(2000) 01 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 191 of 1996

Income Tax Officer APPELLANT

Vs

Dayal Sons and Others RESPONDENT

Date of Decision : 03-01-2000

Acts Referred:
Income Tax Act, 1961 — Section 276C, 277

Citation : (2000) CriLJ 4340 : (2000) 163 CTR 331 : (2000) 244 ITR 126 : (2001) 1 RCR(Criminal) 511 : (2000) 2 ShimLC 207

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : Inder Singh, for the Appellant; K.D. Sood, for the Respondent

Judgement

R.L. Khurana, J.—Respondent No. 1 is a partnership firm of which respondents Nos. 2 to 4 are partners. They were prosecuted for the offences under Sections 276C and 277 of the Income Tax Act, 1961, on the basis of the complaint filed by the Income Tax Officer, B-Ward, Shimla. The learned Chief Judicial Magistrate, Shimla, vide his impugned judgment dated December 29, 1994, acquitted the four respondents both on the merits as well as on a legal point that the prosecution of the respondents was bad in the absence of an opportunity having been afforded to them of being heard before launching the prosecution.

2. While assailing the acquittal of the respondents as recorded by the learned magistrate, it has been contended on behalf of the appellant that there is no provision in the Income Tax Act for the issuance of a show-cause notice to the respondents before launching the prosecution. The question of principles of natural justice does not arise. That the learned magistrate has failed to appreciate the evidence coming on record in the right perspective, while ordering the acquittal of the respondents. The offences stood proved and established on the record against all the respondents beyond any reasonable doubt.

3. Per contra, learned counsel for the respondents has supported the acquittal of the respondents for the reasons and on the grounds detailed in the impugned

judgment.

4. The first question arising in the present case is whether a show-cause notice is required to be served on an accused/respondent before filing the complaint against him for his prosecution.

5. Admittedly, no show-cause notice was served on the respondents before the filing of the complaint for their prosecution for the offences under Sections 276C and 277 of the Income Tax Act, 1961.

6. One of the questions involved before the Rajasthan High Court in Shree Singhvi Brothers and Others Vs. Union of India (UOI) and Others, was whether prosecution for the offences under Sections 276C and 277 of the Income Tax Act, 1961, could be launched without serving a show-cause notice before launching the prosecution. A learned single judge of the High Court relying on the principles enumerated by the apex court in Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, and in The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, , held that principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary. Every process of the quasi-judicial Tribunals must inform itself of the principles of natural justice. Four alternative remedies were available to the Department and specially the remedy of launching of the prosecution is at the option of the Department and, in such a situation, it is all the more essential that the persons sought to be prosecuted, should be afforded an opportunity of hearing before the launching of the prosecution. The learned judge accordingly quashed the prosecution of the petitioners therein, since no show-cause notice was issued to them before launching the prosecution.

7. The above view of the Rajasthan High Court was approved and followed by a Division Bench of the Karnataka High Court in P.V. Pai, B.R. Shetty, Biyar Rubbers Pvt. Ltd. and Smt. Lasha B. Shetty Vs. R.L. Rinawma, Deputy Commissioner of Income Tax, . It was held (page 729) :

"If the provisions of Section 279 of the Act are read in totality together with the provisions of Section 278 regarding abetment of assessee or a person abetting the commission of the offence u/s 276C, the intention of the Legislature becomes clear, namely, to give an opportunity to the assessee or the person charged with abetment to satisfy the sanctioning authority about his bona fides or about the circumstances under which certain statements were made. As far as compounding is concered, the same may be made either before or after institution of the proceedings. Therefore, an assessee may be anxious to offer composition even before prosecution to save himself from ''disgrace and ignominy of the prosecution. The person sought to be prosecuted may be an individual holding some position or status in society or a company, an officer or a legal practitioner. Even where there is wilful concealment of income, such person may repent or, out of fear of the prosecution or of standing as an accused before the criminal court, may offer to compound with the terms and conditions which the compounding authority may impose. Therefore, simply because there is an opportunity to compound after the prosecution is launched, it does not necessarily follow that such opportunity should be denied before the prosecution is launched. The stage at which such offer may be considered could be at the time the sanctioning authority considers according of sanction to prosecute."

8. The Calcutta High Court too in Dunlop India Ltd. and Others Vs. Arun Chandra Sinha, Assistant Commissioner of Income Tax and Others, , following the ratio laid down by the Rajasthan High Court and Karnataka High Court in the above referred to cases, held that unless expressly excluded, the requirement of natural justice will be implied in all situations where the order made would have adverse civil consequences for the parties affected. It was further held that the requirement of natural justice is inherent in the provisions of Section 279(2) of the Income Tax Act, 1961, and that the person accused is entitled to notice before the initiation of proceedings in respect of which a right of compounding has been given u/s 279(2) of the Act.

9. The contrary view has been taken by the Madras High Court in Dr. (Mrs.) M.S. Dhowani Vs. J. Ranganathan Second Income Tax Officer, City Circle-V, , and by the Madhya Pradesh High Court in Laxmandas Pranchand and Others Vs. Union of India (UOI) and Others, . It has been held that Sections 276C and 277 do not contemplate any show-cause notice being issued before initiation of prosecution and that prosecution cannot be invalidated for want of notice before institution of the proceedings.

10. I am unable to agree with the views expressed by the Madras High Court and by the Madhya Pradesh High Court.

11. In C.B. Gautam Vs. Union of India and Others, , the Supreme Court read the requirement of natural justice into the provisions of Section 269UD of the Income Tax Act, 1961. It was held (page 554) :

"Although Chapter XX-C does not contain any express provision for the affected parties being given an opportunity to be heard before an order for purchase is made u/s 269UD, not to read the requirement of such an opportunity would be to give too literal and strict an interpretation to the provisions of Chapter XX-C and, in the words of Judge Learned Hand of the United States of America to make a fortress out of the dictionary. Again, there is no express provision in Chapter XX-C barring the giving of a show-cause notice or reasonable opportunity to show cause nor is there anything in the language of Chapter XX-C which could lead to such an implication. The observance of the principles of natural justice is the pragmatic requirement of fair play in action. In our view, therefore, the requirement of an opportunity to show cause being given before an order for purchase by the Central Government is made by an appropriate authority u/s 269UD must be read into the provisions of Chapter XX-C. There is nothing in the language of Section 269UD or any other provision in the said

Chapter which would negate such an opportunity being given."

12. In other words, unless expressly excluded, the requirement of natural justice will be implied in all situations where the order made would have adverse civil consequences for the parties affected.

13. The approach of the High Courts of Madras and Madhya Pradesh that no notice was required before launching the prosecution in the absence of provision of natural justice, in view of the ratio laid down by the Supreme Court in C.B. Gautam Vs. Union of India and Others, therefore, does not appear to be correct. The approach should rather be whether the provisions of natural justice have been expressly excluded. If not, it should be applied.

14. For the foregoing, I am in full agreement with the reasonings of the Karnataka, Rajasthan and the Calcutta High Courts and hold that the person accused is entitled to notice before the initiation of the prosecution against him. The prosecution would be bad in case no such notice has been given.

15. Resultantly, the order of acquittal, as recorded by the learned magistrate, calls for no interference. The appeal fails and is dismissed accordingly. The bail bonds of the respondents shall stand cancelled and discharged.

