(1998) 12 MAD CK 0106

In the Madras High Court

Case No : Criminal Appeal No''s. 299 of 1987 and 76 of 1990

Income Tax Officer APPELLANT

Vs

J. Chitra RESPONDENT

Date of Decision : 22-12-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Income Tax Act, 1961 — Section 136, 139(2), 148, 193, 230A
Penal Code, 1860 (IPC) — Section 120B, 193, 196, 420

Citation : (1999) 107 TAXMAN 121

Hon'ble Judges : A. Raman, J

Bench : Single Bench

Advocate : T. Sivanathan, for the Appellant; K.A. Panchapagesan, for the Respondent

Judgement

A. Raman, J.—The Income Tax Officer, City Circle IV (II), filed a complaint before the Additional Chief Metropolitan Magistrate, against Smt. Chitra, Thiru R. Janardhanam and Thiru Chinni Mohan Rao as the accused, alleging that they have committed offences punishable under sections 120B, 193, 196, 420 IPC, and sections 276C(1), 277 and 278 of the Income Tax Act, 1961 (''the Act'').

2. The gist of the complaint is as follows:

For the sale of property comprised in Door No. 35, Annal Pillai Street, Madras-1, the 1st accused made a false verification- cum-declaration in Form No. 34A while applying for 230A certificate. The 2nd accused who is the husband of A 1 is the joint executant of the document regarding the sale of the said property. The 3rd accused is an Income Tax practitioner. He filled up the particulars in the clearance certificate before submitting to the issuing authority, presented the same before the Income Tax Officer, collected back the certificate and got the sale deed registered, himself being a witness to the same and thereby abetted A1 and A2 in the commission of the said offence.

3. On behalf of the complainant, four witnesses were examined as D.Ws. 1 to 4

and Exs. P 1 to P22 were marked. The accused had examined four witnesses as D.Ws. 1 to 4 and Exs. P1 to P4 were marked on their side. The learned Additional Chief Metropolitan Magistrate, F.O.II, Egmore, Chennai, after trial, acquitted the accused land 2, but found the 3rd accused guilty u/s 278 of the Income Tax Act under two counts and sentenced the 3rd accused to undergo rigorous imprisonment for six months under each count and to pay a fine of Rs. 500, aggrieved by the order of acquittal passed by the Additional Chief Metropolitan Magistrate in F.O.C.C. No. 571/86, dated 23-12-1986, acquitting the accused 1 and, 2, the complainant has preferred the Appeal in C.A. No. 299 of 1987.

4. In the meanwhile, the 3rd accused who was found guilty by the Additional Chief Metropolitan Magistrate preferred an appeal against the conviction and sentence imposed on him, to the court of sessions in C.A. No. 1 of 1987. The learned Principal Sessions Judge, City Civil Court, Chennai, accepted the appeal preferred by the 3rd accused and acquitted him, setting aside the conviction and sentence passed by the Additional Chief Metropolitan Magistrate, F.O. H. Therefore, the department has preferred the appeal in C.A. No. 76 of 1990, challenging the acquittal order passed by the Principal Sessions Judge, in C.A. No. 1 of 1987, whereby lie acquitted the 3rd accused.

5. The above two appeals were the taken together. Though a counsel from among the panel of lawyers suggested by the Legal Aid Committee was appointed to represent the respondents in C.A. No. 229 of 1987, there was no appearance on behalf of the respondents, even though the hearing of'' these appeals went on for a number of days. Thiru K.A. Panchapagesan, the learned counsel for the respondents in C.A. No. 76 of 1990 was alone present. The arguments of the learned counsel for the department, the appellant, Thiru T. Sivanatham and the argument of the learned counsel for the respondent in C.A. No. 76 of 1990, Thiru K.A. Panchapagesan, were heard. A common order is passed hereby in the above two appeals as under.

6. The common point for determination is:

(i) Whether the order of acquittal of the accused 1 and 2 by the trial court is liable to be set aside.

(ii) Whether the order of acquittal passed by the lower appellate court, acquitting the 3rd accused, is liable to be set aside?

7. The point - The 1st accused is the wife of the 2nd accused. The 1st accused was the owner of a house property comprised in Door No. 35, Anna Pillai Street, Chennai- 1. She sold the same on 31-7-1981, after obtaining the clearance certificate u/s 230A of the Income Tax Act. The 2nd accused is the joint executant of the sale deed. The 3rd accused is the Income Tax Practitioner, who is alleged to have filled up those particulars in the Clearance Certificate, before submitting it to the Issuing Authority and helped in the registration of the document of sale. The property was acquired by the 1st accused in a partition. Section 230A of the Income Tax Act provides that whoever transfers a property

exceeding a value of Rs. 50,000, he must obtain a Clearance Certificate in Form No. 230A from the Income Tax Officer and produce the same along with the document to be registered. The 1st accused presented an application for the grant of certificate u/s 230A on 31-7-1981 to the Income Tax Officer, City Circle-III (10), Madras-6. In [lie application, she has given her address at No. 15, Adiyvappa Naicken Street, Madras. The same address was given as regards the 2nd accused, her husband. The Income Tax Officer issued the certificate, believing the declaration to be true and the certificate was collected by the 3rd accused. The 3rd accused figured as a witness to the registration of the document which was registered on 31-7-1981 by the Joint Sub-Registrar, No. III Madras (North). Investigation revealed that the accused 1 and 2 never resided at Door No. 15, Adiyappa Naicken Street, and they were residing only in Old No. 15, New No. 45, Strotten Muthiah Mudali Street, Chennai - 1. But, it the document that was registered on the same day, the 1st accused has given her address as No. 45, Strotten Muthiah Street, Chennai- 1, whereas in Form No. 230A as well as in the draft sale deed, the address given was No. 15, Adiyappa Naicken Street, Chennai. The 1st accused has stated that she handed over signed blank application form for Income Tax clearance certificate to the 3rd accused, and the 3rd accused filled up that form. Only the ITO having jurisdiction over the permanent residence of the vendor can take action for collecting the Income Tax on capital gains.

8. The Prosecution case is that it is with a view to evade Income Tax on capital gains leviable u/s 45 of the Act wrong address has been given as the notice u/s 139(2) has to be issued to the correct address of the declarant for the assessment year 1982-83 relevant to the previous year ended 31-3-1982. To defraud the exchequer of its due and to mislead and deceive the Income Tax Officer, the accused in furtherance of common intention committed offences punishable u/s 120P, read with sections 193, 196 and 420 of the Indian Penal Code and sections 276C, 277 and 278 of the Act. The case is that the accused have conspired to fabricate false evidence and to deceive the Income Tax Officer, and fraudulently and dishonestly induced him to deliver Form No. 34A Clearance Certificate u/s 230A of the Act, by citing a different and false address, which enabled the 1st accused to wilfully evade capital gains tax chargeable or imposable u/s 45 of the Act. In pursuance of the said conspiracy, the accused have fabricated false address in Form No. 34A and intentionally gave false evidence in the judicial proceedings and, thus, they are guilty u/s 193 of IPC read with section 136 of the Act. The accused corruptly used as true or genuine address in the form of false address in Form No. 34A and the accompanying draft sale deed, knowing it to be false or fabricated. All the accused have conspired and have cheated and thereby dishonestly induced the Income Tax Officer to deliver Form No. 34A which is valuable security by submitting Form No. 34A containing false address, they have caused circumstances to exist which have the effect of enabling her to evade capital gains tax leviable for the assessment year 1982-83. The 1st accused made a statement in the verification in Form No. 34A,

in pursuance of the said conspiracy. The 2nd accused in the course of transaction delivered Form No. 34A, containing false statements about the address and the 3rd accused abetted or induced the 1st and 2nd accused to deliver the statement and declaration in Form No. 34A and thereby helped the accused 1 and 2 to evade tax.

9. The 1st charge framed against the accused 1 to 3 is u/s 120B of 1PC. Charge Nos. 2 to 6 are against the 1st accused under sections 193, 196, 420, 276AC(1) and 277 of the Act. Charges 7 to 11 are against tile 2nd accused for offences under sections 278, 193, 196, 420 IPC and section 277 of the Income Tax Act. The 12111 and 13th charges are framed against the 3rd accused for the offences punishable u/s 278 under two counts.

10. The trial court acquitted all the accused of the charge, viz., accused 1 to 3 u/s 120B. The 3rd accused preferred an appeal to the court of Sessions in C.A. No. 1/87. As regards the acquittal of the 3rd accused u/s 120B, no appeal was preferred by the department. Therefore, the position is that though as against the acquittal of the accused 1 and 2 there is air appeal against the acquittal of all the accused u/s 120B there is no challenge. When the 3rd accused challenged his conviction, the department did not choose to prefer an appeal against the acquittal of the 3rd accused u/s 120B. The lower appellate court in Criminal Appeal No. 1 of 1987 set aside the conviction of the 3rd accused u/s 278, which is challenged by the department in Criminal Appeal No. 76 of 1990. Therefore, as regards the acquittal of the 3rd accused for the offence u/s 120B, there is no challenge at all. In such circumstances, one has to hold that the department having failed to question the acquittal of the 3rd accused for an offence u/s 120B and when that acquittal was more or less confirmed by the lower appellate court, the department cannot now be heard to attack the finding of the lower appellate court as regards the acquittal of the charge u/s 120B. That finding has remained unchallenged, though the department had no opportunity to canvass the correctness of the finding when the 3rd accused preferred an appeal against the conviction. The department having failed to do so, cannot now, by filing appeal against the acquittal of the 3rd accused by the lower appellate court, hope to have the matter at large again as the said finding has remained untouched without any challenge by the department.

11. I will first take up for consideration the case of the 3rd accused. The 3rd accused is an Income Tax practitioner. The charge against the 3rd accused is u/s 120B of IPC and section 278 of the Act. As regards section 120B, I have already pointed out that the trial court acquitted tile accused of the charge u/s 120B and no appeal was preferred by the department questioning the said finding and consequent acquittal of the accused for the offence u/s 120B. Therefore, as the finding of acquittal of the charge u/s 120B has not been challenged, it follows that neither the 3rd accused nor the accused 1 and 2 can be held guilty of the offence u/s 120B.

12. As regards the allegation against the 3rd accused for the alleged offence u/s

278, it is necessary to refer to the complaint. The allegation is para 3 is that the 3rd accused who is an Income Tax practitioner filled up false particulars in the clearance certificate. It is further the stated that in her letter dated 6-9-1985, the Ist accused has stated that she handed over a signed blank application form of Income Tax Clearance to die 3rd accused and it is the 3rd accused who filled up that Form. In paragraph - 15, it is stated that in pursuance of the above conspiracy, the 3rd accused abetted the accused 1 and 2 to deliver the statement and declaration in Form No. 34A, dated 31-7-1981, containing false address of the 1st accused and helped her to evade capital gains tax for the assessment year 1982-83 and as such, he has committed an offence punishable u/s 278.

13. It is not in controversy that the accused 1 and 2 were not Income Tax assessees. The allegation in the complaint is that the 1st accused has given the statement that she handed over the blank form with her signature the particulars were filled up by the 3rd accused. Thus, it is a statement made by the co-accused. A statement given by a co-accused cannot be treated substantial evidence against other accused nor can form the basis of conviction. Therefore, even assuming that the 1st accused has given such a statement, merely on the basis of the same, it cannot be put forward by the department that the case against the 3rd accused is made out. Here we have to find out whether there is any material at all to show that those particulars, viz., particulars concerning the false address found in the application were furnished by the 3rd accused.

14. P.W. 1 has categorically stated in the course of cross-examination that he cannot say whether the contents of Ex. P.1 Application Form were written by A1 or any other person. He also admitted that the draft sale deed Ex. P2 did not contain the signature of the vendor. He has further stated categorically that he cannot say as to who filled up Ex. P6 including the address therein. It has been further clarified that he cannot say, whether AI signed Ex. P1 and P2 and Ex. P6 in blank and handed over them to A3. He further admitted that question of his being misled by Ex. P1 and P6 about the tax liability at the time of issue of P4 and P9 did not arise. He further stated that he is not personally aware whether Ex. P1 and P6 were filled in by the 3rd accused in the office. P.W.2 has nothing to say about this aspect. He only speaks of the enquiry made by him of A1 and A2. He further admitted that he came to understand on enquiry that A1 and A2 are literate and can read and write. He admits that he did not ask A 1 and A2 by showing handwriting in P1 and P6 and asked them whether they can identity the same. He further stated that he did not ascertain from A1 and A2 whether they had given any instruction to A3 to fill up the particulars. P.W. 3, who is said to be familiar with the signature of A3 would admit in the course of cross-examination that he cannot say whether the writing in Exs. P1 and P6 are that of A3 and that he has no personal knowledge that Exs. P2 and P7 were drafted by A3. P.W. 4 has been asked to speak about the laying of the complaint. He could not throw any light on this aspect, for he has admittedly stated that he is not familiar with the handwriting or signature of A3 either in English or any other language, and that he did not see Exs. P 1 and P6. He further admitted that he does not know

as to who drafted the sale deed. When A1 was examined u/s 313 of the Code of Criminal Procedure, of course she has only stated that she signed the form and that she did not give the address particulars. D.W 2, the Auditor would say that the accused 1 and 2 did not tell them that the work of filling the return of income for 1982-83 was entrusted to A3.

It is stated by him that Ex. P.21 was signed by A1 on 16th June and it was duly filled up by one of the staff. Thus, the materials placed on record are not sufficient to come to any conclusion that address particulars were filled up by the 3rd accused. It is also to be pointed out that no step was taken by the department to have the handwriting examined by an Expert, nor the procedure laid down in section 45 of the Evidence Act has been complied with in this case. Therefore, on the basis of the materials placed, it is difficult to come to a conclusion that the address particulars were filled up by the 3rd accused or that he abetted the commission of offence.

15. As 1 have already pointed out and as laid down by the Apex Court that merely on the basis of the statement of a co-accused, it is not possible to hold that the allegation against the 3rd accused has been proved satisfactorily. There must be sufficient materials in the shape of oral and documentary evidence to sustain the case of the prosecution. None of the witnesses examined on the side of the prosecution has stated that the address particular contained in the application forms P1 and P6 were filled up by A3. Merely because the 3rd accused is an Income Tax Practitioner, we cannot presume that the accused 1 and 2 approached him for his service, therefore, he must have filled up the same. Even assuming that the application for grant of clearance certificate was presented by the 3rd accused for and on behalf of the Ist and 2nd accused, from that single circumstance, it cannot be inferred that the other particulars contained therein were all filled up only by the 3rd accused. To establish the hypothesis of guilt and to rule out any other conclusion, the circumstantial evidence adduced must be such that every possibility of hypothesis should be unbroken. But, in this case, there is no circumstantial evidence as well. As rightly pointed out by the learned counsel for the appellant, it is not the suggestion or case of the prosecution that it is A3, who prepared or filled up the address particulars in P2 as well. Therefore, m ere suspicion cannot take the place of proof.

16. The learned counsel for the department referred to the provisions in the Income Tax Act which relate to presumption as culpable state of mind. The relevant section in section 278E, reads as follows :

Presumption as to culpable mental stale-In any prosecution for any offence tinder this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that lie had no such mental state with respect to the act charged as a offence in that prosecution, Explanation says that culpable mental state includes intention, motive or knowledge of a fact or belief in, or reason to believe a fact.

It further clarifies that a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Therefore, on the basis of section 278E, the learned counsel for the department would urge that the 3rd accused being an Income Tax practitioner has been approached by the accused 1 and 2 to submit the application, seeking Income Tax clearance certificate, and when there is evidence to show that the same was presented by the 3rd accused on behalf of the accused 1 and 2, when the address particulars containing therein as on the face of it are false, the culpable state of mind has to be presumed, more so when the 3rd accused is said to be residing in the opposite house of the accused 1 and 2.

17. In my opinion, this contention rather stretches too far the presumption. The 3rd accused was only a professional. Assuming that the accused 1 and 2 approached him for obtaining the Income Tax clearance certificate and the application was presented by the 3rd accused, from that one cannot draw an interference that any false particular contained in that application was made with the knowledge of the Income Tax practitioner, or with his consent or on his direction. Here, as pointed out already as to who presented the application; there is no definite material. The address particulars have not been subjected to any examination by any expert. The prosecution''s witnesses would say that they did not know as to who filled these particulars. The statement given by one of the co-accused that it is the 3rd accused who filled up the particulars can never to taken as evidence or basis to build up the persecution case. In such circumstances, it is not a case where section 278 can be held to be attracted. Even otherwise as indicated in the very section, this is not a case where the court can presume the existence of such mental state for the reasons indicated already. Only if there is necessary evidentiary basis, the presumption would come into play. Here, there is no evidence to show that the address particulars were filled up by the 3rd accused. Nor it is stated that he was aware of such a false particular being furnished and in spite of the same, he presented the application before the Income Tax authority. Hence, the argument based upon section 278 is not available to the department.

Hence, it follows that the judgment of the lower appellate court, acquitting the 3rd accused is proper and it cannot be interfered with.

18. It has to be now seen whether the acquittal of the accused 1 and 2 by the trial court is in order. As regards 1 and 2nd accused, admittedly, the 2nd accused is not and was not. the owner of the property relating to which the application u/s 230A was filed. The figured just as a joint executant of the sale deed, perhaps it was entitled upon the vendor. The evidence adduced by the department is to the effect that he had nothing do with the property. Therefore, it cannot be stated that the 2nd accused had some interest in the property and with a view to

avoid tax imposable or leviable with reference to the property he has made a false statement. The order granting a certificate u/s 230A will only go to the benefit of the person who owns property. Where a person owns the property and purports to transfer, assign, limit or extinguish the right, title or interest of any person to or in any property valued at more than Rs. 2 lakhs (Rs. 50,000-old) on the date of the sale deed, section 230A requires that such a document shall not be registered by the registering authority unless the assessing officer concerned certifies as specified u/s 230A of the Act. Assuming that a false particular regarding the address is given, it can only be stated that such a false particular was furnished by the owner of the property with a view to enable her to obtain a certificate u/s 230A of the Act, but a person who has no legal interest, claim or title over the said property, by mere reason of his being made a party to a document, he cannot beheld to have committed an offence as alleged by the department. He was not concerned with the property, if he gives the correct address, equally it can be stated that as he is not the owner of the property he has given the a false statement. It is not the case here that the 2nd accused has given a declaration that he is the owner of the property. Therefore, strictly speaking, I am of the view that the offence as alleged against the 2nd accused cannot be held to have been proved. For he is not the owner of the property, any address particulars given by him, whether correct or incorrect, cannot make him liable because he is not the beneficiary under the order passed by the Income Tax authority u/s 236A.

19. Even otherwise, one has to see whether it can be stated that the offences as against the accused 1 and 2 have been made out. It is the admitted case of the department that the accused 1 and 2 were not assessees of Income Tax, it is not the case that they were Income Tax assessees and they had suppressed the facts and applied for clearance certificate on the ground that they are Income Tax assessees. Further, it is also not in dispute that when normally a person, who is not an Income Tax assessee, makes request u/s 230A for grant of certificate enabling him to dispose of a property of more than the value of Rs. 50,000, he will be entitled to the same. It is also not the case that this No-objection certificate or the certificate as contemplated u/s 230A can be granted only by a particular Income Tax authority. P4 is the certificate issued in this case by the Income Tax Officer, City Circle 1U. The allegation is that in the draft sale deed, the accused 1 and 2 declared their address as at No. 15, Adiyappan Naicken Street, Madras, and the Income Tax Officer issued the certificate believing the declaration to be true. According to the complainant, the investigation revealed that the accused 1 and 2 never resided 1-11 No. 15, Adiyappan Naicken Street, Madras, and on the date of submitting the application they were residing only at Old No. 15, New No. 45, Strotten Muthiah Mudali Street, Chennai-1. The allegation is that such a false address has been given with a view to evade Income Tax on capital gains. The address that has been given, viz - No. 15, Adiyappan Naicken Street, Chennai- 1, falls under the jurisdiction of the Income Tax Officer, City Circle HI, Chennai 6. If the address is No. 15, Strotten Muthiah

Mudali Street, the same would fall under the jurisdiction of a different Income Tax Officer. Put straight, that would normally be entitled to title certificate. But, even if the said address falls under the jurisdiction of a different Income Tax Officer, it is not known how by giving a different address the Income Tax can be evaded. Normally the accused 1 and 2 are entitled to Income Tax clearance certificate u/s 230A, whether it is the Income Tax Officer, City Circle 111(10), the officer, or some other Income Tax Officer having jurisdiction over other City Circle. It is not as though only that the Income Tax Officer, viz., City Circle 111(10) alone is eligible or entitled to issue the certificate. Therefore, it is not known how the giving of a different address will lead to any inference that an attempt to evade tax imposable has been made by the accused 1 and 2. The accused 1 and 2 were not the income tax assessees on the date when they made a request by filling on application u/s 230A. Therefore, this aspect of the case the department, has not properly explained. The complaint is to the effect that such a false address has been given with a view to evade Income Tax on capital gains. It is stated that only the Income Tax Officer having jurisdiction over the permanent address of the vendor can take action for collecting Income Tax on capital gains. The prosecution has not produced any rules to show that it is so.

20. The Income Tax Officer, City Circle 111(10) who has granted this certificate is entitled to proceed against and levy capital gains. If the address is No. 15, Adiyappa Naicken Street, according to them, it is only that officer-in-charge of that circle alone can initiate action. It seems to the prosecution case that it is only the address that counts for the purpose of reckoning tax and not the transaction. For the evidence of P.W 1 does not throw any light on this aspect. On the other hand, his evidence is destructive of the prosecution case. P.W 1 who was the Income Tax Officer, City Circle M (10) on the date of issuance of the clearance certificate has not stated that he had no jurisdiction to initiate action for levying tax on capital gains or that it is only the officer having control and jurisdiction over No. 15, Strotten Muthiah Mudali Street, who has the jurisdiction. P.W. 2 states that the accused 1 and 2 did not file Income Tax return for the assessment year 1982-83 disclosing capital gains on sale of the property. If that is the ground, then they have to be proceeded against under the relevant provisions of the Act. Giving of a different address does not arise or matter in such case. Further, P.W 1 has stated that capital gains will arise in the assessment year and assessment of the same will come up in the next year. Therefore, the liability to pay tax will arise only in the next year after the transaction. Here, the draft sale deed is dated 31-7-1981 and in July or August, the same has been registered. So, the assessment year in this case will be 1981-82 and the assessment of the same will come up only in 1982-83.

21. According to P.W 1, the accused 1 and 2 did not file Income Tax return for the assessment year 1982-83 on capital gains. The liability to disclose the income and pay Income Tax on capital gains would arise only for the assessment year 1982-83. The specific evidence of P.Ws. 1 and 2 is that the accused 1 and 2 failed to file return disclosing the income from capital gains on sale of property

made in July 1981. Therefore, if any action is to be taken against the accused 1 and 2, the foundation and the basis for the same should be on the ground that they did not file the return and disclose the income on capital gains for the year 1982-83 when they should have done so. But, the charge is not that. The main charge is that they have given false address. According to P.WA, the falsity is only with regard to P2. There is no other falsity .It is also to be pointed out that PM. 4 has admitted that AI filed return of income for the assessment year 1982-83 on 23-61986, and that she declared capital gains on the sale of property at No. 35, Anna Pillai Street, Madras- 1 at Rs. 74,000 and the return was accompanied by a statement under Ex. P22 and but for the issuance of notice u/s 148 which was issued on 22-3-1986, the liability to pay the tax on capital gains would have escaped assessment. Apparently, this complaint has been filed only after the same. It has been presented in court on 13-8-1986. But, when they filed this complaint, the department did not choose to allege that the 1st accused failed to pay the tax payable on capital gains on the sale of property in July 1981, and as such, she is liable to be proceeded against u/s 276C. On the other hand, they have chosen to file the complaint as though the accused are guilty for the offences of having given a false address. Neither in the oral evidence adduced by the department nor by the production of rules under the Act, it has been shown that the department was prohibited from taking any steps immediately on account of the giving of false address or that it is only the concerned officer who has jurisdiction can take steps under the provisions of the Act. On the other hand, PM. 4 who is the Income Tax Officer, City Circle IV (it), has stated that he issued notice u/s 148 later and made assessment. Therefore, the argument that the Income tax Officer, City Circle 111(10), Chennai, alone is competent to take action is belied by the action of PM. 4. I do not think that there is any provision in the Act which prohibits the authorities concerned to initiate action in such circumstances. Therefore, the very basis of the case against the accused 1 and 2 is quite shaky.

22. If at all the 1st accused can alone be proceeded against for having omitted to submit Income Tax return and for having omitted to disclose the income realised by way of capital gains, and, thus, having failed to pay the tax leviable, the 1st accused is deemed to have committed an offence, punishable under the provisions of the Act. But, even then, the complaint against the 1st accused is not on that ground. It is also necessary to point out in this case that according to P.W 4, subsequently a return has been filed, a tax assessment has been made and the tax has been collected. 111 such circumstance, there does not survive anything on the date when the complaint was filed, for the very case of the complainant is that the Income Tax Officer having jurisdiction alone can collect tax on capital gains. But, when the case was presented, it was not on this ground and such an evidence has not been produced before the Court. Further, even assuming that it is so, the date when the complaint was laid was only in August 1986. Already, an Income Tax return has been filed by the 1st accused and the assessment has been made and, therefore, the allegation that the Income Tax

Officer having jurisdiction could not take action for collection of tax becomes irrelevant. Finally, the allegation that to avoid Income Tax on capital gains, the accused colluded and conspired shall stand negatived.

23. Therefore, I am of the view that the complaint laid is not maintainable and on the basis of the evidence adduced before the Court, it cannot be held that the accused 1 and 2 are guilty under any provisions of the Income Tax Act. On the date of complaint, there was no material to accuse the appellants of having committed any offence by giving false address particulars for the allegation is that with a view to avoid capital gains such a false address was given. But on the date when the complaint was filed, already the return of income for the year 1982-83 has been submitted and assessment has been made by the officer concerned. Further, even according to P.W 1, the question of payment of capital gain tax will arise only in the next year. Therefore, the liability to pay the Income Tax would arise only in the next assessment year 1982-83 and, therefore, if any false address is given in the year 1981, it cannot be said to have given a cause of action to proceed against the accused under the provisions of the Act. In this view of the matter, it has to be held that the offence as against the accused 1 and 2 cannot be held to have been made out. Though 1 do not agree with the reasons given by the Additional Chief Metropolitan Magistrate, E.O. II for acquitting the accused 1 and 2, in view of'' the discussion made in this judgment, it follows that the order of acquittal has to be confirmed, though for different reasons.

24. In this result, these two criminal appeals are dismissed, confirming the order of acquittal of the accused 1 to 3.

