
(1979) 04 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 1362 of 1974

Income Tax Officer

APPELLANT

Vs

Mohan Lal Vig and Another

RESPONDENT

Date of Decision : 03-04-1979

Acts Referred:

Income Tax Act, 1961 — Section 277
Penal Code, 1860 (IPC) — Section 193

Citation : (1983) 139 ITR 681

Hon'ble Judges : S.S. Sidhu, J; Harbans Lal, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.K. Jhingan, for the Appellant; Siri Chand Goyal and O.P. Goyal, for the Respondent

Judgement

S.S. SIDHU J.—Lal Chand, Mohan Lal and Sohan Lal respondents were tried u/s 277 of the I.T. Act and s, 193, IPC, on a complaint filed against them by the ITO, District II (vii), Amritsar, by the Court of the Chief Judicial Magistrate, Amritsar. That court, vide its judgment dated March 21, 1974, acquitted all the three respondents of the charge u/s 193, I PC, and acquitted Mohan Lal and Sohan Lal also of the charge u/s 277 of the I.T. Act, but convicted Lal Chand alone u/s 277 ibid and sentenced him to rigorous imprisonment for six months. The complainant filed the present appeal against the acquittal of Mohan Lal and Sohan Lal, respondents. An appeal preferred by Lal Chand against his conviction and sentence was accepted by the Court of Additional Sessions Judge, Amritsar (Shri Balwant Singh Teji), and as a result thereof his conviction and sentence were set aside and he too was acquitted of the charge u/s 277 of the LT. Act, vide its judgment dated April 12, 1978. The complainant, therefore, filed Criminal Appeal No. 58 of 1979 against the aforesaid acquittal of Lal Chand. This judgment, therefore, shall dispose of that appeal also.

2. The facts of the case, in brief, are that the complainant filed a complaint against all the three respondents alleging that they along with Smt. Veero and

one Daljit Rai filed an application on April 30, 1956, for the registration of their firm, named and styled as M/s. Roda Ram Lal Chand, u/s 26A of the Indian I.T. Act, 1922, for the assessment year 1957-58. The partnership deed dated April 20, 1956, purporting to be signed by Daljit Rai also was presented along with that application and, consequently, the registration of the firm was obtained on the basis of the partnership deed and the representations made in the application. During the proceedings for the assessment year 1962-63, it came to the notice of the I.T. Department that Daljit Rai partner was aged about ten years and, as such, he was a minor. Accordingly, Shri Joginder Singh, ITO, P.W. 2, cancelled registration of the firm for the assessment year 1957-58 and also its continuation as such up to the assessment year 1962-63. Lal Chand, respondent, a partner of the aforesaid firm, had filed the return of income on August 17, 1964, for the assessment year 1963-64, in response to a notice dated August 31, 1963, issued u/s 139(2) of the I.T. Act by Shri Joginder Singh, P.W. 2, which he had received on September, 19, 1963. The return was filed beyond the prescribed period and it showed the income of Rs. 17,447. The declaration made in that return was signed and duly verified by Lal Chand on his own behalf as a partner of the firm and on behalf of other partners. That return was accompanied by the profit and loss account, trading account of various items and personal accounts of partners, besides two applications. The first application was made for a condonation of the delay in filing the return and another application was made for registration of the assessee-firm under the name and style of M/s. Roda Ram Lal Chand, and therein the respondents admitted that Daljit Rai was a minor and so he was only admitted to the profits of the firm. During the pendency of assessment proceedings for the year 1963-64, the shop of the respondents was raided by the officers of the Excise and Taxation Dept. and a Dasti Bahi was recovered from there and the same was produced before Shri V. P. Sood, ITO, P.W. 3. Thereupon, the said Officer, vide his order dated July 13, 1966, issued a notice under Sections 143(2) and 142(1) of the LT. Act requiring the assessee to appear before the ITO on July 27, 1966, along with the cash book, ledger, bank pass book and Dasti Bahi relating to the assessment year 1963-64. However, the respondents obtained a number of adjournments and their counsel appeared before the ITO on June 12, 1967, The recovered Dasti Bahi mentioned above contained a number of opening debit entries relating to different sums which when totalled amounted to Rs. 75,221. Those entries actually represented the amounts due from various parties to the assessee-firm regarding the business transactions which had taken place during the accounting year 1962-63, but there was no mention of those transactions or profits earned therefrom in the set of books, including the ledger pertaining to that period, of the firm. The trading account of various items, and the profit and loss account which had been annexed to the return of income did not show the profits earned from these transactions nor did the personal accounts of the partners show the distribution of these profits. Thus, it appeared that the assessee-firm had another set of books for the accounting year 1962-63 in which these business transactions had been recorded and from which opening debit balance as posted in the Dasti Bahi

had been brought forward. The respondents failed to produce the genuine set of books despite notice being served on them requiring them to produce those genuine account books and, accordingly, the assessee-firm was given an opportunity to show cause as to why that entire amount be not treated as income of the firm from undisclosed sources. After getting a number of adjournments, the assessee-firm applied to the Commissioner that the amounts shown in the Dasti Bahi be treated as its concealed income and the same be spread over a number of relevant years. However, that request was turned down. The assessee again submitted another application which was also rejected. Thereafter, the assessee-firm was given a notice to produce evidence on which it might rely in respect of the addition of Rs. 75,221 to its total income. Mohan Lal respondent appeared in response to that notice and obtained adjournments and finally the assessment order was passed by Shri V. P. Sood, P.W. 3, on March 26, 1968, and the income of the assessee-firm for the accounting year 1962-63 was assessed at Rs. 85,000. In an appeal before the AAC, the estimated income of the firm was reduced from Rs. 85,000 to Rs. 75,221. But for that reduction, that appeal was otherwise dismissed. It was also alleged in the complaint that the respondents had been carrying on business and earning huge profits in the relevant year but deliberately and intentionally, with a view to concealing the profits for evading payment of Income Tax, they did not enter the particulars of such business and profits earned therefrom in the account books which they had fabricated for the purpose of producing the same before the Income Tax authorities. It was further alleged that the accused-respondents filed statements of account as annexures to the return of income which they knew to be false and made a false verification and declaration in the return of income and they being guilty of delivering accounts and statements which were false and which they either knew or believed to be false or did not believe to be true and further they caused the circumstances to exist by making false entries in the books which they produced before the ITO intending that such circumstances of false entries might appear in evidence in the proceedings before the ITO and the same might cause the T.T. authorities, who were to form an opinion upon such false evidence, to entertain an erroneous opinion touching the material points, to the result of such proceedings before such authorities. It was finally alleged that since the accused were guilty of committing offences under the I.T. Act. and also under the IPC, they should be tried and punished in accordance with law.

3. The trial court, after examining Sarvshri R.D. Mann, Joginder Singh and V.P. Sood, the ITO, P.Ws. 1 to 3, respectively, found that a prima facie case u/s 277 of the I.T. Act and u/s 193, IPC, was made out against the three respondents. The trial court, therefore, charged them accordingly. They pleaded not guilty to the charges and claimed to be tried. After that, the prosecution examined Shri Babu Ram Sharma, Records Keeper, Officer of the Excise and Taxation Office, Amritsar, P.W. 4. Shri Joginder Singh, Taxation Inspector, Ludhiana, P.W. 5, and Shri S.K. Jain, Deputy Excise and Taxation Commissioner (Appeals), Rohtak, P.W. 6.

4. All the three accused-respondents, in their statements recorded after the close of the prosecution evidence, admitted having filed the return of income and also that they had got their firm registered with the I.T. Department, but pleaded ignorance about all other facts. Both Mohan Lal and Sohan Lal respondents further added that they did not remember the facts and pleaded their ignorance in respect thereof. However, none of the accused produced any evidence in their defence. The result of the trial of the case has already been indicated above, and so also the result of the appeal filed by Lal Chand against his conviction and sentence.

5. It has been argued by the learned counsel for the appellants that Lal Chand respondent filed ex. P.K. return of income of the assessee-firm for the assessment year 1963-64 before the I.T. authorities and along with it he also filed statements of accounts, exs. P.L., P.M., P.N. and P.O. signed by Mohan Lal respondent. In ex. P.K., the total income of the assessee-firm shown was Rs. 17,477 only. Therefore, the business premises of the firm of the respondent were searched by the District Excise and Taxation authorities as deposed to by Shri S.K. Jain, P.W. 6, and Inspector Joginder Singh P.W. 5, whereupon the Dasti Bahi, ex. P.Y., was recovered. That Dasti Bahi. showed various debit balances amounting to Rs. 75,221 which had been carried forward from the previous years and, therefore, those balances apparently represented the income of the assessee-firm from the transactions entered into by it in the accounting year 1962-63, that is, assessment year 1963-64. On the basis of that Dasti Bahi, the I.T. authorities gave a number of notices to the respondents to explain the amounts of debit balances carried forward from the previous year in the Dasti Bahi but they failed to give any explanation and, therefore, they were ultimately given notice to show cause as to why the amounts of debit balances shown in Dasti Bahi, ex. P.Y., be not treated as their concealed income. The accused could not give any explanation for those amounts and finally, vide their applications exs. P.A.C., P.A.D. and P.A.F., which were signed by Mohan Lal, the respondents requested that the amounts entered in the Dasti Bahi be treated as income of the assessee-firm but the same be spread over a number of relevant years. It has further been argued by the learned counsel for the appellants that since Dasti Bahi, ex. P.Y. was found from the premises of the firm of the respondents and the entries contained in that Dasti Bahi showed that the accused earned profits in the year 1962-63 which they had concealed by not making a mention thereof in their return, ex. P.K., it stands proved that the respondents had filed a return of income for the assessment year 1963-64, marked ex. P.K., which contained false declarations and statements with respect to the income of the firm and, thus, the respondents had committed an offence punishable u/s 277 of the I.T. Act, He has further submitted that the filing of the false return and statements of accounts reveals that the respondents had fabricated false documentary evidence for the purposes of being used before the I.T. authorities and thereby they had committed an offence within the mischief of Section 193, IPC, also.

6. We have applied our mind to the above submissions made before us by the learned counsel for the appellants and have also heard the learned counsel for the respondents in that behalf. We are of the considered opinion that the evidence produced in this case is hardly sufficient to prove the charges u/s 277 of the I.T. Act and Section 193, IPC, against the respondents or any of them. The main documentary evidence which has been relied upon by the prosecution to prove its charges against the respondents is Dasti Bahi, ex. P. Y., allegedly recovered by the I.T. authorities from the business premises of the firm of the respondents when a raid was carried out at the said premises by those authorities, but we doubt if the alleged recovery of Dasti Bahi, ex. P. Y., and also the contents of that Bahi, have been got duly proved by leading any legal evidence. Shri S.K. Jain, Deputy Excise and Taxation Commissioner, P.W. 6, has stated that he inspected the business premises of M/s. Roda Ram Lal Chand at Baba Bakala in Amritsar District, on September, 21, 1963, and from those premises, the Dasti Bahi, ex. P.Y., was taken into possession by him. Admittedly, at that time, those premises stood locked. It is to be noted that no seizure memo was prepared by Shri Jain, P.W., in respect of the seizure of that Dasti Bahi, from there. Thus, there is the solitary statement of Shri Jain with regard to the recovery of the Dasti Bahi, ex. P.Y., from those premises. In the absence of any independent corroboration of the statement of Mr. Jain, it will be difficult to hold that in fact the Dasti Bahi, ex. P.Y., was recovered from those premises. Anyway, if it be presumed for the sake of argument that the recovery of the Dasti Bahi, ex. P.Y., from the business premises of the firm of the respondents stands proved from the statement of Shri Jain, P.W., it cannot be said that proof of the recovery of that Dasti Bahi, also amounts to the proof of the truth of the contents of that Dasti Bahi. In order to show that that Bahi contained true accounts relating to the business conducted by the firm of the respondents, some evidence should have been led by the prosecution for showing that those accounts were entered in that Bahi, by the respondents or by somebody at their instance, but it may be pointed out that no evidence whatsoever has been produced to prove the contents of that Bahi. No person who might have made those entries in ex. P.Y., was examined on behalf of the prosecution. No person who was acquainted with the handwriting of the person by whom entries in that Dasti Bahi, were made and signed has been examined. Accordingly, the entries of accounts made in ex. P.Y., have not been got legally proved and, therefore, those entries cannot be considered as legal evidence against the respondents.

7. It has been argued by the learned counsel for the appellants that Mohan Lal, respondent, in applications, exs. P.A.C., P.A.D. and P.A.F., which were signed by him, had requested that the amounts entered in the Dasti Bahi, be treated as their income and that they be spread over a number of relevant years. He has, further argued that the aforesaid applications and also applications exs. P.A.M. and P.A.N. signed and presented by Mohan Lal contained the admission of Mohan Lal that, the amounts entered in the Dasti Bahi, in fact, related to the income of the assessee-firm and, therefore, the contents of exs. P.Y. stand duly proved and, as

such, they can be used against the respondents for holding that the respondents had submitted false Income Tax return and, thereby, they had committed an offence within the mischief of Section 277 of the I.T. Act and Section 193, IPC. We, however, find no merit in this argument. Exhibits P.A.D. and P.A.F. were never put to Mohan Lal, respondent or other respondents during the course of their examination after the close of the prosecution evidence,, Of course, these documents, exs. P.A.C., P.A.M. and P.A.N., were put to him and he was questioned whether he had made those applications and signed the same. On this, he replied in the affirmative. Now, it is well-settled that if an accused person admits his signature on a particular document it does not mean that he has, thereby, admitted the contents of that, document. It is to be noted that the contents of the aforementioned applications were never put to Mohan Lal, respondent, or any of the other two respondents when they were examined u/s 342, Cr. PC, after the close of the prosecution evidence. No other evidence has been led to prove the contents of those documents which contain the alleged admissions of Mohan Lal with regard to the contents of ex. P. Y. It is, therefore, abundantly clear that the contents of exs. P.A.C., P.A.M., P.A.N. and P.Y. on which only reliance has been placed by the learned counsel for the appellants for proving the case of the prosecution against the respondents have not been got proved by leading any legal evidence. That being so, it cannot be said that the Income Tax return and the statements of accounts attached therewith were fabricated documents. Accordingly, the courts below rightly held that the charges under Sections 277 of the I.T. Act and Section 193, IPC, have not been brought home to any of the respondents. We, therefore, uphold the acquittal of all the three respondents as ordered by the courts below.

8. For the reasons given above, we find no force in these appeals which are hereby dismissed.