

(1989) 04 SHI CK 0017

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No's. 115, 116 and 117 of 1985

Income Tax Officer and Another

APPELLANT

Vs

M/s. Siri Niwas Om Parkash and Others

RESPONDENT

Date of Decision : 03-04-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 249, 256, 468

Income Tax Act, 1922 — Section 52

Income Tax Act, 1961 — Section 227

Citation : (1989) 1 ILR HP 179

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bhawani Singh, J.—These three criminal appeals - Criminal Appeal No. 115 of 1985 (Income Tax Officer, Mandi, and Anr. v. Mis Siri Niwas Om Parkash and Ors.), Criminal Appeal No. 116 of 1985 (Income Tax Officer, Mandi, and Anr. v. Mis Siri Niwas Om Parkash and Ors.) and Criminal Appeal No. 117 of 1985 (Income Tax Officer, Mandi, and Anr. v. Siri Niwas Om Parkash and Ors.) - arise out on the order of learned Chief Judicial Tv agistrate, Kullu. These are being decided by this common judgment as there is no substantial difference between them so far as the accused and basis to file the min this Court are concerned. However, for the facility of reference, broad facts of all of them are useful.

2. The matter against the accused pertains to three assessment years, namely, 1961-62, 1962-63 and 1963-64 and the pro- sedition is u/s 52 of the Income Tax Act, 1922 relating to 1961-62 assessment year and u/s 277 of the Income Tax Act, 1961 qua 1962-63 and 1963-64 assessment years. The verification of the returns filed by the accused in all these three cases has been done on 20-10-1961, 15-10-1962, and 30-10-1963.

3. Shri Inder Singh, learned Counsel for the Appellants, has submitted that the order of the trial court is bad and deserves to be set aside. To support this

submission, it is submitted that the Judicial Magistrate should have taken Judicial notice of the circumstances with regard to law and order situation prevailing in Northern India at that time and particular reference, in this connection is made to Delhi, Haryana, Punjab and Hierarchal Pradesh. In view of the same, the learned Counsel submits, the Trial court should have granted an adjournment in this case without insisting for the appearance of Appellant No. 2. A reference to a telegram and a letter to the Court, seeking adjournment, have also been made. Besides, it is contended that the conclusion of the trial court that no interest in the prosecution of the case was being shown is not justified because the complaint has been filed by a public servant duly authorized to do so.

4. I am not convinced with these submissions of the learned counsel for the Appellants. The matter pertains to assessment years 1961-62, 1962-63 and 1963-64 and filed in the Court on 26-3-1977. It was dismissed by the learned Chief Judicial Magistrate, Kullu, on 15th September, 1978 u/s 468 of the Code of Criminal Procedure. The matter came before this Court in Criminal Appeals Nos. 90, 91 and 92 of 1978 and after the same was allowed on April 24, 1984 by this Court, the Proceedings got revived with effect from 15-5-1984. Perusal of the case file reveals that whether before 15-5-1984 or afterwards, the matter has not moved and it appears, adjournments have taken place on one ground or the other. Without referring to them in detail, it is enough to find that on 27-10-1984, the complainant was present with Shri Anil Mehra, Advocate, but time was prayed due to the inability of Shri R.L. Garg, Public Prosecutor, In charge of the case to conduct this case due to the sudden death of his father. On this date, last chance was granted in view of the special circumstances-death of the father of the Public Prosecutor-and the last chance means the last chance meaning thereby that no other chance for seeking adjournment could be granted. But on 26-11-1984, to which date this case was postponed, the complainant whose evidence was to be recorded, was absent.

5. In view of the circumstances as above, the learned Chief Judicial Magistrate, rejected the prayer of the complainant made through an application for the adjournment sought on the ground of disturbances in Northern India. In my opinion, the learned Chief Judicial Magistrate was perfectly justified in rejecting such a prayer. There were, in fact, no such disturbances as claimed and asserted by the complainant. There was no difficulty of movement or any apprehension of personal danger. Things were moving safely, smoothly and law and order was posing no problem in any of these States. The complainant appears to have presumed the situation well before 26-11-1984 as the telegram as well as the letter had been sent on 14-11-1984. It being very old case pending since March, 1977, the trial Judge was justified in taking this fact as well into consideration while dismissing the complaint in the absence of the complainant whose statement was to be recorded in this case.

6. The effort of the learned Counsel for the Appellants to explain the delay on the ground of the matter having once come to this Court, does not in any way affect

the age of the case. It may throw sorry light on the sincerity of the complainant only.

7. In view of the above circumstances, I hold that looking to the over-all facts and circumstances of this case, the order of the learned Chief Judicial Magistrate is justified and I confirm the same.

8. Shri Inder Singh has assailed the order on the ground that the accused could be discharged and not acquitted, as has been done by the learned trial judge. Perusal of the Criminal Appeals indicates that no such plea has been taken to challenge the order on this ground. Although such a plea cannot be allowed to be raised for the first time, however, I examine the same with this observation that my conclusions on the first part of the case already arrived at will not in any way be affected by this, examination and conclusions thereon.

9. The submissive on advanced is that the case being a warrant case, only order of discharge could be passed by" the trial judge u/s 249 of the Code of Criminal Procedure in case of the absence of the complainant. The order of acquittal, the learned Counsel contends, is beyond the scope of Section 249 of the Code of Criminal Procedure and is, therefore, liable to be set aside and case remanded back for retrial. This argument also does not in any way impress me. As already observed above, the various dates on which the returns by the accused were filed are 28-11-1963 and up to 1-4-1964, the punishment prescribed was six months and, therefore, it fell within the definition of "summons case" with the result that the provisions of Section 256 of the Code of Criminal Procedure under Chapter-XX became applicable and the order which could be passed in the. Absence of the complainant was that of acquittal and not of discharge. The order of discharge could be passed only if the provisions of Chapter-XIX were applicable and the case fell under the definition of "warrant cases. The submission of the learned Counsel that even if it is held that the punishment was six months, the Code of Criminal Procedure being a procedural law, therefore, it is contended that the provisions of the Code of Criminal Procedure, 1973 should have been made applicable for the trial of this case. There is no substance in this argument. As already held, the substantive law, the Income Tax Act, 1922 as well as the income Tax Act, 1961, as relevant to the present case, prescribed the punishment for offences u/s 52 (under the 1922 Act) and u/s 277 (under the 1961 Act) only to the extent of six months, the case could not be treated as a "warrant case" and this does not pertain to the procedural aspect of the matter. New Code makes no difference. Alternatively, it touches a very valuable right of the accused as under the procedure prescribed for the trial of summons cases, the result is acquittal-security from future initiation of case on the same facts- and under the New Code when tried as a "warrant case", no such benefit is available in case of discharge. Besides other conclusions, one can be retried or a fresh complaint can be filed against the accused.

10. Last of all, after considering all the aspects of the case, there is no substance in the appeals and I proceed to dismiss the same and the same are accordingly

dismissed.