
(1985) 03 MP CK 0018

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 109 of 1984

Income Tax Officer

APPELLANT

Vs

Kaluram

RESPONDENT

Date of Decision : 26-03-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 277

Citation : (1986) 55 CTR 451 : (1985) 156 ITR 748

Hon'ble Judges : P.D. Mulye, J

Bench : Single Bench

Judgement

P.D. Mulye, J.—This is a petition filed by the petitioner u/s 482, Criminal Procedure Code, against the order dated August 10, 1983, passed by the Chief Judicial Magistrate, Indore, in Criminal Case No. 1075 of 1980, whereby the respondent has been discharged. In the alternative it is also prayed that if the impugned order is treated to be an acquittal, then the petitioner be granted leave u/s 378, Criminal Procedure Code, to prefer an appeal against the acquittal of the respondent.

2. The facts giving rise to this petition may be stated, in brief, thus : The petitioner, who is an Income Tax Officer, in the capacity of a public servant, after obtaining the necessary sanction, filed a criminal complaint u/s 200 of the Criminal Procedure Code, against the respondent, who is an Income Tax assessee, for an offence u/s 420 read with Section 511 of the Indian Penal Code and u/s 277 of the Income Tax Act on the ground that for the assessment years 1965-66 and 1966-67, the respondent had submitted false returns by concealing certain income which was assessable to tax. Therefore, for income escaping assessment, action was taken against the respondent by issuing notice u/s 148 of the Income Tax Act. Thus, the respondent had submitted false returns with an intent to deceive and defraud the Income Tax Department and to secure a favourable order of assessment.

3. The case was adjourned from time to time for recording evidence before charge but despite obtaining several opportunities, the petitioner did not adduce any evidence in support of the complaint.

4. On August 10, 1983, also, the complainant was absent. The respondent submitted an application u/s 245(2), Criminal Procedure Code, along with a certified copy of the judgment of the Income Tax Appellate Tribunal (Ex. D-1) to point out that the fact of concealment of income for the years complained of was held as disproved. The learned trial court, therefore, discharged the respondent on the ground that there is no evidence which if unrebutted would warrant a conviction of the accused. Hence, this petition.

5. The learned counsel for the petitioner did not dispute the fact that the learned trial court had given several opportunities to the petitioner to lead evidence before charge but no evidence was led. However, he submitted that despite there being no evidence adduced by the petitioner, when the trial court permitted the respondent to produce in evidence Ex. D-1 on which it relied, the necessary inference to be drawn from the impugned order is that the respondent has been acquitted even though no charge was framed against him. But, I am not persuaded to agree with the submission because the acquittal is only after regular trial in which the evidence is adduced after a charge is framed. This is not a case of acquittal. Therefore, merely because the respondent had filed a copy of the judgment of the Income Tax Tribunal, it would not lead to the conclusion that the effect of the impugned order is acquittal of the respondent. In fact, it is a clear order of discharge against which the petitioner ought to have filed a revision which is admittedly barred by 61 days. When the petitioner had a specific remedy of revision to which he did not resort, the inherent power u/s 482, Criminal Procedure Code, cannot be exercised. Therefore, this petition deserves to be dismissed on the short ground that no revision having been filed within time, this is not a fit case to exercise the inherent power. Even if it is treated as a revision, it is barred by limitation by 61 days for which no application for condonation under the Limitation Act has been filed. This being not a case of acquittal, granting of leave also does not arise.

6. The learned counsel for the petitioner in support of his submission placed reliance on the decisions reported in Abdul Nabi Vs. Gulam Murthuza Khan and Another, , Mahant Abhey Dass Vs. S. Gurdial Singh and Others, , Raza Husain and Others Vs. Emperor, and K. Abdul Salam Sahib Vs. Batchu Veerabhadraraju, . But, in my opinion, these authorities are distinguishable so far as the facts of the present case are concerned.

7. On the other hand, the learned counsel for the respondent apart from contending that the petition is not maintainable also submitted by placing reliance on the decision reported in [1981] CLJ 745 [State (Delhi Administration) v. Vishwanath Lagnani] that averment made in the petition filed before the lower court do not prima facie make out any case against the respondent.

8. The essence of an offence u/s 277 of the Income Tax Act lies in the verification of an untrue statement. Where verification was deliberately false, subsequent rectification cannot alter the position. It is not enough to sustain the conviction u/s 277 by merely showing that the return was false, but it must also be established that the accused knew that the return made is false to his knowledge. The prosecution has to establish that not only the verification made by the accused was false but also that he has made such verification with the belief and knowledge that such verification was false or at least that he believed such verification not to be true. The same would apply to a case for an offence u/s 420, Indian Penal Code, regarding cheating about which also there is no prima facie material or evidence adduced by the petitioner.

9. For all those reasons, I see no merit in this petition which is dismissed and the order of discharge is upheld.