(1993) 10 MAD CK 0021

In the Madras High Court

Case No : Criminal Appeal No. 412 of 1987

Income Tax Officer APPELLANT

Vs

Rayala Corporation P. Ltd. RESPONDENT

Date of Decision : 08-10-1993

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 378, 464
Income Tax Act, 1961 — Section 200, 276B
Income Tax Rules, 1962 — Rule 30

Citation : (1994) 206 ITR 381

Hon'ble Judges : Bellie, J

Bench : Single Bench

Advocate : Ramaswamy K, for the Appellant; Karpagavinayagam, for the Respondent

Judgement

Bellie, J.—This is an appeal filed by the Income Tax Officer, Circle III, Madras, the complainant in the case against an order of acquittal

passed by the appellate court setting aside an order of conviction and sentence passed by the trial court in a case in which the accused was

accused of having committed an offence punishable u/s 276B read with section 200 of the Income Tax Act, 1961, and rule 30 of the Income Tax

Rules, 1962.

2. As per the complaint, the accused which is a company, viz., Messrs. Rayala Corporation (P.) Limited, Madras, for payment of tax from their

employees, deducted tax at source but the same has not been remitted to the credit of the Central Government within a week without reasonable

cause or excuse as required u/s 276B of the Income Tax Act read with section 200 and rule 30 of the Income Tax Rules, and, therefore, they have

committed an offence.

3. The trial court, viz., the Additional Chief Metropolitan Magistrate (Economic Offences-I), Madras, found that the offence against the accused

has been proved and, therefore, it convicted them and sentenced them to pay a fine of Rs. 2,000. But, in appeal by the accused, the learned

Principal Sessions Judge, Madras, disagreed with the finding of the trial court and instead held that the alleged offence against the accused had not

been proved satisfactorily and, therefore, he set aside the conviction and sentence passed by the trial court and acquitted the accused. It is against

this order of acquittal that the complainant has filed this appeal.

4. On careful consideration of the materials in the case, I find that the order of acquittal passed by the learned Sessions Judge cannot be sustained.

It is not in dispute that the accused deducted a sum of Rs. 26,000, from the salaries of the employees on February 15, 1971, Rs. 698 on February

26, 1971 and Rs. 20,708 on March 31, 1971, and all these sums were together remitted only on June 8, 1971, and, as per rule 30 of the Income

Tax Rules, the amounts shall be remitted within one week from the date of deduction. Therefore, in the case of the first sum, there was a delay of

105 days, the second sum, 94 days and the third sum 61 days.

5. When P.W.-2, the Assistant Director (Intelligence), Income Tax Department, went to the company and contacted the chief accountant there,

viz., Yegneswaran, and he, as regards the said delays, gave an explanation exhibit P-5. Not satisfied with that explanation, the complaint was

lodged.

6. The learned appellate judge appears to state that, in the charge framed by the court, it is not stated that the delay was without reasonable cause

or excuse, and no witness also has spoken so. For these reasons, he held that the accused is entitled to acquittal. It must be remembered that the

charge has been framed by the court. In that charge, the words ""without reasonable cause or excuse"" are not mentioned. But all other particulars of

the case against the accused have been stated. I am clearly of the opinion that, considering the provisions of section 464 of the Code of Criminal

Procedure, as regards the fact of omission to frame, or absence of, or error in, charge, the absence of the said words in the charge alone will not

vitiate the trial entitling the accused to an acquittal. I find there is absolutely nothing to show that, on account of the absence of those words, the accused has been in any way prejudiced.

7. Regarding the point that no prosecution witness has spoken that the delay was without reasonable cause or excuse, it must be borne in mind

that, in the complaint, it has been clearly stated that the delay was without reasonable cause or excuse. P.W.-2, in his evidence, has stated that,

when he went to the company and met the accountant, he admitted that there was delay in remitting the amounts, and when he asked for an

explanation for the delay, he said that the cheque had to be signed by the managing director of the company for remittance and the managing

director was away in Ooty, and then he gave exhibit P-5 typed explanation. From this evidence of P.W.-2, in the background of the averments in

the complaint, one would understand that, according to him, the delay was without reasonable cause or excuse. Only because any of the

prosecution witnesses including P.W.-2 has not expressed the very words ""without reasonable cause or excuse"", it cannot be said that there is no

proof that the delay was ""without reasonable cause or excuse"".

8. Considered in relation to the time of one week within which the money must be deposited, the delay regarding all the three amounts is

enormous. Therefore, the accused knew that the complaint against them is non-remittance of the amount without reasonable cause or excuse. In

these circumstances, it is for the accused to have given evidence to show that the delay was due to reasonable cause or excuse. No suggestion has

been made to any of the prosecution witnesses that there was reasonable cause or excuse for the delay. The accused has not chosen to examine

anybody on their side to prove the same. In exhibit P-5 explanation given by the chief accountant of the accused company it is stated that, because

the managing director of the company was in Ooty, the signature in the cheque could not be obtained, and it is further stated that, due to his

preoccupations and other administrative charges, the tax deducted at source was not remitted into the Reserve Bank of India then and there. No

court will accept this as reasonable cause or excuse for the long delay stated above. Therefore, it appears to me that the trial court has rightly

convicted the accused but the appellate court has wrongly acquitted the accused.

9. Mr. M. Karpagavinayagam, learned counsel appearing for the respondent-accused, has cited the decision in Income Tax Officer, Ward-C Vs.

Taurus Equipment (P.) Ltd. and Another, . But, in that case, the words ""fails without reasonable cause or excuse"" were neither in the complaint nor

in the evidence. Therefore, it was held that the prosecution failed to prove that any offence was committed. But in our case, as stated above, in the

complaint, it has been clearly stated that the accused failed to remit the amount without reasonable cause or excuse. Therefore, that judgment

cannot be of help to the accused.

10. Thus considering, I am of the view that the order of acquittal by the appellate court cannot be sustained. Therefore, the appeal is allowed, the

order of the first appellate court is set aside, and the order of the trial court is restored.