(1989) 07 AP CK 0007

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 27 of 1989

Income Tax Officer APPELLANT

Vs

Abdul Razack RESPONDENT

Date of Decision : 06-07-1989

Acts Referred:

Constitution of India, 1950 — Article 136
Criminal Procedure Code, 1973 (CrPC) — Section 245(2), 482
Income Tax Act, 1961 — Section 116, 132, 132(1), 132(11), 132(12)
Penal Code, 1860 (IPC) — Section 120B, 193, 196, 420, 511

Citation : (1989) 47 TAXMAN 141

Hon'ble Judges : Bhaskar Rao, J

Bench : Single Bench

Advocate : N.V.S.R. Gopalkrishnamacharyulu, for the Appellant; Habib Ansari, for the Respondent

Judgement

Bhaskar Rao, J.—This revision case is filed against the judgment of the Special Judge for Economic Offences, Hyderabad in Crl. Misc. Petition No. 2425 of 1987 in Civil Case No. 94 of 1987 dated 1-2-1988 dismissing the complaint filed by the petitioner herein and discharging the respondents-accused 1 to 3 u/s 245(2) of the Code of Criminal Procedure, 1898. The facts of the case are that A-1 is the assessee, A-2 is the wife of A-l and A-3 is their relative. On 26-9-1986 at 11 a.m., a search was conducted in the house of A-l by the income tax authorities. In the course of search, they seized a cash of Rs. 1,80,000 and the search was completed at 5.30 p.m. At the time of search, the respondents did not give any explanation. The respondents filed a representation on 22-10-1986 along with a xerox copy of an agreement of sale dated 25-9-1986 entered into between A-2 and A-3 for the sale of a residential plot stating that A-3 paid Rs. 1 lakh to A-2 on 25-9-1986 under the said agreement and the balance amount of Rs. 80,000 was accumulations of A-1''s professional income. As per section 132(5) of the income tax Act, 1961 (''the Act''), the income tax authorities have to pass an order within 4 months from the date of seizure estimating the liabilities, tax, penalties, etc., and also pass an order retaining the amounts seized. The matter was posted on 16-1-1987 and summons were issued to A-3; but A-3 did not appear. Thereafter, the order dated 22-1-1987 was passed u/s 132(5) by the ITO, ''B'' Ward (Circle I), Hyderabad stating that since the tax/interest/penalty, etc., were payable by the assessee for the seized amount of Rs. 1,80,000, the said amount was retained and no part of it could be released to the assessee and that the order was passed with the previous approval of the IAC, Range I, Hyderabad. In paragraph 16 of the said order of the ITO, it is stated that the officer wanted to see the original agreement as there were corrections in the xerox copy of the same. It is further stated: "I am afraid, I cannot take cognizance of the copy signed by the Notary later, unless the original is produced before me." However, it is found: "The xerox copy of the acknowledgement from the office of the IAC, Acquisition, produced by the assessee, signed by a clerk in that office, no doubt, shows that a copy of the agreement was filed on 26-9-1986."

2. Aggrieved by the order of the ITO dated 22-1-1987, the respondents herein filed a representation on 10-2-1987 u/s 132(11) before the Commissioner, AP, Hyderabad. Rejecting the representation, the Commissioner passed an elaborate order dated 28-10-1988, wherein in paragraph 3 it is observed as follows:

"3. As regards the question of release of seized cash of Rs. 1,80,000 is concerned, since the same has been adjusted against the various undisputed demands of the assessee which are not connected with the proceedings u/s 132(5) of the income tax Act, 1961, in terms of section 132B, the applicant is not entitled to any relief on this point. As regards the assessee''s contention that out of the seized cash of Rs. 1,80,000 a sum of Rs. 1,00,000 belongs to his wife, this will have to be considered by the income tax Officer afresh at the time of making a regular assessment. Since the order u/s 132(5) is in the nature of a summary assessment order estimating the undisclosed income of the assessee, the findings given therein are not final and they have to be reviewed at the time of regular assessment on the basis of evidence produced at that time. The income tax Officer is, therefore, directed to consider the issue afresh at the time of the regular assessment after giving due opportunity to the assessee to adduce evidence in support of various contentions."

Thus, the Commissioner observed that the order of the ITO passed u/s 132(5) was not a final order and the same has to be reviewed at the time of regular assessment on the basis of the evidence produced. He, therefore, directed the ITO to review the same at the time of regular assessment after giving opportunity to the assessee to adduce evidence in support of various contentions.

3. In the meanwhile, on the basis of the sanction order dated 26- 3-1987 passed by the Commissioner for prosecution of the respondents herein, the ITO filed the complaint on 31-3-1987 against the respondents herein alleging the offences under sections 174, 175 of the income tax Act and section 193 of the Indian Penal Code, 1860. The Court below took cognizance of the case against the

respondents herein. Thereupon, the respondents herein filed Crl. Misc. Petition No. 2425 of 1987. The Court below after hearing both parties and going into rules, observed that the Commissioner did not apply his mind properly, that he did not give any opportunity to the respondents herein before giving sanction order for prosecution; that the complaint is premature as the respondents herein did not even file their return for the assessment year 1987-88 and, therefore, discharged the respondents. Against that order, the present revision is filed by the ITO.

4. The learned counsel for the petitioner submitted that the Court below has erred in saying that the Commissioner has not applied his mind while directing the prosecution and further submitted that the observation of the Court below that the complaint is pre mature is not correct and that complaint can be filed as soon as the search is conducted u/s 132(1) and (1A), even though no return is filed and no assessment is made. It is further submitted that the alleged xerox copy of agreement of sale shows the correction of date from 29-9-1986 to 25-9-1986 as if it was executed on 25-9-1986, but the stamp purchased was on 29-9-1986. Therefore, the same is a false and fabricated document filed for the purpose of evading the tax and the penalties to be imposed under the Act.

5. The learned counsel for the respondents on the other hand con tended that the Court below thoroughly considered the entire material on record and found that the complaint is premature and discharged the respondents keeping it open to the department to file a complaint afterwards. There are no merits in this revision and the same is liable to be dismissed.

6. The first contention to be considered is whether the complaint is premature or not. As per the facts of the case, the search was conducted on 26-9-1986. The order u/s 132(5) by the ITO was passed on 22-1-1987. The complaint was filed on 31-3- 1987. The respondents filed a representation on 10-2-1987 be fore the Commissioner and the Commissioner passed orders on 28-10-1988. The assessment year is 1987-88 and for that assessment year, the financial year starts from 1-4-1986 and ends with 31-3-1987. The return has to be filed within 4 months from 31-3- 1987, i.e., on or before 31-7-1987. Therefore, there is ample time for the respondents to file the return.

7. For the undisclosed income of Rs. 1,80,000, the explanation offered by the respondents is that out of that amount found in the house, Rs. 1 lakh belongs to A-2 who received the same as sale consideration from A-3 for the sale of the plot under the agreement executed on 25-9-1986. It is the contention of the department that the said agreement is only a fabricated one for the purpose of evading the tax and that, therefore, it amounts to attempt to evade the tax and attracts section 276C(1) of the Act. It is relevant to ex tract section 276C(1):

"Wilful attempt to evade tax, etc.- (1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable...."

Thus, as per the above section, if any person wilfully attempts to evade tax in any manner, he is liable for punishment. But in this case, admittedly, no return was filed and the respondents had time to file return up to 31-7-1987. Apart from that, the Commissioner, in his order dated 28-10-1988 passed u/s 132(12) observed that all the contentions of the respondents can be raised at the time of regular assessment and directed the ITO to consider the same in the final order. But, however, before the ITO passed such an order, the complaint was filed. The question, whether the amount of Rs. 1 lakh belongs to A-2 which she realised by sale of plot under agreement dated 25-9-1986, is to be decided in the regular assessment proceedings as directed by the Commissioner. Therefore, when once that question has to be decided in the regular assessment, the question, whether the alleged agreement is a fabricated one or not, also has to be decided in the same proceedings. The finding of the ITO that the said agreement is a fabricated one and created for the purpose of evading tax, has been set aside by the Commissioner in his order passed u/s 132(12). Therefore, there is no final decision holding that the agreement dated 25-9-1986 is a fabricated one or created for the purpose of evading tax.

8. The learned counsel for the petitioner relied upon some decisions of the Courts to show that even though the regular assessment is not completed or the assessment is reopened or pending before the authority, it is not a bar for filing a complaint, where the offences are committed under the Act.

One of the decisions relied upon by the learned counsel for the petitioner Jyoti Prakash Mitter Vs. Haramohan Chowdhury, , which is a decision rendered by a Division Bench of the Calcutta High Court. In that case, a complaint u/s 277 of the Act was filed against the accused, J.P. Mitter before the Chief Metropolitan Magistrate, who took cognizance of the same. It was challenged by the accused before the Calcutta High Court contending that the penalty proceedings and prosecution cannot be proceeded with pending finalisation of the regular assessment. Dealing with that contention Mr. Justice N.C. Talukdar speaking for the Bench held:

"...We have given our anxious consideration to the contentions, and we hold ultimately that the assessment should be completed before the proceedings, either by way of a penalty or a prosecution under Chapter XXI and Chapter XXII of the income tax Act, 1961 respectively, can be instituted and that although the findings in either of the said proceedings may not be binding on the other, it does not rule out the necessity of completing the assessment which is the sine qua non for instituting either of the proceedings. The second dimension also of Mr. Mitter''s contentions, therefore, succeeds." (p. 387)

Thus, the Division Bench quashed the order passed by the Chief Metropolitan Magistrate, Calcutta in that case. This decision is in favour of the respondents herein and it is not helpful for the petitioner.

Another decision referred to by the learned counsel is that of the Supreme Court in P. Jayappan v. S.K. Perumal, First ITO AIR 1984 SC 1693. In that case, the accused-assessee filed his return for the assessment year 1977-78 in January 1978 disclosing some income along with accounts. In August 1981, a search was conducted in the house of the assessee u/s 132, which revealed suppression of income and accounts not disclosed by the assessee in the return. Therefore, a complaint was filed against him before the Addl. Chief Judl. Magistrate (Economic Offences), Madurai under sections 276C and 277 of the income tax Act and under sections 193 and 196 of the Indian Penal Code alleging that he deliberately filed a false return. Thereupon, the assessee filed petitions u/s 482 of the Code of Criminal Procedure before the Madras High Court for quashing the prosecution proceedings launched against him, on the ground that the same were premature as the reassessment was pending. The Madras High Court dismissed those petitions. Then the assessee filed a petition under article 136 of the Constitution before the Supreme Court. The question which arose before the Supreme Court was whether prosecutions under sections 276C and 277 of the income tax Act and under sections 193 and 196 of the Indian Penal Code instituted by the department while the reassessment proceedings under the. Act are pending, are liable to be quashed on the ground that they were not maintainable. The Supreme Court in the circumstances of that case found in paragraph 7 thus:

"7. On a careful consideration of the relevant provisions of the Act, we are of the view that the pendency of the reassessment proceedings cannot act as a bar to the institution of the criminal prosecution for offences punishable u/s 276C or section 277 of the Act. The institution of the criminal proceedings cannot in the circumstances also amount to an abuse of the process of the Court. The High Court was, therefore, right in refusing to quash the prosecution proceedings." (p. 1696)

The Supreme Court in that case also held that the reasons given by the Calcutta High Court in Jyoti Prakash Miner''s case (supra) do not apply to the case before them.

But, there is lot of difference between P. Jayappan''s case (supra) and the present case. In P. Jayappan''s case (supra) the return was already filed and the same was found to be false during the search and the reassessment proceedings were pending. Therefore, the Supreme Court in that case held that merely because the reassessment proceedings are pending, it is no ground for quashing the prosecution proceedings. Whereas, in the present case, the return has not been filed, there is time for filing the same and the regular assessment has yet to be made. Therefore, the decision of the Supreme Court in P. Jayappan''s case (supra) is not applicable to the present case.

Another decision relied upon by the learned counsel is that of the Madras High Court in Madras Vanaspati Ltd. v. S. Subramanian, ITO [1989] 175 ITR 172. In that case, return was filed for the assessment year 1975-76 in September 1975, in which the total income, after adjustments, was shown as nil. While the assessment proceedings were going on, a search was made on 30-7-1976 of the premises of the assessee-company. In that search, it was found that the accounts of the assessee-company were manipulated by its staff. The ITO completed the assessment and filed prosecution for offences under sections 120B, 420, 511 and 193 of the Indian Penal Code and section 277 of the income tax Act. On appeal against the assessment, the Tribunal remanded the case to the ITO. The assessee invoked the inherent powers of the High Court u/s 482 of the Code of Criminal Procedure to quash the prosecution on the ground that the assessment on the basis of which prosecution had been launched had been set aside. The Madras High Court by relying upon the decision of the Supreme Court in P. Jayappan''s case (supra) dismissed petition filed u/s 482. This decision is also not applicable to the present case, as in that case, the return was already filed and the assessment was completed.

Another decision relied upon by the learned counsel is that of the Delhi High Court Electric Construction and Equipment Co. Ltd. and Another Vs. N. Kumar and Another, which is also similar to the cases referred to above and in that case also, the decision of the Supreme Court in P. Jayapparis case (supra) was relied. That decision is also applicable to the present case. In view of the facts of the present case referred to above, as the respondents have to file a return and the genuineness of the agreement of sale has to be decided in the regular assessment as directed by the Commissioner, the prosecution in the present case is premature and the Court below has rightly dismissed the complaint.

9. It is next contended that the Court below has erred in saying that the Commissioner has not applied his mind in directing the ITO to file a complaint. It is necessary to refer to section 279(1) of the Act. Section 279(1) reads as follows:

"Prosecution to be at instance of Chief Commissioner or Commissioner. - (1) 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:

Provided that no such sanction shall be required if the prosecution is at the instance of the Commissioner (Appeals) or the appropriate authority.

Explanation: For the purposes of this section ''appropriate authority'', shall have the same meaning as in clause (c) of section 269UA.

(1A) A person shall not be proceeded against for an offence u/s 276C or section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under clause (iii) of sub-section (1) of section 271 has been reduced or waived by an order u/s 273A.

(2) Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by-

(a) the Board or a Chief Commissioner or a Director General authorised by the Board in this behalf, in a case where the prosecution would lie at the instance of the. Commissioner (Appeals) or the appropriate authority;

(b) the Chief Commissioner or Director General or Commissioner, in any other case.

(3) Where any proceeding has been taken against any person under sub-section (1), any statement made or account or other document produced by such person before any of the income tax authorities specified in clauses (a) to (g) of section 116 shall not be inadmissible as evidence for the purpose of such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived, u/s 273A or that the offence in respect of which such proceeding was taken would be compounded."

This section is substituted by the Finance Act, 1988 with effect from 1-4-1988. Prior to its substitution, sub-section (1), as substituted by the Taxation Laws (Amendment) Act, 1975, with effect from 1-10-1975 and later on amended by the income tax (Second Amendment) Act, 1981, with effect from 11-7-1981, the Finance Act, 1982 with effect from 1-4-1982 and the Taxation Laws (Amendment) Act, 1984, with effect from 1-4-1984, stood as under:

"Prosecution to be at instance of Commissioner - (1) A person shall not be proceeded against for an offence u/s 275A, section 276A, section 276AA, section 276B, section 276C, section 276CC, section 276D, section 276DD, section 276E, section 277, section 278 or section 278A except at the instance of the Chief Commissioner or Commissioner."

As per the unamended section the person shall not be proceeded against for an offence u/s 279(1) except at the instance of the Chief Commissioner or the Commissioner. As per the above provision any prosecution must be at the instance of the Chief Commissioner or the Commissioner. It is contended that the words ''at the instance of the Commissioner'' mean the Commissioner''s mere direction which is sufficient. In this case there is such a direction and, therefore, there is no violation of the provision.

10. The proceedings in F.No.Pros/I/8/86/87 of the Commissioner of income tax read as follows:

"Order u/s 279 (1) of the income tax Act, 1961. - On a perusal of the assessment records of Sri Abdul Razack, an income tax assessee on the file of the income tax Officer, B-Ward, Circle-I, Hyderabad for the assessment year 1987-88, it is found that Sri Abdul Razack has committed:

(i) the offence punishable u/s 276C(1) of the income tax Act, 1961 inasmuch as he has wilfully attempted to evade tax on an income of Rs. 1,00,000;

(ii) the offence punishable u/s 276C(2) of the income tax Act, 1961 inasmuch as he has wilfully attempted to evade the payment of tax by trying to take the amount of Rs. 1 lakh seized from him on 26-9-1986 out of the reach of the department.

It is also found that Smt. Gul Bano Razack, wife of Sri Abdul Razack and Shri Mohd. Ashraf committed the offences punishable u/s 278 of the income tax Act inasmuch as they have abetted the commission of the aforementioned offences by Sri Abdul Razack.

It is also found that Sri Abdul Razack, Smt. Gul Bano Razack and Sri Mohd. Ashraf have committed the offences punishable u/s 277 of the income tax Act, 1961 inasmuch as they made false statements in their letters dated 22-10-1986 and delivered the same to the income tax Officer, B-Ward, Circle-I, Hyderabad with knowledge about the false statements made therein and also made false statements on oath in their sworn statements recorded on 16-1-1987, 19-1-1987 and 16-1-1987 respectively knowing the same to be false.

The income tax Officer, B-Ward, Circle-I, Hyderabad, is there- fore directed to file, complaints against Sri Abdul Razack, Smt. Gul Bano Razack, and Sri Mohd. Ashraf for the aforesaid offences in the Court of the Special Judge for Economic Offences, Hyderabad."

In the above order it is mentioned that the assessment records of Abdul Razack were perused by the authorities. However A-1, Abdul Razack has not filed any return by 26-3-1987 as he was having time to file the return up to 31-7-1987. Therefore, the question of perusing the assessment record of A-l for the assessment year 1987-88 does not arise.

11. The learned counsel also wanted to rely upon a decision of the Supreme Court in T.S. Baliah v. T.S. Rangachari, ITO AIR 1969 SC 701. In that case prosecution was launched. An objection was taken that the prosecution was illegal as the complaint was not filed by the IAC. Section 53 of the Indian income tax Act, 1922 (''the 1922 Act'') only requires that a person shall not be proceeded against for an offence u/s 51 or section 52 of the 1922 Act ''except at the instance of the Inspecting Assistant Commissioner''. The complaint was filed on the authority of the IAC. But it was signed by another officer and, therefore, the objection was that it was not properly filed. There is no statutory requirement that the complaint petition must be filed by the IAC. The Supreme Court while interpreting the clause ''at the instance'' occurring in section 53 held that it only means ''on his authority'' and it is, therefore, sufficient compliance of the statutory requirement if the complaint petition is filed ''on the authority'' of the IAC. The Supreme Court also held there that if the complaint is filed on the authority of the IAC there is sufficient compliance. In the present case the objection is not that some other officer has signed instead of the Commissioner. The allegation in the present case is that the Commissioner has not applied his mind to show that the complaint is filed at his instance. To find out whether the complaint is filed at his instance or not, the mere signature of the authority on

the instrument to prosecute is not sufficient. There must be application of mind while ordering the prosecution. As stated supra, in this case in the order issued u/s 279(1) it is stated that it was made on a perusal of the assessment record for the year 1987-88, but actually no return was filed for that year and no record is there in that regard. Therefore, the judgment of the Supreme Court is not applicable to the facts of the present case. The observation in the above order clearly shows that the same is contrary to the facts on record as there was no assessment record for the year 1987-88.

The further contention that the record pertaining to the seizure u/s 132 itself is taken as an assessment record for the year 1987-88, cannot be accepted. Had the Commissioner mentioned that he has perused the record from the file pertaining to the proceedings u/s 132 it would have been a different matter.

It is next contended that as per the amended section, sanction is required before any proceeding is filed. But before the amendment, the proceedings have to be filed ''at the instance of the Commissioner''. The interpretation given to the term ''at the instance'' meaning it to be ''on his authority'' has got to be accepted. Once proceedings are to be initiated one has to apply his mind to the entire facts of the case before passing any order to file a complaint. But in this case as observed supra the Commissioner has not perused the record for the assessment year 1987-88 which shows that there was no compliance of section 279(1). So it cannot be held that the Commissioner applied his mind while passing order u/s 279(1).

It is further contended that as per section 276C(1) if a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under the Act, he shall, without prejudice to any penalty that may be imposed on him under any other provisions of the Act, be liable for the offence. To appreciate this contention it is relevant to refer to section 276C(1) and (2):

"Wilful attempt to evade tax, etc - (1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable-

(i) in a case where the amount sought 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.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and

shall, in the discretion of the court, also be liable to fine.

Explanation: For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person-

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(ii) ****

(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof."

As per the principles of interpretation of statute the provisions of the statute must be interpreted as per the language used therein. By reading the above section it is clear that a person who wilfully attempts to evade any tax, penalty or interest chargeable or imposable be punishable as laid down in that section. Thus, there must be wilful attempt to evade. To decide this wilful attempt there must be assessment on the return filed. In the case on hand there was still time for the respondent to file the return. Further there is an order of the Commissioner directing the ITO to decide the questions in issue including the genuineness of the agreement during the regular assessment proceedings. If during those proceedings the authority comes to the conclusion that the agreement is a genuine one, it cannot be said that the respondent wilfully attempted to evade payment of tax, penalty or interest. Therefore, at a stage when the return is not filed and there was still time for filing it, it cannot be said that the respondent committed any offence u/s 276C(1) or that such an allegation would constitute the offence. In the circumstances it cannot be presumed beforehand that after filing of the return and on its scrutiny the authorities would find concealment of income by holding that the agreement of sale is not a genuine one, and accordingly concluded that there was an attempt to evade payment of tax, etc.

12. The point is, whether the act of attempt is complete or not and this depends upon the facts and circumstances of each case. In the instant case there was ample time to file the return and there was chance to the respondent to explain about the amount seized by adducing cogent and convincing evidence. Even before filing the return, it cannot be anticipated that he would not explain and accordingly it cannot be presumed that the respondent attempted to evade tax, etc.

Thus, even before the act of attempt to evade is started, on a mere anticipation or contemplation that there was possibility of accruing liability after finalisation of regular assessment proceedings, it cannot be said that the respondent is liable for conviction u/s 276C(1).

It is next contended that as per the Explanation to section 276C(1) once the amount of Rs. 1,80,000 was found in possession of the respondents, they must be construed to have attempted to commit the offence. It must be noted that the Explanation cannot come to the rescue of the department. Even to constitute an offence as per the above Explanation, there must be specific finding by the department in regard to the amount seized during the regular assessment proceedings. In the present case, there is no such order or finding and the order of the ITO is set aside by the Commissioner.

It is next contended that the xerox copy of the agreement shows that the stamp was purchased on 29-9-1986, whereas the agreement was executed as if it is executed on 25-9-1986 and, therefore, the same is fabricated. It must be noted that the original document is not filed before the authority and only a xerox copy of the agreement was filed. Whether there is any correction or not can only be found and verified from the original itself. Apart from it the Commissioner has clearly stated that all the objections can be raised at the time of regular assessment and directed the ITO to decide the same in the regular assessment. Therefore, there cannot be any proceedings against the respondents on the ground that the said document is fabricated.

13. Therefore, in view of the above stated circumstances when there is time to file return and the genuineness of the alleged agreement of sale is subject to regular assessment proceedings as directed by the Commissioner, it cannot be held that there is evasion of payment of tax, penalty or interest as contemplated u/s 276C(1) or u/s 277 of the income tax Act or any offence u/s 193 of the Indian Penal Code is committed.

14. Therefore, in view of the above circumstances the Court below has rightly discharged the accused 1 to 3 u/s 245(2) of the Code of Criminal Procedure. The criminal revision case is accordingly dismissed.

