

(1998) 12 MAD CK 0070

In the Madras High Court

Case No : Criminal Appeal No's. 299 of 1987 and 76 of 1990

Income Tax Officer and Another

APPELLANT

Vs

J. Chitra and Others

RESPONDENT

Date of Decision : 22-12-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 45

Income Tax Act, 1961 — Section 136, 139(2), 148, 230A, 276C

Penal Code, 1860 (IPC) — Section 120B, 193, 196, 420

Citation : (2000) 158 CTR 135 : (2001) 247 ITR 497

Hon'ble Judges : A. Raman, J

Bench : Single Bench

Advocate : T. Sivananthan, for the Appellant; K.A. Panchapagesan, for the Respondent

Judgement

A. Raman, J.—The Income Tax Officer, City Circle IV(II), filed a complaint before the Additional Chief Metropolitan Magistrate, against

Tmt. Chitra, Thiru R. Janardhanam and Thiru Chinni Mohan Rao as the accused, alleging that they have committed offences punishable under

Sections 120B, 193, 196 and 420 of the Indian Penal Code, and Sections 276C(1), 277 and 278 of the Income Tax Act, 1961.

2. The gist of the complaint is as follows :

For the sale of property comprised in Door No- 35, Annal Pillai Street, Madras-1, the first accused made a false verification-cum-declaration in

Form No. 34A while applying for Section 230A certificate. The second accused who is the husband of A1, is the joint executant of the document

regarding the sale of the said property. The third accused is an Income Tax practitioner. He filled up the particulars in the clearance certificate

before submitting to the issuing authority, presented the same before the Income Tax Officer, collected back the certificate and got the sale deed

registered, himself being a witness for the same and thereby abetted A1 and A2 in the commission of the said offence.

3. On behalf of the complainant four witnesses were examined as P. Ws. Nos. 1 to 4 and exhibits P-1 to P-22 were marked. The accused had

examined four witnesses as D. Ws. 1 to 4 and exhibits D-1 to D-4 were marked on their side. The learned Additional Chief Metropolitan

Magistrate, E. O. II, Egmore, Chennai, after trial, acquitted accused Nos. 1 and 2, but found the third accused guilty u/s 278 of the Income Tax

Act under two counts and sentenced the third accused to undergo rigorous imprisonment for six months under each count and to pay a fine of Rs.

500. Aggrieved by the order of acquittal passed by the Additional Chief Metropolitan Magistrate in E. O. C. C. No. 571 of 1986, dated

December 23, 1986, acquitting accused Nos. 1 and 2, the complainant has preferred the appeal in C. A. No. 299 of 1987.

4. In the meanwhile the third accused who was found guilty by the Additional Chief Metropolitan Magistrate, preferred an appeal against the

conviction and sentence imposed on him, to the Court of Sessions in C. A. No. 1 of 1987. The learned Principal Sessions Judge, City Civil Court,

Chennai, accepted the appeal preferred by the third accused and acquitted him, setting aside the conviction and sentence passed by the Additional

Chief Metropolitan Magistrate, E. O. II. Therefore, the Department has preferred the appeal in C. A. No. 76 of 1990, challenging the acquittal

order passed by the Principal Sessions Judge, in C. A. No. 1 of 1987, whereby he acquitted the third accused.

5. The above two appeals were taken up together. Though a counsel from among the panel of lawyers suggested by the Legal Aid Committee was

appointed to represent the respondents in C. A. No. 229 of 1987, there was no appearance on behalf of the respondents, even though the hearing

of these appeals went on for a number of days. Thiru K. A. Panchapagesan, learned counsel for the respondents in C. A. No. 76 of 1990, was

alone present. The arguments of learned counsel for the Department, the appellant, Thiru T. Sivanathan and the argument of learned counsel for the

respondent in C. A. No. 76 of 1990. Thiru K. A. Panchapagesan, were heard. A common order is passed hereby in the above two appeals as

under.

6. The common point for determination is (i) Whether the order of acquittal of accused Nos. 1 and 2 by the trial court is liable to be set aside (ii)

Whether the order of acquittal passed by the lower appellate court, acquitting the third accused, is liable to be set aside ?

7. The point: The first accused is the wife of the second accused. The first accused was the owner of a house property comprised in Door No. 35,

Anna Pillai Street, Chennai-1. She sold the same on July 31, 1981, after obtaining the clearance certificate u/s 230A of the Income Tax Act. The

second accused is the joint executant of the sale deed. The third accused is the Income Tax practitioner, who allegedly filled up those particulars in

the clearance certificate, before submitting it to the issuing authority and helped in the registration of the document of sale. The property was

acquired by the first accused in a partition. Section 230A of the Income Tax Act provides that whoever transfers a property exceeding a value of

Rs. 50,000 he must obtain a clearance certificate in Form No. 34A from the Income Tax Officer and produce the same along with the document

to be registered. The first accused presented an application for the grant of certificate u/s 230A, on July 31, 1981, to the Income Tax Officer, City

Circle-III(10), Madras-6. In the application; she has given her address at No. 15, Adiyappa Naicken Street, Madras. The same address was

given as regards the second accused, her husband. The Income Tax Officer issued the certificate, believing the declaration to be true and the

certificate was collected by the third accused. The third accused figured as a witness to the registration of the document which was registered on

July 31, 1981, by the Joint Sub-Registrar, No. III, Madras (North). An investigation revealed that accused Nos. 1 and 2 never resided at Door

No. 15, Adiyappa Naicken Street, and they were residing only in Old No. 15, New No. 45, Strotten Muthiah Mudali Street, Chennai-1. But, in

the document, that was registered on the same day, the first accused has given her address as No. 45, Strotten Muthiah Mudali Street, Chennai-1,

whereas in Form No. 34A as well as in the draft sale deed, the address given was No. 15, Adiyappa Naicken Street, Chennai. The first accused

has stated that she handed over a signed blank application form for Income Tax clearance certificate to the third accused, and the third accused

filled up that form. Only the Income Tax Officer having jurisdiction over the permanent residence of the vendor can take action for collecting the Income Tax on capital gains.

8. The prosecution case is that it is with a view to evade Income Tax on capital gains leviable u/s 45 of the Income Tax Act, 1961, purpose of a wrong address has been given as the notice u/s 139(2) has to be issued to the correct address of the declarant, for the assessment year 1982-83 relevant for the previous year ended on March 31, 1982. To defraud the exchequer of its legitimate revenue and to mislead and deceive the Income Tax Officer, the accused in furtherance of common intention, committed offences punishable u/s 120B, read with Sections 193, 196 and 420 of the Indian Penal Code, and Sections 276C, 277 and 278 of the Income Tax Act, 1961. The case is that the accused have conspired to fabricate false evidence and to deceive the Income Tax Officer, and fraudulently and dishonestly induced him to deliver Form No. 34A clearance certificate u/s 230A of the Income Tax Act, by citing a different and false address, which enabled the first accused to wilfully evade capital gains tax chargeable or imposable u/s 45 of the Income Tax Act. In pursuance of the said conspiracy, the accused have fabricated false address in Form No. 34A and intentionally gave false evidence in the judicial proceedings and thus they are guilty u/s 193 of the Indian Penal Code read with Section 136 of the Income Tax Act. The accused corruptly used as true or genuine address in the form of false address in Form No. 34A and the accompanying draft sale deed, knowing it to be false or fabricated. All the accused have conspired and have cheated and thereby dishonestly induced the Income Tax Officer to deliver Form No. 34A which is valuable security by submitting Form No. 34A containing false address, they have caused circumstances to exist which have the effect of enabling her to evade capital gains tax leviable for the assessment year 1982-83. The first accused made a statement in the verification in the Form No. 34A, in pursuance of the said conspiracy. The second accused in the course of the transaction, delivered Form No. 34A containing false statements about the address and the third accused abetted or induced the first and second accused to deliver the statement and the declaration in Form No. 34A and thereby helped accused Nos. 1 and 2 to evade tax.

9. The first charge framed against accused Nos. 1 to 3 is u/s 120B of the Indian Penal Code. Charge Nos. 2 to 6 are against the first accused

under Sections 193, 196, 420 of the Indian Penal Code, and Sections 276C(1), 277 of the Income Tax Act. Charge Nos. 7 to 11 are against the

second accused for offences under Sections 278, 193, 196, 420 of the Indian Penal Code, and Section 277 of the Income Tax Act. The twelfth

and thirteenth charges are framed against the third accused for the offences punishable u/s 278 of the Income Tax Act under two counts.

10. The trial court acquitted all the accused of the charge, viz., accused Nos. 1 to 3 u/s 120B of the Indian Penal Code. The third accused

preferred an appeal to the Court of Sessions in C. A. No. 1 of 1987. As regards the acquittal of the third accused u/s 120B, no appeal was

preferred by the Department. Therefore, the position is that though as against the acquittal of accused Nos. 1 and 2 there is an appeal, as against

the acquittal of all the accused u/s 120B there is no challenge. Then the third accused challenged his conviction, the Department did not choose to

prefer an appeal against the acquittal of the third accused u/s 120B. The lower appellate court in Criminal Appeal No. 1 of 1987, set aside the

conviction of the third accused u/s 278 of the Income Tax Act, which is challenged by the Department in Criminal Appeal No. 76 of 1990.

Therefore, as regards the acquittal of the third accused for the offence u/s 120B, there is no challenge at all. In such circumstances, one has to hold

that the Department having failed to question the acquittal of the third accused for an offence u/s 120B and when that acquittal was more or less

confirmed by the lower appellate court, the Department cannot now be heard to attack the finding of the lower appellate court as regards the

acquittal of the charge u/s 120B. That finding has remained unchallenged, though the Department had an opportunity to canvass the correctness of

the finding when the third accused preferred an appeal against the conviction. The Department having failed to do so, cannot now, by filing appeal

against the acquittal of the third accused by the lower appellate court, hope to have the matter at large again as the said finding has remained

untouched without any challenge by the Department.

11. I will first take up for consideration, the case of the third accused. The third accused is an Income Tax practitioner. The charge against the third

accused is u/s 120B of the Indian Penal Code and Section 278 of the Income Tax Act. As regards Section 120B, as already pointed out that the

trial court acquitted the accused of the charge u/s 120B and no appeal was preferred by the Department questioning the said finding and the

consequent acquittal of the accused for the offence u/s 120B. Therefore, as the finding of acquittal of the charge u/s 120B has not been challenged,

it follows that neither the third accused nor accused Nos. 1 and 2 can be held guilty of the offence u/s 120B.

12. As regards the allegation against the third accused for the alleged offence u/s 278 of the Income Tax Act, it is necessary to refer to the

complaint. The allegation in para. 3 is that the third accused who is an Income Tax practitioner filled up false particulars in the clearance certificate.

It is further stated that in her letter dated September 6, 1985, the first accused has stated that she handed over a signed blank application form of

Income Tax clearance to the third accused and it is the third accused, who filled up that form. In paragraph 15, it is stated that in pursuance of the

above conspiracy, the third accused abetted accused Nos. 1 and 2 to deliver the statement and declaration in Form No. 34A, dated July 31,

1981, containing false address of the first accused and helped her to evade capital gains tax for the assessment year 1982-83 and as such he has

committed the offence punishable u/s 278 of the Income Tax Act.

13. It is not in controversy that accused Nos. 1 and 2 were not Income Tax assessees. The allegation in the complaint is that the first accused has

given the statement that she handed over the blank form with her signature and the particulars were filled up by the third accused. Thus, it is a

statement made by the co-accused. A statement given by a co-accused cannot be treated as substantial evidence against the other accused nor

can it form the basis of conviction. Therefore, even assuming that the first accused has given such a statement, merely on the basis of the same, it

cannot be put forward by the Department that the case against the third accused is made out. Here we have to find out whether there is any

material at all to show that those particulars, viz., particulars concerning the false address found in the application were furnished by the third

accused.

14. P.W. 1 has categorically stated in the course of cross-examination that he

cannot say whether the contents of exhibit P-1 application form were written by A-1 or any other person. He also admitted that the draft sale deed exhibit P-2 did not contain the signature of the vendor. He has further stated categorically that he cannot say as to who filled up exhibit P-6 including the address therein. It has been further clarified that he cannot say whether A-1 signed exhibits P-1 and P-2 signed exhibit P-6 in blank and handed over them to A-3. He further admitted that the question of his being misled by exhibits P-1 and P-6 about the tax liability at the time of issue of P-4 and P-9 did not arise. He further stated that he is not personally aware whether exhibits P-1 and P-6 were filled in by the third accused in the office. P.W. 2 has nothing to say about this aspect. He only speaks to the enquiry made by him of A-1 and A-2. He further admitted that he came to understand on enquiry that A-1 and A-2 are literate and can read and write. He admits that he did not ask A-1 and A-2 by showing the handwriting in P-1 and P-6 whether they can identify the same. He further stated that he did not ascertain from A-1 and A-2 whether they had given any instruction to A-3 to fill up the particulars. P.W. 3, who is said to be familiar with the signature of A-5 would admit in the course of cross-examination that he cannot say whether the writing in exhibits P-1 and P-6 is that of A-3 and that he has no personal knowledge that exhibits P-2 and P-7 were drafted by A-3. P. W. 4 has been asked to speak to the laying of the complaint. He could not throw any light on this aspect, for he has admittedly stated that he is not familiar with the handwriting or signature of A-3 either in English or any other language, and that he did not see exhibits P-1 and P-6. He further admitted that he does not know as to who drafted the sale deed. When A-1 was examined u/s 313 of the Criminal Procedure Code of course she has only stated that she signed the form and that she did not give the address particulars. P. W. 2, the auditor would say that accused Nos. 1 and 2 did not tell them that the work of filing the return of income for 1982-83 was entrusted to A-3. It is stated by him that exhibit P-21 was signed by A-1 on June 16 and it was duly filled up by one of the staff. Thus, the materials placed on record are not sufficient to come to any conclusion that the address particulars were filled up by the third accused. It is also to be pointed out that no step was taken by the Department to have the

handwriting examined by an expert, nor the procedure laid down in Section 45 of the Evidence Act has been complied with in this case. Therefore,

on the basis of the materials placed, it is difficult to come to a conclusion that the address particulars were filled up by the third accused or that he

abetted the commission of offence.

15. As I have already pointed out and as laid down by the apex court, merely on the basis of the statement of a co-accused, it is not possible to

hold that the allegation against the third accused has been proved satisfactorily. There must be sufficient materials in the shape of oral and

documentary evidence to sustain the case of the prosecution. None of the witnesses examined on the side of the prosecution has stated that the

address particulars contained in the application Forms P-1 and P-6 were filled up by A-3. Merely because the third accused is an Income Tax

practitioner, we cannot presume that accused Nos. 1 and 2 approached him for his services and, therefore, he must have filled up the same. Even

assuming that the application for grant of clearance certificate was presented by the third accused for and on behalf of the first and second

accused, from that single circumstance, it cannot be inferred that the other particulars contained therein were all filled up only by the third accused.

To establish the hypothesis of guilt and to rule out any other conclusion, the circumstantial evidence adduced must be such that every possibility of

hypothesis should be unbroken. But, in this case, there is no circumstantial evidence as well. As rightly pointed out by learned counsel for the

appellant, it is not the suggestion or case of the prosecution that it is A-3, who prepared or filled up the address particulars in P-2 as well.

Therefore, mere suspicion cannot take the place of proof.

16. Learned counsel for the Department referred to the provisions in the Income Tax Act which relate to presumption as to culpable state of mind.

The relevant Section in Section 278E, which reads as follows :

In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the

existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act

charged as an offence in that prosecution.

The Explanation says that "culpable mental state" includes intention, motive or

knowledge of a fact, or belief in, or reason to believe, a fact.

It further clarifies that "a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its

existence is established by a preponderance of probability.

17. Therefore, on the basis of Section 278E of the Income Tax Act, learned counsel for the Department would urge that the third accused being an

Income Tax practitioner has been approached by accused Nos. 1 and 2 to submit the application, seeking Income Tax clearance certificate, and

when there is evidence to show that the same was presented by the third accused on behalf of accused Nos. 1 and 2 and when the address

particulars contained therein as on the face of it are false, the culpable state of mind has to be presumed, more so when the third accused is said to

be residing in the opposite house of accused Nos. 1 and 2.

18. In my opinion, this contention rather stretches too far the presumption. The third accused was only a professional. Assuming that accused Nos.

1 and 2 approached him for obtaining the Income Tax clearance certificate and the application was presented by the third accused, from that one

cannot draw an inference that any false particulars contained in that application were made with the knowledge of the Income Tax practitioner, or

with his consent or on his direction. Here as pointed out already, as to who presented the application, there is no definite material. The address

particulars have not been subjected to any examination by any expert. The prosecution's witnesses would say that they did not know as to who

filled these particulars. The statement given by one of the co-accused that it is the third accused, who filled up the particulars can never be taken as

evidence or basis to build up the prosecution case. In such circumstances, it is not a case where Section 278 can be held to be attracted. Even

otherwise as indicated in the very Section, this is not a case where the court can presume the existence of such mental state for the reasons

indicated already. Only, if there is necessary evidentiary basis, the presumption would come into play. Here, there is no evidence to show that the

address particulars were filled up by the third accused. Nor is it stated that he was aware of such a false particular being furnished and in spite of

the same, he presented the application before the Income Tax authority. Hence, the argument based upon Section 278 of the Act is not available

to the Department. Hence, it follows that the judgment of the lower appellate court, acquitting the third accused is proper and it cannot be interfered with.

19. It has to be now seen whether the acquittal of accused Nos. 1 and 2 by the trial court is in order. As regards the second accused, admittedly,

the second accused is not and was not the owner of the property relating to which the application u/s 230A of the Income Tax Act, was filed. He

figured just as a joint executant of the sale deed, perhaps it was entitled upon the vendor. The evidence adduced by the Department is to the effect

that he had nothing to do with the property. Therefore, it cannot be stated that the second accused had some interest in the property and with a

view to avoid tax imposable or leviabale with reference to the property he has made a false statement. The order granting a certificate u/s 230A will

only to go to the benefit of the person, who owns the property. Where a person owns the property and purports to transfer, assign, limit, or

extinguish the right, title or interest of any person to or in any property valued at more than Rs. 2 lakhs (Rs. 50,000 old) on the date of the sale

deed, Section 230A requires that such a document shall not be registered by the registering authority unless the Assessing Officer concerned

certifies as specified u/s 230A of the Income Tax Act. Assuming that a false particular regarding the address is given, it can only be stated that such

a false particular was furnished by the owner of the property with a view to enable her to obtain a certificate u/s 230A of the Act, but a person

who has no legal interest, claim or title over the said property by mere reason of his being made a party to a document, cannot be held to have

committed an offence as alleged by the Department. He was not concerned with the property, if he gives the correct address, equally it can be

stated that as he is not the owner of the property he has given the false statement. It is not the case here that the second accused has given a

declaration that he is the owner of the property. Therefore, strictly speaking, I am of the view that the offence as alleged against the second

accused cannot be held to have been proved, for he is not the owner of the property. Any address particulars given by him whether correct or

incorrect cannot make him liable because he is not the beneficiary in the order passed by the Income Tax authority u/s 230A.

20. Even otherwise, one has to see whether it can be stated that the offences as against accused Nos. 1 and 2 have been made out. It is the admitted case of the Department that accused Nos. 1 and 2 were not assesseees of Income Tax. It is not the case that they were Income Tax assesseees and they had suppressed the facts and applied for a clearance certificate on the ground that they are Income Tax assesseees. Further, it is also not in dispute that when normally a person, who is not an Income Tax assessee, makes a request u/s 230A for grant of a certificate enabling him to dispose of a property of value more than Rs. 50,000, he will be entitled to the same. It is also not the case that this no-objection certificate or the certificate as contemplated u/s 230A can be granted only by a particular Income Tax authority. P4 is the certificate issued in this case by the Tenth Income Tax Officer, City Circle III. The allegation is that in the draft sale deed, accused Nos. 1 and 2 declared their address as No. 15, Adiyappan Naicken Street, Madras, and the Income Tax Officer issued the certificate believing the declaration to be true. According to the complainant, the investigation revealed that accused Nos. 1 and 2 never resided in No. 15, Adiyappan Naicken Street, Madras, and on the date of submitting the application they were residing only at Old No. 15, New No. 45, Strotten Muthiah Mudali Street, Chennai-1. The allegation is that such a false address has been given with a view to evade Income Tax on capital gains. The address that has been given, viz., No. 15, Adiyappan Naicken Street, Chennai-1, falls under the jurisdiction of the Income Tax Officer, City Circle III, Chennai-6. If the address is No. 15, Strotten Muthiah Mudali Street, the same would fall under the jurisdiction of a different Income Tax Officer. But state that would normally entitled title certificate (sic). But, even if the said address falls under the jurisdiction of a different Income Tax Officer, it is not known how by giving a different address, the Income Tax can be evaded. Normally, accused Nos. 1 and 2 are entitled to Income Tax clearance certificate u/s 230A of the Act, whether it is the Income Tax Officer, City Circle III(10), the officer, or some other Income Tax Officer having jurisdiction over another city circle. It is not as though only that the Income Tax Officer, viz., City Circle III(10), alone is eligible or entitled to issue the certificate. Therefore, it is not known how the giving of a different address will lead to any inference that an attempt to evade tax imposable has been made by

accused Nos. 1 and 2. Accused Nos. 1 and 2 were not Income Tax assesseees on the date when they made a request by filing an application u/s

230A of the Income Tax Act. Therefore, this aspect of the case, the Department, has not properly explained. The complaint is to the effect that

such a false address has been given with a view to evade Income Tax on capital gains. It is stated that only the Income Tax Officer having

jurisdiction over the permanent address of the vendor can take action for collecting Income Tax on capital gains. The prosecution has not

produced any rules to show that it is so.

21. The Income Tax Officer, City Circle III(10), who has granted this certificate is entitled to proceed against and levy capital gains. If the address

is No. 15, Adiyappa Naicken Street, according to them, it is only that officer-in-charge of that circle alone who can initiate action. It seems to the

prosecution case that it is only the address that counts for the purpose of reckoning tax and not the transaction. For the evidence of P. W. 1 does

not throw any light on this aspect. On the other hand, his evidence is destructive of the prosecution case. P. W. 1 who was the Income Tax

Officer, City Circle III(10), on the date of issuance of the clearance certificate has not stated that he had no jurisdiction to initiate action for levying

tax on capital gains or that it is only the officer having control and jurisdiction over No. 15, Strotten Muthiah Mudali Street, who has the

jurisdiction. P. W. 2 states that accused Nos. 1 and 2 did not file Income Tax return for the assessment year 1982-83 disclosing capital gains on

the sale of the property. If that is the ground, then they have to be proceeded against under the relevant provisions of the Income Tax Act. Giving

of a different address does not arise or matter in such case. Further, P. W. 1 has stated that capital gains will arise in the assessment year and

assessment of the same will come up in the next year. Therefore, the liability to pay tax will arise only in the next year after the transaction. Here,

the draft sale deed is dated July 31, 1981, and in July or August, the same has been registered. So, the assessment year in this case will be 1981-

82 and the assessment of the same will come up only in 1982-83.

22. According to P.W. 1, accused Nos. 1 and 2 did not file Income Tax returns for the assessment year 1982-83 disclosing income on capital

gains. The liability to disclose and pay the Income Tax on capital gains would

arise only for the assessment year 1982-83. The specific evidence of P. Ws. 1 and 2 is that accused Nos. 1 and 2 failed to file the return disclosing the income from capital gains on the sale of the property made in July, 1981. Therefore, if any action is to be taken against accused Nos. 1 and 2, the foundation and the basis for the same should be on the ground that they did not file the return and disclose the income on capital gains for the year 1982-83 when they should have done so. But, the charge is not that. The main charge is that they have given a false address. According to P. W. 1, the falsity is only with regard to P-2. There is no other falsity. It is also to be pointed out that P. W. 4 has admitted that A1 filed the return of income for the assessment year 1982-83 on June 23, 1986, and that she declared capital gains on the sale of the property at No. 35, Anna Pillai Street, Madras-1, at Rs. 74,000 and the return was accompanied by a statement under exhibit P-22 and but for the issuance of notice u/s 148 which was issued on March 22, 1986, the liability to pay the tax on capital gains would have escaped assessment. Apparently, this complaint has been filed only after the same. It has been presented into court on August 13, 1986. But, when they filed this complaint, the Department did not choose to allege that the first accused failed to pay the tax payable on capital gains on the sale of the property in July, 1981, and as such she is liable to be proceeded against u/s 276C. On the other hand, they have chosen to file the complaint as though the accused are guilty of the offence of having given a false address. Neither in the oral evidence adduced by the Department nor by the production of rules under the Income Tax Act, has it been shown that the Department was prohibited from taking any steps immediately on account of the giving of false address or that it is only the concerned officer, who has jurisdiction who can take steps under the provisions of the Act. On the other hand, P.W. 4 who is the Income Tax Officer, City Circle IV(ii), has stated that he issued notice u/s 148 of the Act later and made assessment. Therefore, the argument that the Income Tax Officer, City Circle III(10), Chennai, alone is competent to take action, is belied by the action of P.W. 4. I do not think that there is any provision in the Act which prohibits the authorities concerned to initiate action in such circumstances. Therefore, the very basis of the case against accused Nos. 1 and 2 is quite shaky.

23. If at all the first accused can alone be proceeded against for having omitted to submit Income Tax return and for having omitted to disclose the income realised by way of capital gains, and thus having failed to pay the tax leviable, the first accused is deemed to have committed an offence punishable under the provisions of the Income Tax Act. But, even then, the complaint against the first accused is not on that ground. It is also necessary to point out in this case that according to P. W. 4, subsequently a return has been filed, a tax assessment has been made and the tax has been collected. In such circumstance, there does not survive anything on the date when the complaint was filed, for the very case of the complainant is that the Income Tax Officer having jurisdiction alone can collect tax on capital gains. But, when the case was presented, it was not on this ground and such evidence has not been produced before the court. Further, even assuming that it is so, the date when the complaint was laid was only in August, 1986. Already, an Income Tax return has been filed by the first accused and the assessment has been made and, therefore, the allegation that the Income Tax Officer having jurisdiction could not take action for collection of tax becomes irrelevant. Equally, the allegation that to avoid Income Tax on capital gains, the accused colluded and conspired shall stand negatived.

24. Therefore, I am of the view that the complaint laid is not maintainable and on the basis of the evidence adduced before the court, it cannot be held that accused Nos. 1 and 2 are guilty under any provisions of the Income Tax Act. On the date of complaint, there was no material to accuse the appellants of having committed any offence by giving false address particulars for the allegation is that with a view to avoid capital gains such a false address was given. But on the date when the complaint was filed, already the return of income for the year 1982-83 has been submitted and the assessment has been made by the officer concerned. Further, even according to P.W. 1, the question of payment of capital gains will arise only in the next year. Therefore, the liability to pay the Income Tax would arise only in the next assessment year 1982-83 and, therefore, if any false address is given in the year 1981, it cannot be said to have given a cause of action to proceed against the accused under the provisions of the Income Tax Act. In this view of the matter, it has to be held that the offence as against accused Nos. 1 and 2 cannot be held to have been made

out. Though I do not agree with the reasons given by the Additional Chief Metropolitan Magistrate, E. O. II, for acquitting accused Nos. 1 and 2,

in view of the discussion made in this judgment, it follows that the order of acquittal has to be confirmed, though for different reasons.

25. In this result, these two criminal appeals are dismissed, confirming the order of acquittal of accused Nos. 1 to 3.