(2003) 04 MAD CK 0218

In the Madras High Court

Case No : Criminal R.C. No. 309 of 2000

Income Tax Officer APPELLANT

Vs

Balaji Chit Fund and Another (No. 2) RESPONDENT

Date of Decision : 24-04-2003

Acts Referred:

Income Tax Act, 1961 — Section 184(7), 276C, 277
Penal Code, 1860 (IPC) — Section 120B, 193, 420, 468, 471

Citation : (2004) 186 CTR 291 : (2003) 264 ITR 445

Hon'ble Judges : A. Packiaraj, J

Bench : Single Bench

Advocate : Ramaswamy K., Special Public Prosecutor, for the Appellant; R. Asokan, for the Respondent

Final Decision : Dismissed

Judgement

A. Packiraj, J.—This revision has been filed by the complainant, namely, the Income Tax Officer, Ward-I(2), Coimbatore, against the orders passed by the Judicial Magistrate No. 2, Coimbatore, in Crl. M. P. No. 1580 of 1998 in C. C. No. 305 of 1989 on his file, discharging the accused of offence u/s 245(2) of the Code of Criminal Procedure.

2. The circumstances under which the said order has come to be passed are as follows :

"(a) The complainant filed a complaint against the accused for offence under Sections 120B, 193, 420, 468 and 471 of the Indian Penal Code and Sections 276C and 277 of the Income Tax Act, 1961. The allegation is that A-1, Balaji Chit Funds is a company of which A-2, A-3 and one Nalini are the partners.

(b) The allegation against the accused is that a declaration was filed by A-2, on behalf of A-1 u/s 184(7) of the Income Tax Act for continuation of registration of A-1 in respect of the assessment year 1981-82 and the same was presented before the Income Tax Officer, City Circle (2), Coimbatore in April, 1981. The returns were also filed.

(c) The Income Tax Officer completed the assessment and also granted continuation of the registration by orders passed on March 31, 1983. In the said declaration signatures of A-2 Jayaraman, Nalini and A-3 Susila Rajagopal were found. When each one of them was examined, Nalini denied having affixed her signature. Therefore, the present complaint has been filed alleging that the signature of Nalini has been forged and that the said document becomes a false document and producing a false document before the Income Tax Officer, for the purpose of taking action or giving false evidence is deemed to be a civil court (sic). Hence, the prosecution."

3. On receipt of the summons, the accused filed a petition stating that the prosecution is not maintainable because, against the assessment order, they have already filed an appeal and the assessment has been approved by the appellate authority and even the adjudicating authority has held that the firm as such is in existence and Jayaraman, Nalini and Susila Rajagopal are the partners. Hence, there is no illegality in it. Just because Nalini says that it is not her signature it does not mean that she is not a partner to the firm. Since the authorities having held that the partnership consists of Jayaraman, Nalini and Susila Rajagopal and they have given a declaration u/s 184 of the Income Tax Act and just because Nalini disowns, her signature, it cannot be said that she is not a partner. Even assuming that the signature of Nalini has been affixed by any other person, it cannot be said to be a forgery, unless Nalini says that she has not given any consent to that person to affix her signature, as revealed in illustration "K" of Section 463 of the Indian Penal Code. But the statement recorded by the Income Tax Officer from Nalini does not say that she never authorised anybody to affix her signature. Therefore, in law, it cannot be said to be a forgery. Moreover, the matter relates to the year 1981-82 and for all practical purposes, the firm had its partners as Jayaraman, Nalini and Susila Rajagopal and the authorities having held a partnership concern, no offence is made out. I feel the order of the learned Magistrate discharging the accused need not be disturbed.

4. In the result, the revision is dismissed.

