

(1993) 06 GAU CK 0011
In the Gauhati High Court
Case No : Criminal Appeal No. 65 of 1986

Income Tax Officer

APPELLANT

Vs

Dr. Bhupendra Narayan Bhattacharyya

RESPONDENT

Date of Decision : 30-06-1993

Acts Referred:

Income Tax Act, 1961 — Section 277
Penal Code, 1860 (IPC) — Section 177

Citation : (1995) 124 CTR 142 : (1996) 220 ITR 490

Hon'ble Judges : D.N. Baruah, J

Bench : Single Bench

Advocate : G.K. Talukdar, for the Appellant; J.M. Choudhury and P. Kataki, for the Respondent

Judgement

D.N. Baruah, J.—This appeal is directed against the judgment and order dated November 8, 1985, passed by the Additional Chief Judicial Magistrate, Kamrup, acquitting the respondent in Case No. 310C of 1973.

2. The appellant (income tax Officer, B-Ward, Guwahati), instituted a Criminal Case No. 310C of 1973 against the respondent u/s 277 of the Income Tax Act, 1961, read with Section 177 of the Indian Penal Code, 1860. The prosecution story is that the respondent submitted a verified return of Income Tax for the assessment year 1970-71 corresponding to the financial year 1969-70. The return was signed and verified by the respondent himself. In the said return, the respondent as assessee showed income which is less than his actual income. Not being satisfied with the statement made in the return, the appellant issued notice to the respondent to appear on March 9, 1971. He was examined u/s 131 of the Income Tax Act. After examination of the respondent and on consideration of the relevant facts, the appellant passed an order u/s 143(3) assessing the total income of the respondent as Rs. 43,404 for the said assessment. This income included Rs. 27,560, he received as medical attendant for giving treatment to the Central Government employees, namely, the employees of the postal

department, and Rs. 10,000 as the income received from other private practice. Even though the total income of the respondent was Rs. 43,404, the respondent made an incorrect statement just to evade the tax. Accordingly, a complaint was lodged. The Magistrate took cognizance of the offence and issued process. Charges u/s 277 of the Income Tax Act read with Section 177 of the Indian Penal Code were framed.

3. During trial 12 witnesses were examined. After going through the evidence, the court found that the prosecution failed to prove the charges and accordingly the respondent was acquitted. Hence, the present appeal.

4. I have heard Mr. D.K. Talukdar, learned standing counsel for the appellant and Mr. J.M. Choudhury, learned counsel for the respondent. The main submission of Mr. Talukdar is that the return was found to be false in a proceeding u/s 131 of the Income Tax Act, where the respondent was examined and the return was produced before him. The Income Tax Officer in the present criminal case deposed before the court that in the said proceeding u/s 131 of the Income Tax Act, the Income Tax Officer found that the verification made by the respondent in the return filed by him was false and, accordingly, the respondent is punishable u/s 277 of the Income Tax Act. However, he has not made any submission with regard to the offence u/s 177 of the Indian Penal Code.

5. Mr. Talukdar also submits that the evidence of the witnesses abundantly shows that the respondent is guilty u/s 277 of the Income Tax Act, inasmuch as, the ingredients of the said section have been fulfilled. Mr. Talukdar mainly relied the evidence of P.W. 1, G.N. Hazarika, Income Tax Officer, B-Ward, Guwahati. He submits that it was not proper on the part of the Additional Chief Judicial Magistrate to acquit the respondent of the charges levelled against him in view of the evidence on record. Mr. J.M. Choudhury, on the other hand, submits that none of the ingredients of Section 277 of the Income Tax Act is present to warrant a conviction under the said section. Mr. Choudhury has drawn my attention to the portion of the evidence of P.W.-1, G.N. Hazarika, where he stated that he did not take any step except filing the complaint case against the respondent and he did not know the respondent. There was no correspondence between him and the respondent. He had no occasion to see the respondent writing. He simply said that the signature in the return (exhibit-3) was proved as it was found in the official record.

6. Earlier he had not seen him writing and he had no personal acquaintance with the respondent. Therefore, Mr. Choudhury submits that from the evidence of the witness (P. W.-1) there can be no conviction u/s 277 of the Income Tax Act, on the ground of filing of a return with false verification. Mr. Choudhury further submits that apart from this, the essentiality certificates issued by the respondent also were not proved, inasmuch as, P.W.-1 did not know about the said certificates. In his evidence, he stated that in exhibit-21(1) to 1447(1), the respondent put his signature, as these signatures had been found under the official seals. The witness also stated that he would not have been in a position

to prove the signatures unless there were seals under the signatures of the respondent. Therefore, the Additional Chief Judicial Magistrate rightly acquitted the respondent.

7. Section 277 of the Income Tax Act provides that if a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable, (i) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, 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. Therefore, under this section, the accused is punishable, if he makes a statement in any verification in the return or delivers an account or statement which is false, or which he either knows or believes not to be true. In order to convict a person under this section it is, therefore, necessary to see whether there is a verification in the return, or any statement delivered which he either knows or believes to be false or does not believe to be true. The absence of any of the requirements of this section, cannot warrant conviction of a person under this section.

8. From the evidence it appears that the Income Tax Officer had no knowledge whether the signature appearing in the verification column is the signature of the respondent. There is no evidence to prove this, except the essentiality certificates exhibit-21(1) to 1447(1). However, these essentiality certificates were not proved in accordance with law, inasmuch as, the witness (P.W.-1) did not specifically say that these were the certificates issued by the respondent. The witness (P. W.-1) stated in his evidence that he presumed that these certificates were issued by the respondent as there were official seals under the signatures. In my opinion, this cannot be a reason for coming to such conclusion that these are the certificates issued by the respondent. Moreover, there is also no reliable evidence to show that the signatures appearing in the return (exhibit-3) are the signatures of the respondent. As submitted by Mr. Choudhury, P. W.-1, simply stated that these signatures appearing in the verification of exhibit-3(1), in all probability belong to the respondent as it is found in the official record. In my opinion, signatures cannot be proved in this manner.

9. Prosecution also failed to prove that the petitioner (respondent (?)) made a false verification in the exhibit-3. Besides, it was also not proved that the statements are false. The appellant failed to prove the essentiality certificates also. Mr. Choudhury submits that there is no evidence to show that the verification was made by the respondent, knowing fully well that the statements made in the return are false. Mr. Talukdar has not been able to point out any evidence to show that the respondent had knowledge that the statements were false. Besides, in the statement recorded u/s 313 of the Criminal Procedure

Code, also the respondent was not asked whether he put his signature in exhibit-3. The appellant simply asked the respondent whether he filed a return and in reply he admitted the filing of the return, but it was not put to him whether exhibit-3 was the return. No question was put to the respondent that the verification was false to his knowledge.

10. In view of the above, in my opinion, the ingredients of Section 277 of the Income Tax Act have not been proved in this case, and therefore, there can be no conviction under this section. Similarly, there is no acceptable evidence to warrant conviction u/s 177 of the Indian Penal Code also.

11. Normally, in an appeal against acquittal, the appellate court is always slow in interfering with the decision of the trial court. If two views are possible, the appellate court will be very reluctant to interfere with the order of acquittal, unless the other view is fanciful and unreasonable- I do not find that the view taken by the court below is wrong and unreasonable. Therefore, I find no reason to interfere with the judgment and order dated November 8, 1985, passed by the Additional Chief Judicial Magistrate, Guwahati, in Case No. 310C of 1973. Accordingly, the appeal is dismissed.