
(1979) 10 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 101 of 1977

Income Tax Officer

APPELLANT

Vs

Vidya Sagar Gupta and Another

RESPONDENT

Date of Decision : 12-10-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 417, 418, 423
Income Tax Act, 1961 — Section 277

Citation : (1983) 139 ITR 748

Hon'ble Judges : S.S. Dewan, J; Kulwant Singh Tiwana, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.K. Jhingan, for the Appellant; Bhagirath Dass and S.K. Hiraji, for the Respondent

Judgement

K.S. Tiwana, J.—Vidya Sagar and his brother, Anand Sagar, were partners of firm M/s. Shahzada Hosiery Mills Ltd., Ludhiana. For the assessment year of 1963-64. (accounting year 1962-63), the respondent-firm filed a return with the ITO, Ludhiana, on February 18, 1964. Trading account, profit and loss account, balance-sheet, etc., for this assessment year were attached with this return. It may be noticed here that the return was not signed by anyone, but the documents in the form of statement of accounts, which were attached with the return, were signed by Vidya Sagar, respondent. A declaration u/s 184(7) of the I.T. Act, 1961, hereinafter referred to as " the Act", that Vidya Sagar and Anand Sagar were the partners of the firm at the time of filing the return, (...?...) duly signed by both (sic) these partners was also attached to the return. In this return, the respondent declared Rs. 62,102 only as income and understated the profit by Rs. one lakh. The correct gross profit amounted to Rs. 2,38,579, but it was declared as Rs. 1,38,579,

2. Shri B.D. Gupta, P.W. 1, ITO, Ludhiana, who was seized of the tax matter, asked Vidya Sagar, respondent, on June 20, 1967, to explain the discrepancy in the profit, but he could not reconcile the difference, even with the help of his

counsel and accountant. Shri B. D. Gupta then recorded the statement of Vidya Sagar, respondent, on June 20, 1967, as exhibit P. E. on solemn affirmation, which is :

" I hereby state on solemn affirmation that I am a partner of M/s. Shahzada Hosiery Mills, Ludhiana, having 1/2 share. The other partner is my brother, namely, Anand Sagar. Today I have produced account books for the financial year 1962-63, relevant to the assessment year 1963-64, made up into two ledgers, two cash books (Pacci), one Kachi cash book, one purchase register, one sale book, two copies of sale vouchers. These account books were written by my ex-accountant Sh. Sat Sarup, who is no more in my service. He left my service about four years back. I have submitted account statement consisting of profit and loss account, trading account, balance-sheet and copies of personal accounts. As pointed out by the Income Tax Officer, my present accountant, Sh. Brij Lal, and my counsel, Shri Jagdish Singh, have checked the totals of the balance-sheet. The total of the liabilities side is in excess by Rs. 1,00,000. The correct total of the liabilities side is Rs. 3,34,763 instead of Rs. 4,34,763. But the total of the "asset side amounting to Rs. 4,34,763 is correct. In this way, the assets exceed the liabilities by Rs. 1,00,000. I am unable to explain this discrepancy of Rs. 1,00,000 at this time without thoroughly examining my account books. Any how I have got checked by my accountant the details of closing stock amounting to Rs. 1,25,370 and sundry creditors 1,59,570, which are correct. Their details duly signed by me have been furnished today. "

As Vidya Sagar, respondent, his counsel, Shri Jagdish Singh and Brij Lal, accountant, could not explain the difference, Shri B. D. Gupta on the same day impounded the records produced before him, vide his orders, Ex. P. F. Vidya Sagar also made his statement, Ex. P. F./2, on June 20, 1967, at the foot of Ex. P.P. to the effect that the account books of the Shahzada Hosiery Mills, pertaining to the financial year 1962-63, relating to the year 1963-64, and impounded on that date belonged to that firm.

2. When the matter was pending before the IAC, Ludhiana, Vidya Sagar, respondent, filed an application Ex. P.H. on March 12, 1968. In para. 7 of Ex. P.H. he stated;

" The assessee, under some wrong advice, deflated the net profit for that year (assessment year 1963-64), by Rs. 1 lakh and inflated the profit for the current year (assessment year 1964-65), by the same amount, i.e., Rs. one lakh, through the device of wrong totals in the trading account of both the years. It is declared that there are no other wrong totals from beginning till to-date. Thus, on the whole there was no concealment of income. The assessee being afraid of calculation of profits (25% on exports) was tempted to adopt this method,"

On March 26, 1968, this firm through Vidya Sagar, respondent, filed another return, which was treated by the department as " revised return ", adding the concealed profit of Rs. one lakh for the assessment year 1963-64, in it.

3. As the respondent had filed a false return on February 18, 1964, by deliberately concealing the profits of Rs. one lakh and also submitted false accounts with it to deflate the profit, the ITO, after sanction and authorisation from the Commissioner, Patiala, filed the present complaint.

4. Shri B. D. Gupta, appearing as P.W. 1 in support of the prosecution case, testified to the facts narrated above. Shri P. N. Malik had filed the complaint under the authorisation from the Commissioner, Patiala. P.W. 3, Shri Sat Sarup, ex-accountant of the respondent, did not identify the signatures of Vidya Sagar, respondent, on Ex. P.H. and other documents.

5. After the recording of the statement of Shri B.D. Gupta, the learned Magistrate charged the respondent and Anand Sagar u/s 277 of the I.T. Act, to which they pleaded not guilty. The respondent and his co-accused further cross-examined Shri B. D. Gupta, after the charge.

6. At the close of the prosecution case, when examined, Vidya Sagar, respondent, denied the case against him. He denied having made any statement to Shri B. D. Gupta, ITO, or the filing of Ex. P.H. He also disclaimed his signatures on these two documents and Ex. P.C. and P.D., the statement of accounts and the balance-sheet. He also denied if the second return filed by the firm was a " revised return ". His co-accused, Anand Sagar, also denied the case against him.

7. The learned trial Magistrate formed the view that it was not proved from evidence that Ex. P.H. was made by Vidya Sagar, respondent, or was signed by him. Shri B.D. Gupta, ITO, before whom Vidya Sagar, respondent, had signed only on 2 or 3 occasions could not have the sufficient proficiency to identify his signatures on Ex. P.H. Taking Ex. P.H. to be the only evidence to connect the respondent with the commission of the offence, which according to the learned trial Magistrate was not proved to have been signed by Vidya Sagar, he acquitted both of them. The ITO has filed this appeal contesting the judgment of acquittal passed by the learned trial Magistrate.

8. During the pendency of this appeal, Anand Sagar, respondent, has died. The appeal against him has, therefore, abated.

9. The powers of the appellate court and the approach to evidence for assessment and appraisal in appeal against acquittal were examined by the Supreme Court in Labh Singh and Others Vs. State of Punjab, ;

" In some earlier judgments of this court, it was said that the High Court should not reverse an order of acquittal unless there are " substantial and compelling" reasons to "do so. In order to dispel doubts, it was clarified in subsequent decisions that the use of such phrases was neither intended to lay down a formula to be rigidly applied in every case, nor to curtail the powers of the High Court in appeal over an order of acquittal. It is now well settled that the powers of the High Court under Sections 417, 418 and 423 of the Code of Criminal Procedure, 1898 (or for that matter under the corresponding provisions of the

new Code of 1973) while hearing an appeal against an acquittal are as wide and comprehensive as in an appeal against a conviction. It has full power to reappraise the entire evidence upon which the order of acquittal was based and to reach its own conclusion. But before reversing an order of acquittal it should endeavour to displace or dispel in a general or specific way the primary reasoning of the trial court upon which the acquittal is founded, paying due regard and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses and the value of their evidence; (2) the initial presumption of innocence in favour of the accused, a presumption certainly not weakened by his acquittal at the trial; (3) the right of the accused to the benefit of any 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."

With these principles in the background of our mind, we have gone through the record of the case and have heard the counsel for the parties.

10. The learned trial Magistrate acquitted the respondent mainly on the ground that the admission made by him regarding the deliberate deflation of the profit was not proved to have been made by him. Vidya Sagar has denied having made Ex. P.H. No evidence was examined by the prosecution to the effect that Vidya Sagar had actually signed that application. It depended upon the statement of Shri B. D. Gupta, who, on seeing Ex. P.H., had identified the signatures on it to be of Vidya Sagar, respondent. We agree with the learned trial Magistrate that Shri B. D. Gupta, ITO, had only twice or thrice seen Vidya Sagar, respondent, sign in his presence. After a lapse of quite a few years, at the trial, Shri B.D. Gupta may not have been in a position to say with definiteness that the signatures on Ex. P.H. were of Vidya Sagar, as he has not been specially trained in the matter of identification of signatures, like the employees of banks etc. This ground of acquittal is valid, but the appeal cannot be dismissed on this ground alone as this is not the only point involved in this case. The other evidence against Vidya Sagar, respondent, is the statement, Ex. P.E., recorded by Shri B. D. Gupta, ITO, himself, in which he had made the admissions, which are supplemented by the conduct of Vidya Sagar, respondent, in pursuing the return filed by him as a partner of the firm. This aspect of the case has not been gone into by the learned trial Magistrate and we propose to discuss it.

11. It is an admitted fact that the return filed on behalf of the firm, Shahzada Hosiery Mills, on February 18, 1964, is not signed by anybody. On that basis, Shfi Bhagirath Dass, learned counsel for the respondent, has argued that u/s 140 of the Act, the information contained in the return has to be verified. In the absence of verification, according to the learned counsel, the contents of the return regarding the deflation of the profit of Rs. one lakh was not vouched by anybody to be correct. On this basis, it was argued that no one, not even Vidya Sagar could be held guilty u/s 277 of the Act, as only the false verification of a return is punishable under the Act.

12. An assessee is required u/s 139 of the Act to file a return before a specified

date. With it he is to file certain documents. The return of course is required to be signed and the correctness of its contents are to be verified by the person filing that return. In the case in hand, admittedly, the return is neither signed nor verified to be correct. The question is whether this return and the statement of accounts filed along with it, which are signed by Vidya Sagar, respondent, who had pursued the return before the ITO, is fastened with any criminal liability.

13. Section 277 of the Act for the purpose of reference is reproduced as under:

" If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with rigorous imprisonment for a term which may extend to two years ;

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months."

Exhibit P.C., the accounts .of profit and loss, and Ex. P.D., the balance-sheet, are signed by Vidya Sagar, respondent, and these form part of the return filed on February 18, 1964, for the firm, of which he is a partner. To pursue that return with the I.T. authorities, Vidya Sagar, respondent, along with his accountant and his counsel appeared before Shri B.D. Gupta, P.W. 1, ITO, on June 20, 1967. He was confronted with the return which was not signed by anyone, and Exs. P.C. and P.D, bearing his signatures. He did not disclaim these at that time nor stated that these had not been filed by him. He, with the assistance of his accountant and his counsel, made efforts to explain the discrepancy. This conduct of Vidya Sagar, respondent, shows that he, by express conduct, admitted these to have been filed by him. Not only this, in his statement, Ex. P.H., reproduced in extenso above, for the purpose of reference, he, in clear and unambiguous terms, admitted :

" I have submitted account-statement consisting of profit and loss account, trading account, balance-sheet and copies of personal accounts."

He also made it clear in Ex. P.E, that the account books were written by his accountant. Sat Sarup. His failure to deny, refuse or disclaim the accounts, by which he wanted to substantiate the contents of the return, amounts to admission by him of these documents filed with the return. He chose to deny the signatures even on Ex. P.E , which position cannot be accepted. Exhibit P.E. was recorded by Shri B. D. Gupta in the normal course of his duties, in discharge of his official functions as an ITO, sitting as an authority to assess the tax on the firm. No malice has been alleged against Shri B. D. Gupta. The contents of Ex. P.E. and the identity of Vidya Sagar, respondent, as its maker are proved beyond any controversy from the statement of Shri B.D-. Gupta. There is clear admission in Ex. P.E. that the accounts, which were signed by Vidya Sagar, respondent, were filed by him with the return pertaining to the firm, on whose behalf he had

appeared before Shri B. D. Gupta, on June 20, 1967, in his capacity as a partner. We do not find anything on the record to justify any doubt on Shri Vidya Sagar, respondent, being the maker of Ex. P.E. The observations of the learned trial Magistrate about the capability of Shri B.D. Gupta to identify the signatures of Vidya Sagar, respondent, on Ex. P.H. cannot be stretched for application to statement, Ex. P.E., which was recorded by the ITO himself.

14. After the confirmation of the identity of Vidya Sagar, respondent, as the maker of Ex. P.E., who, by his admission and conduct, had admitted the statements of account filed with the return, the question which arises is whether the accounts are false and produced deliberately to conceal the profit. The accounts deflate the taxable liability of the firm by Rs. one lakh. This was again admitted by Vidya Sagar, respondent, in Ex. P.E., in these words:

" The correct total of the liability side is Rs. 3,34,763.....in this way, the assets exceed the liability by Rs. 1,00,000. I am unable to explain this discrepancy of Rs. 1,00,000 at this time without thoroughly examining my account books."

There is no evidence produced on the file to show if it was an error in calculation or no dishonest intent flowed from it. Such a position in the accounts could not occur without deliberation. In this context, the non-signing of the return was also a calculated move on the part of Vidya Sagar, respondent, to seek shelter behind the argument now raised that the unsigned return is not a valid return under the Act and he is not punishable u/s 277 of the Act. Help was also sought for this from the observations of the Income Tax Appellate Tribunal contained in its judgment. Ex. D.A., copy of the judgment pertaining to the question of penalty in this case. The Tribunal described the unsigned return as a waste-paper for the purpose of penalty under the Act for the concealment of the income. That finding does not bind the criminal court as the question of filing the false statement or document for the purpose of Section 277 of the Act was not examined by the Tribunal. The Tribunal had, however, observed in its judgment that there was a conscious effort at concealment of the profit on the part of the assessee. The act of filing Exs. P.C. and P.D., the accounts, which are signed by Vidya Sagar and which have been demonstrated to be false, even by his own admission in Ex. P.E., was deliberate. They are signed by him and also filed deliberately with an intention to escape the higher assessment of tax. Indisputably, the accounts filed with the return have been proved to be false and to the knowledge of Vidya Sagar, respondent.

15. In the absence of signatures on the return, we find it difficult to convict Vidya Sagar filing a false return, but the case against him squarely falls u/s 277 of the Act for delivering an account or a statement, which is false and which he knows or believes to be false, to the I.T. authorities with the unsigned return and which was later accepted by him. Vidya Sagar, respondent, is, therefore, convicted u/s 277 of the Act.

16. Under the proviso to Section 277, as it stood at the time of the commission

of the offence, the court could on adequate reasons convict the accused for a lesser penalty than the minimum provided by this section. The return was filed in 1964 and the disparity was detected in 1967. The respondent had been litigating before different forums under the I.T. Act. The matter was referred to the High Court as well. Since 1974, he is standing in the proceedings in this complaint. The proceedings against the respondent have been extremely long-drawn, in which he had to face varied litigation before the tax authorities and the courts. In this situation, we think it appropriate not to sentence the respondent to any term of imprisonment, as he had already been subjected to long-drawn litigation. Convicting him for the aforesaid offence, we direct that he shall be released on probation for a period of two years on his furnishing surety bond, with two sureties, and a personal bond in the amount of Rs. 5,000 to the satisfaction of the Chief Judicial Magistrate, Ludhiana, to be furnished within two months from today, with an undertaking that he shall keep peace and be of good behaviour during this period. In case of non-furnishing of this bond or the breach of any condition of the bond, Vidya Sagar, respondent, shall be called upon to undergo rigorous imprisonment for six months.