(2011) 04 MAD CK 0483

In the Madras High Court

Case No : Criminal Appeal No. 646 of 2002

Income Tax Officer APPELLANT

Vs

R. Soundararajan RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Income Tax Act, 1961 — Section 277, 279
Penal Code, 1860 (IPC) — Section 193, 196, 420, 468, 471

Citation : (2011) 337 ITR 531 : (2012) 20 TAXMAN 734

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : Ramasamy K., Public Prosecutor, for the Department, for the Appellant; S. Sridharan, for the Respondent

Final Decision : Dismissed

Judgement

S. Nagamuthu, J.—This is an appeal against acquittal. The respondent was the sole accused in C. C. No. 133 of 1988 on the file of the learned Judicial Magistrate No. I, Vellore. It was a case instituted on a private complaint filed by the appellant alleging that the respondent committed offences punishable under sections 193, 196, 420, 468 and 471 of the Indian Penal Code and section 277 of the income tax Act, 1961. The trial court has acquitted the respondent. Challenging the same, the appellant is before this court.

2. The prosecution case in brief is as follows : The respondent is a chartered accountant. He was having his office at No. 22/13, Sundaresasamy Koil Street, Vellore. He was residing at No. 2, Natesa Pillai Street, VCC Nagar, Sainathapuram, Vellore. As an income tax practitioner, the respondent submitted income tax return for the assessment year 1983-84 for one Shri P. Thirunavukarasu. The income was shown was Rs. 9,000. Along with the said return, a TDS certificate for a sum of Rs. 2,366 was also submitted. In the income tax return, a request was made for issuing an order for refund of the said

sum of Rs. 2,366. According to the return, the above said TDS certificate had been issued by the Divisional Engineer, Highways and Rural Works, Saidapet, Chennai. RW. 3 was the income tax Officer during the relevant year. On accepting the income tax return, he issued an order for refund of the TDS sum. Thereafter, an account was opened in the Canara Bank, Thiyagarajapuram, Vellore, in the name of Shri Thirunavukarasu. The respondent introduced him to the Canara Bank. The amount ordered by the income tax Department for the refund of the TDS amount was withdrawn through the said account. Later on, the income tax Department had a doubt about the veracity of the above said transaction. Therefore a warrant was issued by the income tax Commissioner, Chennai to P.W. 5 to make search of the house as well as the office of the respondent. P.W. 5 made house search at the house of the respondent as well as in the office and prepared the search lists. Thereafter, he reported the matter to the Commissioner, income tax Department, Chennai. The Commissioner, income tax in turn issued a direction u/s 279 of the income tax Act to P.W. 1, the income tax Officer at Vellore. On the above direction, he filed a private complaint alleging that the respondent had committed offences under sections 193, 196, 420, 468 and 471 of the Indian Penal Code and section 277 of the income tax Act.

3. On appearance, the respondent denied the above allegations. The trial court went on with the trial. As many as five witnesses were examined on the side of the complainant and 19 documents were exhibited. P.W. 1 has spoken to about the launching of prosecution. As I have already stated, P.W. 3 has spoken to about the refund order issued by him based on the income tax return and the TDS certificate submitted by the respondent on behalf of Shri P. Thirunavukarasu. P.W. 2 has spoken to about the opening of a savings bank account in the Canara Bank in the name of Shri P. Thirunavukarasu on the introduction made by the respondent and the payment of the TDS. amount through this account in the name of Shri P. Thirunavukarasu. P.W. 4 has spoken to the fact that the TDS certificate in question was not issued by the Highways Department and it is a fabricated document. P.W. 5 has extensively spoken to about the raid conducted.

4. When the accused was questioned u/s 313 of the Code of Criminal Procedure, 1973, in respect of the above evidence, he denied the same as false. His plea was that he is an innocent chartered accountant and an income tax practitioner. According to him, he submitted the TDS certificate and the income tax return on behalf of one Shri P. Thirunavukarasu. Shri P. Thirunavukarasu was introduced to. him by one Shri Rathi-nakumar. Because Shri P. Thirunavukarasu had become his client, believing his identity, he introduced him to the Canara Bank for opening a savings bank account. Thus, according to him, he is an innocent person and he has not committed any offence. Having considered the above, the trial court acquitted the respondent. The said order of acquittal is under challenge in this appeal.

5. I have heard the learned counsel on either side and also perished the records

carefully.

6. There is ho denial of the feet that the respondent as an income tax practitioner, submitted the income tax return on behalf of one Shri P. Thirunavukarasu. It is also not in dispute that along with the said income tax return, the respondent submitted a TDS certificate for Rs. 2,366. It is also not in dispute that a refund order was subsequently passed by the income tax officer based on the said TDS certificate and the income tax return. Further, the respondent has not denied the fact that he only introduced Shri P. Thirunavukarasu to open a savings bank account in the bank to enable him to withdraw the amount. There is also no dispute, as of now, the TDS certificate is a bogus certificate and, therefore, the consequential refund order has been obtained by playing fraud. Now, the question is as to whether the respondent has got any role to play in the matter of fabricating the TDS certificate. From the evidence available on record it has been established that this respondent had only submitted the TDS certificate and the income tax return. Absolutely, there is no evidence that it was he who fabricated the bogus TDS certificate.

7. It is the main contention of the appellant that there is no such person as Shri P. Thirunavukarasu and the respondent has fabricated even the income tax return as well as the TDS certificate in the name of fictitious person. It is the contention of the respondent that Shri P. Thirunavukarasu is not a fictitious person. According to him, one Shri Rathina kumar introduced Shri P. Thiruriavukarasu as a contractor and accordingly, he prepared the income tax return for him. It is his case that the TDS certificate in question was produced by Shri P. Thirunavukarasu. Therefore, the crucial question is whether Shri P. Thirunavukarasu is a fictitious person or a living person. It is the bounden duty of the prosecution to prove that there was no such person in the name of Shri P. Thirunavukarasu living in the address given in the income tax return. The initial burden is only upon the appellant to prove the fact that Shri P. Thirunavukarasu is a fictitious person. This burden could have been discharged by the appellant either by examining any respectable person from the locality or the Village Administrative Officer or ? anybody else from the village. Absolutely, there is no investigation conducted by the appellant in respect of this aspect.

8. It is in evidence that the above said amount of Rs. -2,366 was added to the income of the respondent in his assessment and accordingly, tax was imposed holding that the respondent had secured the above amount of Rs, 2,366 from the Department. The said assessment order was challenged by the respondent before the income tax Appellate Tribunal. It was contended by him that Rathina kumar is not a fictitious person and he had no role to play in the matter of filing of the income tax return and production of the TDS certificate and the income tax Appellate Tribunal allowed the said plea of the respondent. As a matter of fact, in the order made I. T. A. No. 1135/Mds/1994, the income tax Appellate Tribunal has held in paragraph as follows :

7... From the aforesaid fact it is very clear that Shri Rathina kumar is not a fictitious person. It was also mentioned in the remand report that even a single pass book listed in annexure 3 of the assessment order could be related to any of the contractors in question. The very fact that the pass book found in the possession of the assessee at the time of search do not relate to the contractors in question clearly exhibits the innocence of the assessee. Further, the suspicious movements of Shri Rathina kumar, viz., staying in the Venus Lodge for a number of days during the months of December, 1984, and January, 1985, and further staying in the house bearing Door No. 73 belonging to Shri Venkatachallam, who is a retired person from Simpson and Co., for a few days and the enquiries made by the bank officers and other persons about the whereabouts of Shri Rathina kumar after he vacated the house, all clearly show that the real culprit is Shri Rathina kumar and not the assessee. It is quite probable that the assessee being a junior member of the profession must have acted at the instance of Shri Rathina kumar, who is a middleman in all the transactions. It is also seen from the records that all the transactions have been routed through banks where accounts have been opened in the names of each contractor to whom refunds had been made. The fact that no pass books have been found in the possession of the assessee relating to the contractors in question and the transactions have been routed through the bank, clearly show that the assessee did not have the benefit of refunds obtained in the name of various contractors. We, therefore, fully agree with the reason given by the Commissioner of income tax (Appeals) in his order in deleting the addition made by the Assessing Officer.

9. The said order (vide exhibit D1) was again challenged by the income tax Department before the High Court. The court in Tax Case Petition No. 284 of 1997 by. order dated July 2, 1998, has dismissed the same. Thus, the finding of the income tax Appellate Tribunal holding the respondent as innocent has become final. The respondent has placed reliance on this order. The trial court has also relied on the said order to hold that the respondent is innocent and he had no role to play in the commission of the crime of Shri Rathina kumar and the other contractors. The learned counsel for the appellant is not in a position to point out any infirmity in the said finding.

10. In so far as the receipt of TDS refund order is concerned, it was not handed over to the respondent and it was sent only to the contractor. In the matter of opening of a savings bank account also except, introducing the person whom the respondent believed to be Shri P. Thirunavukarasu he has got no other animus to commit any fraud. Thus, the respondent has nothing to do with the withdrawal of the refunded amount also.

11. It is the well-settled law that the High Court while dealing with an appeal against order of acquittal cannot reverse the findings of the trial court in a mechanical fashion. The acquittal of the accused by the trial court further strengthens the innocence of the respondent. Unless the judgment of the trial court is found to be perverse, this court cannot interfere with the same. In this case, the learned counsel for the appellant is not able to point out any material

on record to show that the judgment of the trial court is perverse requiring interference at the hands of this court.

12. In view of the foregoing discussions, the trial court was right in acquitting the respondent. I find no reason to interfere with the same. In such view of the matter, the appeal fails and the same is dismissed.