the common object of the said agreement Mahesh Kumar @ Mahesh Chand Bhagchank, Hiralal Banka, Nisha Agarwala @ Banka and Sudesh Banka passed on their undisclosed, unexplained accumulated money to their contact man in Sikkim through the middlemen Omprakash Mittal and Gopal Chowdhury and the said contact man of Sikkim, Udayram in turn disclosed a major portion of the amounts so passed over to him to income tax authorities of Sikkim for nominal turnover tax on declaring that he had given a gift of Rs. 7,10,000/- to the aforesaid 5 persons of Calcutta through Bank Drafts purchased from Central Bank of India, Gangtok, Sikkim in favour of the aforesaid 5 persons of Calcutta payable at their branch in Calcutta and the said 5 persons received the said amount in their Bank accounts at Calcutta and thereafter they reflected the same as gifts in their books of accounts and filed income tax returns before competent income tax assessing authority disclosing their unaccounted/undisclosed/unexplained money as receipt of gifts and thus claimed exemption from payment of income tax liabilities and in support of such claim they filed photostat/xerox copies of affidavit obtained by their contact man at Sikkim from the competent authority at Sikkim. The recipients of the so-called gifts thereby succeeded in getting exemption from payment of income tax liabilities on dishonest and fraudulent misrepresentation of facts in their income tax returns. But for such dishonest and fraudulent misrepresentation of facts the income tax authorities would not have passed order accepting the claim of benefits of gifts. It is thus palpably clear that for perpetration of fraud false declarations were made intentionally by the said persons in Calcutta in their income tax returns and false/forged documents were used by them with full knowledge and having reasons to believe that such documents were forged. The aforesaid transaction involved misdeclaration of about Rs. 7,10,000/- of unaccounted/unexplained money and proportionate evasion of income tax liability. The above facts prima facie disclose commission of offences punishable Under Sections 120B read with Sections 420, 468, 471 I.P.C. and Sections 277 and 278 of the Income Tax Act, 1961. What is described above in this paragraph is the reflection of the allegations in the F.I.R.

3. From a reading of the F.I.R. it is evident that the matter relates to submission

of income tax return at Calcutta by the petitioners allegedly supported by false and fabricated statements and materials showing gifts of money received from some other person of Sikkim to whom allegedly the petitioners had earlier passed on their undisclosed, unaccounted accumulated money for evading income tax and obtaining of relief thereby in the matter of assessment of income tax to which they were not legally entitled. It has been argued by the learned Advocate for the petitioners that since the income tax authorities themselves have accepted the returns and have not questioned anything in that connection the police authorities or for that matter the CBI cannot start an investigation in respect of the self-same matter for harassing the petitioners. It is also submitted on behalf of the petitioners that under the Income Tax Act the income tax authorities themselves have enough power and responsibility to take appropriate action if it is felt by them that anything wrong has been done by the petitioners in connection with the submission of their income tax returns but it is an act of gross arbitrariness and wanton illegality on the part of the CBI to embark upon a harassing investigation without any authority of law in respect of the matter of income tax assessment made by the income tax authorities. The two sections of the Income Tax Act which have been mentioned in the F.I.R. as attracted to the facts and circumstances are Sections 277 and 278. The said sections of the Income Tax Act are reproduced below :

"Section 277. False statement in verification, etc.-If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable,-

(i) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, 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.

"Section 278. 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".

4. It may be mentioned here that Section 276C of the Income Tax Act provides for punishment for wilful attempt to evade tax, etc. It is also to be noted in this connection that Sub-section (1) of Section 279 of the Income Tax Act provides that a person shall not be proceeded against for an offence u/s 275A, Section 276, Section 276A, Section 276B, Section 276BB, Section 276C, Section 276CC, Section 276D, Section 277 or Section 278 except with the previous sanction of the Chief Commissioner or Director-General or Commissioner unless the prosecution is at the instance of the Commissioner (Appeals) or of the appropriate authority referred to therein. Section 279A of the Income Tax Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable u/s 276B or Section 276C or Section 276CC or Section 277 or Section 278 shall be deemed to be non-cognizable within the meaning of that Code. Reading Section 279A and Section 279 together it is evident that offences u/s 277 and Section 278 of the Income Tax Act are not cognizable offences and as such the police have no power of their own to investigate any such offence and any prosecution for any such offence can be launched by a complaint with the previous sanction of the Chief Commissioner or Director-General or Commissioner. As we have seen the F.I.R. in this case mentions Sections 277 and 278 of the Income Tax Act but the offences under the said sections being non-cognizable the police cannot investigate the same on the basis of their own power as a matter of course although prosecution under those sections can be launched by filing complaint with the previous sanction or at the instance of any of such authorities as mentioned in Section 279 of the Income Tax Act which evidently is not the case here. There is no doubt that the F.I.R. of the present case also includes several sections of the Indian Penal Code, such as, Sections 120B, 420, 468 and 471. From the averments contained in the F.I.R. it is evident, apparent and transparent that substantially the allegation on the basis of which the investigation has been started is that the petitioners in collusion and conspiracy with others evaded payment of proper income tax and also submitted income tax returns based on false statements and forged and fabricated materials. The basic offences, if any, being under the Income Tax Act the requirement regarding sanction for prosecution and the bar of lack of authority on the part of the police to investigate such offences in view of the specific provisions of the Income Tax Act cannot be circumvented by inclusion of some other ancillary offences under the Indian Penal Code which are only components of or rather only incidental to or instrumental in the commission of the basic offences under the Income Tax Act or which are closely linked up with such offences and which have no separate consequences other than what are sought, to be prevented by enacting specific penal provisions in the Income Tax Act, namely, evasion of tax and steps in that direction. In that view of the matter also the F.I.R. cannot be sustained simply because offences punishable under certain sections of the Indian Penal Code, such as, Sections 420, 468, 471 read with Section 120B have been included in the F.I.R. along with the main offences punishable under the Income Tax Act which, under law, the police cannot investigate on the basis of their own authority.

5. Now let us look to the offences under the Indian Penal Code as included in the F.I.R. In this connection Section 136 of the Income Tax Act deserves consideration and is therefore re-produced below :

"Section 136. Proceedings before Income Tax authorities to be Judicial proceedings.-Any proceeding under this Act before an income tax authority shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code (45 of 1860) and every income tax authority shall be deemed to be a civil court for the purposes of Section 195, but not for the purposes of Chapter-XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)".

6. Therefore every income tax authority is deemed to be a civil court for the purposes of Section 195 Cr. P.C. Section 195(1)(b) Cr. P.C. provides that no court shall take cognizance-

"(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely Sections 193 to 196 (both inclusive), 199, 200, 205 and 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, or

(ii) of any offence described in Section 463, or punishable u/s 471, Section 475 or Section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in Sub-clause (i) or Sub-clause (ii),

except on the complaint in writing of that court, or of some other court to which that court is subordinate."

7. Sub-section (3) of Section 195 Cr. P.C also may be quoted here :

"195(3) : In Clause (b) of Sub-section (1), the term "Court" means a civil, revenue or criminal court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a court for the purposes of this section."

8. Section 136 of the Income Tax Act read with Section 195 Cr. P.C therefore makes it clear that the proceeding for assessment of income tax before an income tax authority is deemed to be a proceeding before a civil court and will therefore attract the provisions of Section 195 Cr. P.C.

9. Section 471 I.P.C. provides for punishment for fraudulently or dishonestly using as genuine any document which the person using the same knows or has reason to believe to be a forged document. Obviously this Section of the Indian Penal Code has been included in the F.I.R. in view of the allegation contained therein that the petitioners used forged or fabricated documents in the proceeding before the income tax authority regarding assessment of income tax

payable by them. This Section 471 I.P.C. finds place in Section 195(1)(b)(ii) Cr. P.C. and therefore in view of Section 136, Income Tax Act read with Section 195 Cr. P.C. a prosecution for the said offence u/s 471 I.P.C. which has been included in the F.I.R. can be launched only on the basis of a written complaint of the concerned income tax authority or of some authority to which the former is subordinate. Such also is the case in respect of the offence u/s 468 I.P.C. which has been included in the F.I.R. inasmuch as Section 468 encompasses the offence described in Section 463 I.P.C. as mentioned in Section 195(1)(b)(ii) Cr. P.C. Section 468 I.P.C. provides for punishment for commission of forgery with the intention that the document forged shall be used for the purpose of cheating. Section 463 I.P.C. defines forgery. Evidently therefore an offence punishable u/s 468 is an offence described in Section 463. Since Section 195(1)(b)(ii) Cr. P.C. applies to "any offence described in Section 463 I.P.C, Section 468 I.P.C. which provides for punishment for commission of forgery with a particular intention, obviously comes within the ambit of Section 195(1)(b)(ii) Cr. P.C. as answering an offence described in Section 463 I.P.C. mentioned therein. (For supporting views see., Dr. S.L. Goswami Vs. The High Court of Madhya Pradesh at Jabalpur, ; Dina Nath Vs. Hansraj and Another, . Evidently therefore if an offence u/s 468 I.P.C. has been committed in respect of a document produced or given in evidence in any income tax proceeding before the income tax assessment authority the offender can be brought to book for that on the basis of a complaint by the appropriate income tax authority u/s 195(1)(b)(ii) Cr. P.C. and not through any separate police investigation at the instance of police.

10. In view of the discussions made above, it is evident that for any offence punishable u/s 277 or Section 278, Income Tax Act prosecution cannot be launched except with the previous sanction of the appropriate authority mentioned in Section 279 of the Income Tax Act. Obviously no complaint has been filed for the said offences against the petitioners with any such previous sanction and instead, the police or for that matter the CBI has suo motu recorded a F.I.R. and started investigation in respect of those offences by including therewith certain other offences punishable under the Indian Penal Code although the offences Under Sections 277 and 278 of the Income Tax Act are non-cognizable in view of the Section 279A of the said Act. Again, in respect of the offences punishable under the Indian Penal Code as mentioned in the F.I.R. the provisions of Section 195(1)(b) are directly attracted so far as Section 468, Section 471 and Section 120B (conspiracy) are concerned and therefore police investigation in respect of those offences in this case is a misdirected and unauthorised action on the part of the CBI in view of the provisions of the said Section 195 Cr. P.C. read with Section 136 of the Income Tax Act. For our consideration there now remains only Section 420 I.P.C. which has been included in the F.I.R. along with the other sections discussed earlier. Even if it is accepted that Section 420 I.P.C. is prima facie attracted in this case on the assumption that the petitioners committed the offence of cheating and thereby dishonestly induced the concerned income tax officer to issue Income Tax Assessment

Certificate, this is an offence which, in view of the allegations in the F.I.R., is closely linked up and associated with and is wholly based on the other offences alleged in the F.I.R. for which prosecution can be launched or initiated only at the instance of the appropriate income tax authorities and not at the instance of the police. Having regard to the objects of the different provisions of the Income Tax Act that in respect of the offences relating to evasion of Income tax it is the appropriate income tax authorities who are to initiate actions, to the exclusion of others, in the manner provided by law for the purpose, it will be an abuse of the process of law and will frustrate the very purpose of engrafting the different provisions of law as discussed above restricting the right to initiate prosecution in respect of offences under the Income Tax Act or relating to income tax assessment proceedings to certain authorities only, if the police is allowed to undertake suo motu, contrary to the provisions of law, investigation in respect of offences regarding the prosecution for which special provisions are there, simply by incorporating Section 420 I.P.C. in the F.I.R. where such offence is closely linked up and associated with and is wholly based on those very offences which in view of the special provisions of law the police is not empowered to investigate. The salutary provisions of Sections 279, 279A, 136 of the Income Tax Act and Section 195 of the Code of Criminal Procedure which the legislature in its wisdom thought it fit to enact for a wholesome purpose, will Mutually stand scrapped from the statute books if the police is granted the liberty to undertake an investigation suo molu in respect of the very same matters squarely coming within the purview of the said provisions of law, by simply super adding thereto a label of Section 420 I.P.C. I have no hesitation to hold that this is plainly not permissible for reasons elaborately discussed by me. It may be noted here that a view similar in tenor has also been taken by the Allahabad High Court in Vindhya Basini Prasad and Others Vs. State of U.P. and Another, In this connection, 1 would also refer to the decision of the Supreme Court in State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, where it has been held in paragraph-8 thereof that in cases where in the course of the same transaction an offence for which no complaint by a court is necessary u/s 195(1)(b) of the Code of Criminal Procedure and an offence for which a complaint of a court is necessary under that Sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in Section 195(1)(b) of the Code of Criminal Procedure should be upheld. The asid Supreme Court decision also thus pointedly lends support to my view regarding the non-maintainability of police investigation in the present case which I have recorded above.

11. The learned Advocate for the opposite party, CBI authorities has relied upon certain reported decisions which I discuss below. In Dhanalakshmi Vs. R. Prasanna Kumar and Others, it has been observed by the Supreme Court that in proceedings instituted on complaint exercise of the inherent power to quash the proceedings in called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. It has been observed by the

Supreme Court in the said decision that (in quashing the proceedings) the High Court was clearly in error in assessing the materials before it and concluding that the complaint cannot be proceeded with. It is needless to mention that the said decision has no application to the present case inasmuch as the present case has not been started on the basis of a complaint and the proceeding is not going to be -quashed on the ground that the allegations do not constitute any offence. The proceeding, on the other hand, in this case, is found liable to be quashed on the ground that the police have no authority to investigate the case in view of the specific provisions of law applicable to the matter. In *State of Bihar Vs. Raj Narain Singh*, the Supreme Court did not approve of quashing of the proceeding due to discrepancy appearing between the First Information Report and the statements of witnesses recorded during investigation. In the present case the proceeding is found liable to be quashed on grounds of law and not for reason of any discrepancy between the F.I.R. and statements of witnesses. The said decision is therefore not attracted to the present case. The decisions in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, ; *Kurukshetra University and Another Vs. State of Haryana and Another*, ; *Nagawwa v. Beeranna* AIR 1976 SC 1946 ; *Jehan Singh Vs. Delhi Administration*, do not apply to the facts of the present case because in none of those decisions it has been held that the High Court has no power to quash an investigation by the police even when it is found that the police, in the facts and circumstances of the particular case, have no power to investigate the same. On the other hand, in the decision in *Nagawwa v. Beeranna* (supra) one of the principles formulated by the Supreme Court for quashing a process against the accused in where the complaint suffers from fundamental legal defects such as, want of sanction or absence of a complaint by legally competent authority and the like. In the present case, as I have elaborately discussed, the police, in view of the specific provisions of law, are not entitled to investigate a case of this nature. If the petitioners have evaded proper assessment of income tax payable by them and if for doing so they have made false declarations and have forged and fabricated materials and used the same for hoodwinking the income tax authorities, in that, event the income tax authorities are themselves competent and required to take appropriate action in the matter under the provisions of law, not only for prosecuting the offender but also for re-assessment of income u/s 147 of the Income Tax Act. But the income tax authorities have not considered it necessary to do anything of the sort in this matter at any rate there is no report of any such action on the part of the income tax authorities. Be that as it may, the investigation in the matter by the police or the CBI being distinctly unauthorised in law, it is incumbent upon this court to quash the same in exercise of its inherent power.

12. The learned Advocate for the petitioners argued that Section 277 of the Income Tax Act applies, in view of the language used therein, "where the amount of tax, which would have been evaded if the statement or account had been accepted as true" and therefore the said Section has no application where the assessment has already been made on the basis of the accounts or statements

stated to be false. This argument I must say is fallacious. Section 277, on its own term, is attracted as soon as a person makes a false statement in any verification under the Income Tax Act or under any rule made thereunder or delivers an account or statement which is false to his knowledge or belief and which if accepted would lead to an evasion of income tax. This does not mean that this Section is no more attracted where the return submitted on false verification or false account or statement has successfully led to evasion of tax by its acceptance by the income tax authorities. The offence is complete as soon as it is committed by filing the culpable verification, account or statement and the offender incurs the liability to be prosecuted at that point of time and obviously subsequent culmination of the process in successful evasion of tax is entirely irrelevant for the purpose of considering whether Section 277 of the Income Tax Act is attracted in the facts and circumstances of a case, far less will such culmination in successful evasion of tax exonerate the offender from the offence he committed u/s 277 at the time of submitting the culpable statement or account. Such interpretation is also applicable *mutatis mutandis* to Section 278 of the Income Tax Act. This aspect of the matter however has no impact here where the police investigation is found to be bad in law.

The learned Advocate for the petitioners also argued several other aspects of the matter including the merit of the allegations made in the F.I.R., particularly in the background of the decision of the Sikkim High Court. Since I find that the F.I.R. and the investigation are not tenable in law and are therefore liable to be quashed, I do not enter into the merit of the other points raised by the learned Advocate for the petitioners nor do I express any opinion about the merit of the factual aspects of the allegations made in the F.I.R. The revisional application is allowed and the F.I.R. in RC/9/ SCB/89 and the proceedings started thereon are hereby quashed. Since similar points are involved in Criminal Revision No. 909 of 1991, this order will also govern the said Criminal Revision No. 909 of 1991.