(1983) 09 P&H CK 0083

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 471 of 1981

Income Tax Officer, 'B' Ward and Another APPELLANT

Vs

Darshan Singh RESPONDENT

Date of Decision : 14-09-1983

Acts Referred:

Income Tax Act, 1961 — Section 227, 292A
Penal Code, 1860 (IPC) — Section 193

Citation : (1984) 38 CTR 292 : (1984) 150 ITR 580 : (1984) 1 RCR(Criminal) 210 : (1984) 17 TAXMAN 38

Hon'ble Judges : B.S. Yadav, J

Bench : Single Bench

Advocate : Ashok Bhan and A.K. Mittal, for the Appellant; S.C. Sibal, for the Respondent

Judgement

B.S. Yadav, J.—The brief facts leading to the present revision petition are that the present respondent, Dharshan Singh, had made an application to the ITO, Phagwara, in the statutory Form No. 31 as required by Rule 42 of the I.T. Rules, 1962. That application was made by him for the grant to him of a certificate u/s 230(1) of the I.T. Act, 1961 (hereinafter called ''the Act''). That application was accompanied by an affidavit. In that application, the respondent had stated that he was having one account in his name in Laxmi Commercial Bank Ltd. and three acres of ancestral land and another 8 acres of land which was purchased by him in village Moranwali, District Hoshiarpur. The respondent had stated in the affidavit that he was an agriculturist and had no income which was liable to Income Tax under the Act. That application was made on January 4, 1977. On the same date, the respondent made a statement before Mr. M.L. Gupta, Income Tax Inspector, which was in the same terms. On suspicion being raised, enquiry was made and it was found that the respondent owned other properties and was also running a petrol pump. The respondent was confronted with the facts found during the enquiry. He submitted a return of income declaring taxable income in the sum of Rs. 10,720. He also filed a return under the G.T, Act declaring taxable gift of Rs. 5,000 after claiming basic exemption of Rs. 10,000. The ITO, ''B'' Ward, Phagwara, therefore, filed a complaint against the respondent for taking action against him u/s 277 of the Act and u/s 193, Indian Penal Code.

2. The case was tried by the Judicial Magistrate, 1st Class, Phagwara. He found the respondent guilty of having committed offences u/s 277 of the Act and Section 193, Indian Penal Code. He, therefore, convicted him and sentenced him to undergo R.I. for six months for each of the offences and a fine of Rs. 500 was also imposed upon him for the former offence. Imprisonment in default of payment of fine was also awarded. Both the sentences of imprisonment were, however, ordered to run concurrently. It may be mentioned that the learned Magistrate was under the impression that, u/s 277 of the Act, a minimum sentence of six months'' R.I. was to be awarded.

3. The respondent filed an appeal which was heard by Mr. S.S. Grewal, Sessions Judge, Kapurthala. He maintained the conviction of the respondent for both the offences but set aside the sentences and ordered him to be released on probation of good conduct for a period of one year u/s 4(1) of the Probation of Offenders Act, 1958. Feeling aggrieved against the order of the Sessions Judge, the complainant has filed this revision petition on the ground that the respondent was more than 18 years of age and could not be given the benefit of Probation of Offenders Act, 1958, in view of Section 292A of the Act.

4. The revision petition is liable to be accepted on the short ground that in view of Section 292A of the Act, the respondent could not be granted probation. The Section reads as follows :--

" Nothing contained in Section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (XX of 1958), shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age. "

5. That Section was enacted by the Taxation Laws (Amendment) Act, 1975, and it came into force on October 1, 1975. The offence u/s 277 of the Act was committed by the respondent after the coming into force of that section.

6. The learned counsel for the respondent has not disputed the above proposition of law. He, however, argued that the respondent is an old man and he wanted the Income Tax Clearance Certificate as he wanted to go abroad to meet his sons. It was also pointed out that the offence was committed more than six years back. He, therefore, prayed that a lenient view may be taken against the respondent while imposing sentence. I am of the opinion that a lenient view cannot be taken in the present case. The respondent had tried to conceal his property as well as his income and it is an economic offence. Such offences are of grave nature and that is why a specific provision had to be introduced that the defaulters should not be given the benefit of probation. Considering the gravity of the offences, imposition of minimum sentence has been provided u/s 277 of the Act.

7. It was agreed upon between the parties that the present case was covered by Section 277(ii) of the Act which provides that the offender shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

8. The respondent has also been convicted u/s 193, Indian Penal Code, and probation could have been granted to him for that offence. However, as he has also been convicted u/s 277 of the Act, sentence will have to be awarded to him for the offence falling u/s 193 of the Indian Penal Code, otherwise the order would become contradictory.

9. For the foregoing reasons, I accept the present revision petition and set aside that part of the order of the learned Sessions Judge by which probation was granted to the respondent and sentence him to undergo three months'' rigorous imprisonment and to pay a fine of Rs. 500 u/s 277 of the Act and to three months'' rigorous imprisonment u/s 193 of the Indian Penal Code. In default of payment of fine, the respondent shall further under go rigorous imprisonment for two months. The substantive sentences of imprisonment shall run concurrently.