

(1998) 07 MAD CK 0045
In the Madras High Court
Case No : Criminal Appeal No. 1188 of 1986

Income Tax Officer

APPELLANT

Vs

S. Ponnambalam and Another

RESPONDENT

Date of Decision : 20-07-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Income Tax Act, 1961 — Section 230A(1), 276, 276C, 277, 278
Penal Code, 1860 (IPC) — Section 120B, 193

Citation : (1999) 240 ITR 171

Hon'ble Judges : V. Kanakaraj, J

Bench : Single Bench

Advocate : Ramasamy K., Special Public Prosecutor, for the Appellant; M. Venkataraman, for the Respondent

Judgement

V. Kanakaraj, J.—The above criminal appeal is directed against the judgment dated August 8, 1986, made in E.O.C.C. No. 113 of 1986,

by the Court of Additional Chief Metropolitan Magistrate (Economic Offences II), Egmore, Madras 8, acquitting the respondents herein and yet

another, who were arrayed as accused Nos. 1 to 3 before the trial court from the charges framed against them punishable under Sections 120B,

193 and 420 read with Section 511 of the Indian Penal Code and Sections 276C, 277 and 278 of the Income Tax Act, 1961.

2. The charges as framed by the trial court against these respondents and yet another is that : Firstly, the first accused during August, 1986,

intentionally made a false verification in the application form (exhibit P-1) for getting Section 230A(1) of the Income Tax Act, certificate, enclosing

draft sale deed understating proposing the sale consideration as Rs. 75,000 and delivering the same before the Income Tax Officer, Salaries Circle

1(2), Madras, and thereby committing an offence punishable u/s 277 of the Income Tax Act, 1961.

3. Secondly, at the same time, place and in the course of the same transaction, the first accused attempted to evade capital gains tax chargeable

under the Income Tax Act to wit, the false consideration shown in the draft sale deed and application as Rs. 75,000 in respect of the assessment

year 1985-86 and thereby committed an offence punishable u/s 276C(1) of the Income Tax Act, 1961.

4. Thirdly, the first accused, at the same time, place and in the course of the same transaction dishonestly attempted to cheat the Income Tax

Officer, Salaries Circle 1(2), Madras, by inducing him to deliver Section 230A certificate which is a valuable security and thereby committed an

offence punishable u/s 420 read with Section 511 of the Indian Penal Code.

5. Fourthly, that the first accused, at the same time, place and in the course of the same transaction gave false evidence in the course of the Section

230A proceedings, which are judicial proceedings before the Income Tax Officer, Salaries Circle 1(2), Madras, and thereby committed an offence

punishable u/s 193 of the Indian Penal Code.

6. Fifthly, the first and second accused at the same time, place and in the course of the same transaction caused the circumstances to prepare a

false draft sale deed containing false statement by the first accused in exhibit P-6 and both of them committed an offence punishable u/s 193 of the

Indian Penal Code.

7. The prosecution represented by the Income Tax Officer, Salary Circle, Madras-6, in its endeavour to prove the above charges framed against

the accused below, since the accused are presumed innocent and the prosecution being burdened with proof beyond reasonable doubts of the

facts and circumstances of the case, would examine four witnesses for oral evidence as P.Ws. Nos. 1 to 4, and also would mark 26 documents for

documentary evidence as exhibits P-1 to P-26 and on the part of the accused the evidence placed in all is nil. The court below in assessing the

above evidence placed in the context of the provisions of law under which the accused came to be charged and weighing the evidence to the

required norms of law and appreciating the same in its own way would ultimately arrive at the decision to acquit all the three accused therein

holding them not guilty, since the prosecution had failed to prove its case with proper evidence to the standard of proof beyond reasonable doubts.

8. It is only challenging the acquittal judgment registered by the trial court, the complainant Department has come forward to prefer the above

appeal on grounds as made out in the memorandum of appeal such as (i) that the lower court has completely misdirected itself on the question of

law relating to Section 230A and Section 277 of the Income Tax Act ; (ii) that the lower court has failed to note u/s 277 of the Income Tax Act

that any person who makes a statement in any verification or under any rule made thereunder or delivers an account which proves to be false, shall

be punished and the same has not been given effect to by the court below ; (iii) that Section 230A(2) of the Income Tax Act states that the

application shall be in such form shall contain such particulars as may be prescribed (Rules 44A and 44B and Form 34A) and the applicant should

sign the verification and if any of the verification made in the said form is false, the person concerned is liable to be punished u/s 277 of the Income

Tax Act and the same has been lost sight of by the court below; (iv) that the lower court's findings that the certificate u/s 230A of the Income Tax

Act is only to prevent the disposal of property, when there is a tax liability and if there is any liability to pay tax, there is no offence committed is

erroneous and has resulted in miscarriage of justice ; (v) that the court below having found that the sale price was admittedly Rs. 1,70,000 and the

application u/s 230A of the Income Tax Act verified as true by the first accused showed the price as Rs. 75,000 which is a false statement, ought

to have convicted the first accused u/s 277 of the Income Tax Act ; (vi) that the lower court erred in finding that there was no tax liability when

under the law, the first respondent is bound to pay capital gains tax ; (vii) that the findings of the court below that no witness has spoken to the

liability of the first accused to pay capital gains tax and hence there is no proof of liability of tax is contrary to law and is opposed to the canons of

evidence ; instead the court has to take judicial notice u/s 57 of the Indian Evidence Act; (viii) that the court below has also failed to note that the

original sale deed had been written for Rs. 75,000 and the stamp purchased for the said amount and that only after the Department's investigation

that in the sale deed it was Rs. 1,75,000 the additional stamps were purchased and interpolated for a total value of Rs. 1,75,000 and the

document registered ; (ix) that the lower court has erred in holding that there is no attempt to evade the capital gains tax on the same ground that there is no tax liability ; (x) that the court below has completely misdirected itself on the application of Section 276C of the Income Tax Act, which contemplates the attempt to be complete, the moment a circumstance is made to exist which may eventually be used to evade tax, the lower court has not adverted to this in its discussion ; (xi) that the lower court's finding that there will not be any liability for tax, if the capital gains has been invested in certain investments and there cannot be any attempt to evade tax is untenable in law; (xii) that the lower court ought to have held that Section 277(ii) of the Income Tax Act will clearly apply to the facts of the case and the interpretation given in this regard by the lower court in para. 14 of its judgment are not correct and warranted. With the above and such other grounds, the memorandum of appeal would seek for setting aside the acquittal judgment and to convict the accused according to the penal provisions of law for the offence committed.

9. During the arguments, learned senior counsel Mr. Ramasamy (Central Government Standing Counsel) appearing for the Income Tax

Department, at the outset besides giving a picture on the structure of the Income Tax laws their significance and the importance of the penal

provisions of the Income Tax Act, would also contend that the Income Tax statutes are standing on a different footing and there should be neither

fabrications nor additions ; that the onus (in common) is fixed on the accused ; that for instance if one states that he possessed rupees five lakhs,

the onus is on him to prove the source. Learned counsel would further argue that the culpable mental state is presumed for the accused unless the

contrary is proved. He would further generally contend that regarding the Income Tax, the Act is dearer and affectionate to those who disclose the

income needless to point out that it is the dreaded enemy of those who try to evade or escape the lawful tax.

10. Learned senior counsel would further argue that in many cases, the tax is deducted at source and would support entering into the facts of the

case stating that the first accused is the seller of the property located in Plot No. AP 1665, Door No. 143, "O" Block, Ganapathy Colony, Anna

Nagar, Madras 40, with an extent of 88 sq. feet, and a house built on it, and the second accused and third accused are the purchasers of the same

which had been sold as per the registered sale deed dated September 30, 1985, under a document No. 3610 of 1985 on the file of the Sub-

Registrar, Anna Nagar, Madras. Over and above Rs. 50,000, if the transaction is involved u/s 230A of the Income Tax Act, the Income Tax

clearance certificate should be obtained for the transaction, that the first accused applied for Section 230A certificate on August 30, 1985, and in

the application the sale consideration was mentioned as ""Rs. 75,000"" but in fact, it should have been more than that. On suspicion the Income Tax

authorities deputed one of the inspectors to make an enquiry and the enquiry revealed that there had been an agreement for sale between the same

parties and regarding the same property wherein the actual sale price was Rs. 1,75,000 and not Rs. 75,000 as it had been falsely mentioned.

11. Learned senior counsel would further contend that the chartered accountant, who filed for the Income Tax clearance certificate explained that

Rs. 1,75,000 had been shown by way of protective steps but the enquiry revealed that on September 6, 1985, the first accused gave a letter to the

effect that the sale consideration in the Section 230A certificate to be Rs. 75,000 and the accused was caught red-handed since his own document

the agreement for sale got detected, then the accused volunteered to admit to the effect that he was ready to correct the document stating that the

sale consideration was Rs. 1,75,000. He had also given a statement on September 7, 1985, admitting all the facts further stating that he had been

misguided by a friend of his to give understatement to the Registrar. He further admitted that it was done with intent to save the stamp duty and

other sundry charges. He also filed a fresh form quoting Rs. 1,75,000 and the certificate was also issued on the same day.

12. Continuing his arguments, learned senior counsel for the Income Tax Department would further contend that the clause in the agreement for

sale says that accused Nos. 2 and 3 have purchased 27 stamp papers for a sum of Rs. 9,750 for the sale consideration of Rs. 75,000 on August

23/24, 1985, and typed out the sale deed that after typing the first accused filed a second application for Rs. 1,75,000 which necessitated to

purchase of the stamp papers for the remaining sum of Rs. 1 lakh and erasing the original sale deed and incorporating Rs. 1,75,000 as sale

consideration the document had been registered.

13. Learned counsel would further point out that statements have also been recorded from accused Nos. 2 and 3 since they too committed an

offence as contemplated under the charge. Giving a picture of the document marked as exhibit he would further say that exhibit P-1 is the

application made originally with understatement valuing the property at Rs. 75,000. Exhibit P-6 is the draft sale deed in force along with exhibit P-I.

Exhibit P-8 is the agreement entered into at Rs. 1,75,000. Exhibit P-9 is the letter by the first accused stating that it was a typographical error.

Exhibit P-10 is the letter by the Assistant Commissioner of Income Tax Department. Exhibit P-12 is the fresh application. Exhibit P-13 is the copy

of the sale deed registered for Rs. 1,75,000, and exhibit P-14 is the understatement of the first accused.

14. Learned senior counsel would further point out that in the attempt to evade capital gains tax, P.W. 1 had committed an offence u/s 136 of the

Income Tax Act that the proceedings before the Income Tax Officer are deemed to be judicial proceedings within the meaning of Section 193 and

Section 228 of the Indian Penal Code and that every Income Tax authority is deemed to be a civil court under the authority of law. The object to

be achieved is that before the Income Tax authorities, one has to make the correct declaration, otherwise he would become punishable u/s 193 of

the Indian Penal Code for fabricating false evidence in a judicial proceeding intending to use the same in any such proceedings.

15. Section 196 of the Indian Penal Code would deal with any one corruptly using or attempting to use as true or genuine any evidence knowing it

to be false or fabricated. Learned counsel would also point out that both the accused were very much parties to the transactions, conspiracy and

abetment, as given in the charge. Learned counsel would draw the attention of the court to Section 276 wherein it has been contemplated that

whoever fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein, intending thereby to prevent that

property or interest therein from being taken in execution of a certificate under the provisions of the Second Schedule, shall be punishable with

rigorous imprisonment for a term which may extend to two years and shall also be liable to fine. That Explanation to Clause 1(iv) were to apply to

constitute an offence u/s 276C(1) and this section would read that if any person wilfully attempts to evade tax imposable under this Act he is

punished with imprisonment and fine and if any person wilfully attempts to evade payment of any tax also becomes punishable with rigorous, imprisonment.

16. Learned senior counsel would further point out that P.W.I the Income Tax Officer speaks about filing of the application u/s 230A of the Act on

lesser sale consideration of Rs. 75,000, i.e., exhibit P-1 application. Exhibit P-2 is the duplicate of exhibit P-1 application. The first accused also

furnished an affidavit in exhibit P-3. Exhibit P-4 is the salary certificate ; the power of attorney is exhibit P-5 ; exhibit P-6 is the draft sale deed for

a sum of Rs. 75,000. Learned counsel would also would point out that P.W. 1 has made an endorsement on exhibit P-1 to the effect that he

suspected and initiated the enquiry ; exhibit P-7 is the report by the inspector on enquiry ; exhibit P-8 is the agreement sent along with exhibit P-7,

i.e., for Rs. 1,75,000 ; exhibit P-9 is the letter dated September 6, 1985, wherein the first accused has admitted the actual value, but attributing the

fault for the typographical error ; exhibit P-10 is the letter from the Inspecting Assistant Commissioner ; exhibit P-11 is the letter filed by the first

accused with fresh application, with the letter of the auditor ; Exhibit P-12 is the fresh application form ; exhibit P-13 is the copy of the sale deed ;

exhibit P-14 is the statement of the first accused ; exhibit P-15 is the statement of the second accused ; exhibit P-16 is the second statement of the

first accused ; exhibit P-17 is the second statement of the second accused ; exhibit P-18 is the impounding order of exhibit P-8 agreement and the

original sale deed; exhibit P-19 is the sale deed for Rs. 1,75,000. exhibit P-20 is the summons issued u/s 131 of the Income Tax Act to the

accused ; exhibit P-21 is the summons for the appearance of the accused and giving statement on November 7, 1985 ; exhibit P-22 is another

summons to P. W. 4, the auditor ; exhibit P-23 is the summons to P.W. 3, the auditor and P. Ws. 3 and 4 would appear on November 26, 1985,

and give sworn statements ; exhibit P-24 is the statement of P. W. 4 ; exhibit P-25 is the statement of P.W. 3 and exhibit P-26 is the authorisation

to file the complaint.

17. Learned counsel would then cite instances from the evidence of the witnesses and from the documents in consummation of his arguments to the

establishment of the offence committed on the part of the accused. He would

also comment on the questioning of the accused by the trial court u/s

313 of the Criminal Procedure Code and the statement given by them to the said questions and would ultimately argue that from the above

instances, the following conclusions should be arrived at. He would ultimately urge that the trial court has based its conclusion on the following

points so as to arrive at holding the accused not guilty and consequently to acquit them. They are :

(i) Violation of filing Form No. 34A for obtaining tax clearance certificate u/s 230A of the Income Tax Act will not constitute an offence by itself ;

(ii) Tax liability ought to have been determined and assessment has to be completed before a charge is made u/s 276C(1) of the Income Tax Act.

Hence, the complaint is premature and the complainant ought to have waited till the transaction was completed ; and

(iii) Punishment clause u/s 276C(1) in this case and u/s 277 in any other case of the Income Tax only means the cases below Rs. 1 lakh of tax

sought to be assessed.

18. Answering the above three points, firstly he would cite a judgment reported in Pandurangam, In re [1973] Law Weekly (Crl.) 53, wherein it

has been made clear that even filing of false affidavit constitutes an offence. While such being the case, it is still more clear that filing of a false

affidavit by the accused would automatically constitute an offence under the Income Tax Act. Learned counsel would further elaborate this point

saying that the .income tax Form No. 34A is an application and it is a valuable security, since by filing a form he gets a clearance certificate. In

Ishwarlal Girdharlal Parekh Vs. State of Maharashtra and Others, (head note), the Supreme Court has ruled that an Income Tax assessment order

is a valuable security. If he files a false return or conceals any fact in it or understates the income and thus invites an assessment order for a lesser

income that constitutes an offence u/s 420 of the Indian Penal Code.

19. Citing yet another judgment reported in Sudhir Kumar Mukherjee v. State of W. B. [1975] L W (Crl. 28) and yet another judgment reported

in State of Maharashtra Vs. Mohd. Yakub and Others, , learned counsel would argue that based on these judgments the presumption of culpable

mental state is what constitutes an offence and how it is applied to Income Tax had all been established, besides allowing the appeal and sentencing

the accused for six months. Hence, no legal error has been committed.

20. Learned senior counsel would secondly focus his attention on the decision in Mahabir Prasad Saraogi Vs. State of Bihar and Another,

regarding the offence constituted u/s 193, i.e., fabrication of false evidence. u/s 193 of the Indian Penal Code dealing with fabricating Form No.

34A the intention of the accused is to cheat the Income Tax officials. Hence, the offence u/s 193 is complete. He would then cite Form No. 34A,

i.e., exhibit P-1 and the sale agreement exhibit P-6 as examples for the accused to have committed the offence u/s 193 and further say that the

offence is complete as soon as it is fabricated with the intention to commit the offence and would end up saying that the trial court had not applied

its mind or having applied its mind did not find any untoward incident in the cases of the offence. So far as the evidence is concerned, the

prosecution has established its case beyond reasonable doubt. The trial court had started solely on legal aspects which are fully settled citing a

ruling reported in G.S.R. Krishnamurthi Vs. M. Govindaswamy, Income Tax Officer, . Learned counsel would argue that all the points that are

necessary to decide the above questions have been considered and answered in this judgment. Citing yet another judgment reported in P.

Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , learned counsel would say that assessment need not have been completed for

the offence to be made out, and both proceedings could be carried on simultaneously, thus more or less akin to point No. 1. Further, this judgment

would also clarify how Section 277 of the Income Tax Act constitutes the offence and about the offence of conspiracy. Citing yet another

judgment reported in R. Vijayalakshmi and another Vs. Income Tax Officer, , learned senior counsel would cite the relevant portion of the

judgment dealing with Section 276C of the Income Tax Act, which "deals with the attempt of a person to evade tax and, therefore, it need not be

an actual evasion of the tax, and further holding thereby that as the first petitioner had deliberately given a false statement in Form No. 37G which

was to be forwarded to the Income Tax Department, it would amount to an attempt to evade tax. The verification was in respect of a false

statement with regard to the sale consideration There was a prima facie case under Sections 276C and 277. There was evidence that the second

petitioner asked the vendor to execute the sale deed in favour of his wife, the first petitioner, and that was prima facie evidence for the offence u/s

278. There was fabrication of false evidence and hence charges could be framed under Sections 193, 196 and 199 of the Indian Penal Code as

well as under Sections 276C, 277 and 278 of the Income Tax Act, 1961. Regarding the charges framed and the other judgment reported in

Income Tax Officer Vs. Dharamchand Surana, , learned senior counsel would explain that in that case the accused was a jewellery mart, which did

not file the returns wherein what constitutes an attempt to commit an offence has been explained. With these arguments, learned senior counsel for

the appellant would ultimately pray for allowing the appeal setting aside the acquittal judgment rendered by the trial court.

21. In reply, learned counsel, Mr. N. Venkataraman, appearing on behalf of the respondents, would contend that the exercise of the power by the

Department from the beginning is arbitrary, that P. Ws. 3 and 4 both of whom are auditors have been involved in this case that the Department

questioned and had recorded statements of the accused, the first one the statement of the first accused on September 17, 1985, in exhibit P-14,

and the second one the sworn statement of A-2 on November 2, 1985, exhibit P-21. P.W. 4's statement had been recorded on November 26,

1985, in exhibit P-24. P.W. 3's statement had been recorded on the same day on November 26, 1985, in exhibit P-25. Reading out the questions

put to P.Ws 3 and 4 learned counsel would question as to what made the Department to give up P. W. Nos. 3 and 4 from being charge sheeted

along with the other accused no one knows till date.

22. Learned counsel would further argue that in this case the first accused is the vendor and accused Nos. 2 and 3 are husband and wife,

respectively, the joint purchasers of the property from the first accused, that A-3's case is akin to the case of the second accused, but they

suddenly gave up the third accused and registered an appeal against the second accused excepting for the fact that one more charge is against the

second accused. At this juncture, learned counsel would also remark that such arbitrariness on the part of the Department has only led casualness

when different kinds of. treatments are meted out to parties.

23. Learned counsel would further attract the attention of the court towards the

instructions given in Chapter 22, Part 2, wherein under the head infirmities in prosecution compounding proposal could be made citing the judgment reported in Controller of Estate Duty Vs. Smt. G. Dhanamani, , learned counsel would contend that the first accused as the vendor his taxable income was nil, and at this stage he sold the property in favour of the accused Nos. 2 and 3 and as per the statement for the year 1996-97 after everything in the case is over, his existing liability should not exceed Rs. 50,000 (now Rs. 2 lakhs) that he was not an assessee that day ; that only the house sought to be sold was the sole property belonging to him. The judgment relied upon by the Department rendered by Justice V. Rengasamy, reported in R. Vijayalakshmi and another Vs. Income Tax Officer, and Income Tax Officer Vs. Dharamchand Surana, which is also on a different footing applies to the facts of this case.

24. Coming to the witnesses, learned counsel for the respondents would point out that from out of the four witnesses P.Ws. 1 to 4, exhibit P-11 is addressed to P.W. 1 and there is no suppression of facts found at all and the evidence of P.W. 1 is self-explanatory and would further point out from the answer given by the chartered accountant that they prepared the document only by way of protective steps. Learned counsel would further emphasise that Section 230A certificate cannot be issued to a person whose property is less than the guidelines value and in case, the guidelines value is less than Rs. 75,000 there is no question of Section 230A coming into play. Pointing out that the guidelines value itself is not based on any fixed principle and without positive evidence regarding the guidelines value, the Section 230A proceeding is premature since the value of the sale deed would not be registered at all on September 5, 1985. Citing from exhibit P-11, learned counsel would say that there is no question of any suppression at all and it was not correct to say since the same was against prosecution, the report had been suppressed, and the whole exercise has been done, taking into consideration, the unregistered document where the offence was not complete.

25. Citing a judgment reported in Income Tax Officer Vs. Gadamsetty Nagamaiah Chetty and Others, , wherein the case is quite similar to the case in hand, enclosing a copy of the sale deed proposed to be registered, request had been made to issue a certificate u/s 230A(1) of the Act and

during the course of the raid a stamped paper was seized wherein the sale consideration was Rs. 3 lakhs as against Rs. 1,20,000 disclosed in the

application u/s 230A(1) in their statement. In their statement the assessee has further admitted that the sale consideration was only Rs. 3 lakhs

but not Rs. 1,20,000 and they have filed the application as per the market value. The learned judge on a consideration of the evidence acquitted

the accused on grounds that they are not liable to pay tax under any enactment mentioned in Section 230A.

26. Citing another judgment reported in COMMISSIONER OF Income Tax Vs. RAM RUP KISHAN AND OTHERS., learned counsel would

point out from the Division Bench judgment of the Punjab and Haryana High Court that false statement in verification the lower court ordered

acquittal of the accused and after a delay of ten years of the order of acquittal, the appeal had come up for consideration remarking that the

termination of criminal proceedings ordered by the lower appellate court was, therefore, the safest order in terms of the Supreme Court guidelines

saying that we see no reason to disturb in the present appeal, and declined to interfere with.

27. The next judgment is reported in Income Tax Officer Vs. B.B. Mittal and Others, wherein the Division Bench of the Punjab and Haryana High

Court (headnote) ;

Held, that the trial court had perused the orders of the Income Tax Appellate Tribunal wherein a positive finding had been recorded that there was

no concealment of any income. The explanation given by the assessee had been held to be bona fide and the Income Tax Officer's order imposing

penalty had to be quashed. The trial court was justified in dismissing the complaint under Sections 276C and 277 of the Income Tax Act, 1961,

and Sections 193 and 196 of the Indian Penal Code, 1860.

28. Citing the above judgment, learned counsel would remark that he had filed his statement and the prosecution was unnecessary.

29. The next judgment cited by learned counsel is that one reported in Puskar Sharma and Others Vs. Smt. Sudha Mishra, wherein it is mentioned

that (headnote): "The Government of India has issued a notification stating that prosecution need not be initiated where the cumulative interest

payable u/s 201(1A) of the Income Tax Act, 1961, for all the years involved in

respect of the tax deducted at source under Sections 192 to 195 is

less than Rs. 10,000 and the tax was also paid to the credit of the Central Government : Held, that the allegation was of delay in payment of tax

deducted at source and the interest on this was less than Rs. 200. The prosecutions were liable to be quashed"". Citing the above ruling, learned

counsel for the respondents would comment that he had no liability at all.

30. The next judgment cited by the respondent is one reported in Banwari and Others Vs. Income Tax Officer and Another, wherein it has been

held that (headnote) : ""for more than a decade the proceedings were pending in the trial court and no useful purpose would be served by

proceeding with the complaint after a lapse of such a long time. The matter had become stale."" The Supreme Court accordingly set aside the order

of the High Court and restored the order of discharge passed by the Magistrate.

31. Citing yet another judgment reported in State v. Karunakaran [1993] 3 174, learned counsel would point out that there is no need to interfere

with the acquittal registered by the trial court on account of a delay of six years. Citing four more judgments reported in the Prevention of Food

Adulteration Cases (i) [1992] (2) P F A C 15 ; (ii) [1990] (2) P F AC 405 ; (iii) [1989] (3) P F A C 124 ; and (iv) [1982] (2) P F A C 372,

learned counsel would point out that in those cases even the minimum sentence was not awarded on account of lapse of time.

32. Learned counsel for the same proposition of law would also cite some more judgments reported in Fourth ITO v. A. K. Srinivasan [1994]

205 ITR 64 ; (ii) State v. Kumaresan [1992] CrL LJ 3115 ; and (iii) S. Guin and Others Vs. Grindlays Bank Ltd., , and out of the above

judgments, it is worth citing State v. Kumaresan [1992] CrL LJ 3115 ; wherein a learned single judge of this court has held that ""in an appeal

against acquittal long time elapsing since acquittal held considering the mental agony suffered by respondent/accused right from the date of incident

till disposal of the present appeal, it would not be proper to disturb verdict of acquittal though finding of trial court on which verdict of acquittal was

based, is set aside.

33. Central Government standing counsel sought to clarify certain ambiguities that arose from the argument of the other side and resuming his

argument would contend that the auditors were not parties to the document and

that the third accused is also left out in the appeal since there would not have been sufficient materials to prosecute them and hence they would have been left with in the charge-sheet. He would further point out that the intention of the appellant to commit the offence has been established u/s 230A there was also understatement of the value ; that when the assessment order is a tax deduction it might be on many reasons and there cannot be a finding ; that even if one files his return and states that he has not executed documents he has to pay tax and if he conceals anything, he becomes liable to be prosecuted against and it is immaterial whether he pays the tax or not. It is an attempt to evade tax chargeable or imposable.

34. Learned counsel would further contend that most cases on question of delay cited by the other side are food adulteration cases and not tax

matters, the amendment of the Criminal Penal Code in 1975 introduced the statute by name Economic Offences (Inapplicability of Limitation) Act,

was passed wherein among other Acts, the Income Tax Act, Customs Act, Imports and Exports Act, fall under and these Acts would come under

a special category whereas the Food Adulteration Act, is not one among them. Learned counsel would further cite a case reported in State of

Gujarat v. Shri Mohan Lal [1987] LW (Crl.) 435 , and argue that in this case the Supreme Court held that ""delay has become part and parcel of

our life and that economic offences should be viewed more seriously and stringently than a murder case and the reason given is that the economic

offence affects the very fibre of the society and the delay should not cause any inconvenience in rendering justice. In fixing the norms in view of long

delay, the Supreme Court completely excluded the Income Tax Act cases, that it is not that prosecution arising out of concealed activity which

would come to surface only after some time.

35. Learned counsel for the respondents would further point out that the document showed, no conclusion could be arrived at regarding the tax

liability, and for question of sentence learned counsel would cite a judgment reported in ITO (Fourth) v. A K. Srinivasan [1994] 205 ITR 64 ,

wherein it has been held that (headnote) ""however since the offence is said to have been committed in the year 1976-77 and the order of acquittal

was passed in 1984, no useful purpose would be served by ordering retrial at this length of time especially when the respondent had already

undergone imprisonment till the rising of the court and paid the fine in respect of the offences, committed in connection with the same transaction.

36. It is an appeal against acquittal by the trial court and in dealing with such appeals arising out of the acquittal by the trial court, sufficient

guidelines have been provided by the apex court in its judgment reported in *Madhavan Nair v. State of Kerala* [1975] MLJ (Cri.) 239 wherein it

has been held :

In an appeal u/s 417 of the Code of Criminal Procedure, against an order of acquittal the High Court has full power to review at large the

evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed.

No limitation should be placed upon that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code

and before reaching its conclusion upon facts, the High Court should give proper weight and consideration to such matters as, (1) the view of the

trial judge as to the credibility of the witnesses ; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened

by the fact that he has been acquitted at his trial ; (3) that right of the accused to the benefit of any real and reasonable doubt ; and (4) the slowness

of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. The High Court should also

take into account the reasons given by the court below in support of its order of acquittal and must express its reasons in the judgment which lead it

to hold that the acquittal is not justified. Further, if two conclusions can be based upon the evidence on record, the High Court should not disturb

the finding of acquittal recorded by the trial court. It would follow as a corollary from that, that if the view taken by the trial court in acquitting the

accused is not unreasonable, the occasion for the reversal of that view would not arise.

37. Judging the facts of the case in the light of the evidence and in the context of the provisions of law in the Indian Penal Code and the Income

Tax Act as well, it is a case of attempt to evade tax by undervaluing the property for sale intentionally furnishing an understatement in order to

cheat the Income Tax Department. Four witnesses have been examined and 26 documents have been marked. From among the witnesses

examined P.Ws. 1 and 2 are the Departmental officials and P.Ws. 3 and 4 are the chartered accountants, who dealt with the subject matter on

behalf of the accused. So far as the evidence of P.W 1 is concerned, he would depose that he was the Income Tax Officer, Salary Circle-I (2),

Madras-6, and the first accused, who was his assessee, approached him for a Section 230A certificate giving exhibit P-1 application and stating

that the property sought to be sold was for a sale consideration of Rs. 75,000 wherein accused Nos. 2 and 3 have been shown as purchasers.

Along with exhibit P-1 and a duplicate of it in exhibit P-2 exhibit P-3 sworn affidavit by the first accused the salary certificate in exhibit P-4 the

power of attorney given in favour of his auditor P.Ws. 3 and 4 in exhibits P-5 and P-6. The draft sale deed signed by the first accused had also

been filed. Suspecting undervaluation of the instrument he made an endorsement to his inspector. P.W. 2 to make an inspection on the subject-

matter and the report had been filed in exhibit P-7 based on which and the copy of the agreement submitted along with exhibit P-7 he issued

summons and got the original agreement in exhibit P-8 along with exhibit P-9 letter from the first accused on September 6, 1985, stating thereby

that the value was only Rs. 1,75,000 and due to typographical error the sale consideration had been mentioned as ""Rs. 75,000"". This witness

would also depose that based on the attempts made on the part of the first accused he issued instructions in exhibit P-10 to get fresh application

for Rs. 1,75,000 from the first accused, and followed the other procedures in recording the statements of all the accused as per exhibits P-14 to

P-17 and impounded exhibit P-8 the undervalued instrument. He also recorded the statement of P.Ws. 3 and 4 in exhibits P-24 and 25, who are

the auditors of the first accused and by exhibit P-26 authorisation of the Commissioner, he lodged the complaint against the accused.

38. P.W. 2 the Income Tax inspector would depose that he conducted an enquiry on September 4, 1985, when he enquired the auditors, who

produced the copy of the agreement, who stated that it was only as the protective step he produced the xerox copy of the agreement besides

identifying his signature in exhibit P-5 dated September 5, 1985.

39. P.Ws. 3 and 4 are the auditors of the first accused among whom P. W. 3 would depose that in the last week of August, 1985, the first

accused came for obtaining a Section 230A(1) certificate of giving exhibit P-6 draft sale deed. Further giving exhibit P-5 the power of attorney in

favour of the firm that he filled up the application taking the particulars from exhibit P-1 sale deed, that he was not aware of any other agreement

when he filled up the application ; that he appeared before P.W. 2 and produced all necessary documents and then met the Assistant

Commissioner of Income Tax, Mr. Lekhry, who informed him that prior permission of the Commissioner of Income Tax must be obtained by him

prior to issuing the certificate and that he met the Commissioner along with his senior advocate, K. Ramamani, and gave a requisition exhibit P-11

with other details requesting to issue the certificate for the value of Rs. 1,75,000, since there was no tax liability, P.W. 4 is none other than the

partner attached to the same office of P.W. 3 and this witness would also depose that exhibit P-2 application was filled up by him on the basis of

exhibit P-6 draft sale deed, which was supplied by the first accused. He would also identify the power of attorney as exhibit P-5 and getting the

signature of the first accused he filed it with the Income Tax Officer then the first accused brought another agreement of sale for Rs. 1,75,000 in

exhibit P-3. He met P.W. 1 and handed over the papers and on his instruction he met the Income Tax Officer, who wanted the reason for the

difference of amount between the application and the draft sale deed for which he answered that according to the guidelines value, the assessee

prepared it and this witness would also depose that in meeting the Assistant Commissioner of Income Tax, Mr. Lekhra, and on giving a letter in

exhibit P-9 by the first accused stating thereby that typographical error had occurred in exhibits P-2 and P-12 was prepared on September 17,

1985, showing the sale consideration of Rs. 1,75,000 in a fresh application and the draft sale deed in exhibit P-13 enclosing which they submitted ;

that he received summons in exhibit P-22 and gave the statement to the Income Tax Officer in exhibit P-24.

40. From the above evidence of the prosecution P.W. 1 suspecting the value offered in exhibit P-2 draft sale deed prior to issuing certificate u/s

230A(1) of the Income Tax Act had summoned the first accused and by mere asking the first accused he had plainly told P.W. 1 that it was only a

typographical error and on the instructions of P.W. 1 he got a new form and prepared the sale agreement for Rs. 1,75,000 and submitted the same

for the issuance of the Income Tax clearance certificate. It is the further case of the prosecution that P.Ws. 3 and 4 being the auditors of the first accused they filled up the necessary forms that were to be submitted in the proper manner before the Income Tax authorities concerned. With the above facts not only summoning accused Nos. 1 to 3, but also summoning their auditors P.Ws. 3 and 4 statements have been obtained from all of them and they have been marked as exhibits before the trial court. P.Ws. 2 and 3 would simply state that based on the draft sale deed supplied by the first accused they entered the necessary columns in the application and submitted before the authorities.

41. So far as the case of the prosecution is concerned excepting for P.W. 1 who is said to have suspected undervaluation of the document and

asked the reasons from the first accused, who readily stated that it was a typographical error and only thereafter the enquiry has been held as a

formality nothing new turns out against the accused. In the said enquiry held with the accused and P.Ws. 3 and 4 and recording their statements

seem to be an idle formality that had been adopted in this case by the departmental officials. It is quite evident that if at all any irregularity had taken

place knowingly and wilfully regarding the preparation of the documents it should have been known to P.Ws. 3 and 4 through whom the papers

got submitted, since being their auditors and the Department seems to have simply accepted what they told that based on draft sale deed they

prepared the form and submitted. Hence instead of treating them as accused clamping them also u/s 120B of the Indian Penal Code, the

prosecution has not only left them, but also have made them as prosecution witnesses to speak to their innocence not to reveal anything about his

examining of P.Ws. 3 and 4 and nothing constructive turns out from out of his evidence. Ultimately, it has to be concluded that the entire case of

the prosecution rests only on the evidence of P.W. 1 and the facts spoken about by this witness which has also not been corroborated by any

other witness bringing out the guilt of the accused in a pinpointed manner. Mere production of documents cannot prove the case of the prosecution

by themselves without bringing in evidence the circumstances under which they came into existence, etc.

42. Though it is true as per the arguments of learned counsel for the appellant that economic offences should be dealt with severely and that even

admittedly is punishable u/s 193 of the Indian Penal Code, and further more than in such cases of falsification of documents to cheat the

Department should be treated stringently, everything could be done only based on evidence brought on record and such evidence is reliable and

adduced to the standard and extent required by law.

43. Though culpable mental state of the accused could be presumed in which event, the burden to cast off the said presumption lies on the

shoulders of the accused as argued on the part of learned counsel for the Department, it should not be forgotten that to attain this state, prima facie

case should be made out against the accused, lest, the presumption cannot at all be formed by the court. Here is a case in which from out of four

witnesses, two are claimed that is P.Ws. 3 and 4, to have been made co-accused, as per the defence, if at all the offence is said to have been

committed by the accused. But the Department would not only leave them scot free, but also make them the prosecution witnesses for speaking

nothing relevant in consummating the allegations to the requirements of the sections. But their evidence only serves exculpating them from the

charge, which is not the purpose of the prosecution. On the contrary, positive evidence should have been let in proof of this guilt of the accused.

No least attempt has been taken in this regard by the prosecution. The document writers who really wrote the draft sale deeds have not been

examined to bring forth, the circumstances under which those documents came into existence nor those who really witnessed these documents

being reduced into writing got examined. Even the part said to have been played by the Assistant Commissioner of Income Tax one Lekhara and

the Commissioner of Income Tax have not been proved in evidence much less regarding the permission granted for prosecution resulting in P.W. 1

lodging the complaint. It is further pathetic to note that simply the names of the second and third accused were found to be figuring in the draft

deeds that is the purchasers without any supporting evidence or authenticity, they have been made the accused. The statements said to have been

obtained by the prosecuting officials not only from the second and third accused but also from the first accused being very weak piece of evidence

without corroborative evidence adduced in a reliable manner, they cannot be taken as the conclusive proof in deciding the case. From the very act

of leaving the third accused in the appeal would further go to show that the prosecution was not definite as to who were to be made the accused at

the time of filing the case. In short, the above case could well be called a case of no evidence in law.

44. Like every other criminal case, a case under the Income Tax Act would also be subject to the rule that the accused is presumed innocent and

that the burden to discharge the said innocence is paramountly on the prosecution. However strong the suspicion against the accused be, if every

reasonable possibility of innocence has not been excluded he is entitled to acquittal. Whenever circumstances arise they must be proved and not by

them-selves presumed. No single item of evidence can be singled out and given prominence nor the accused's theory of the case be withdrawn

from consideration. What constitutes an offence is a question of law, whether on the evidence the crime has been committed is a question of fact. If

therefore, the evidence regarding the proof of the case leaves room for any doubt and does not displace the presence of innocence wholly, the

charge cannot be said to have been established.

45. In the light of the above discussion, the only conclusion that could be arrived at so far as the case of the prosecution as projected before the

trial court is concerned is that the prosecution has miserably failed to prove the case put up by it to the required standards of proof beyond

reasonable doubt, thus failing to bring home the guilt of the accused and hence any form of interference by this court into the acquittal judgment

registered for the reasons assigned by the trial court will not be in the interest of justice and this court is left with no option but to confirm the

acquittal judgment of the trial court.

46. In the result, the appeal fails and the same is dismissed confirming the acquittal judgment rendered by the Court of Additional Chief

Metropolitan Magistrate (Economic Offence II), Egmore, Madras-8, in E. O. C.C. No. 113 of 1986, dated August 8, 1986.