

(1987) 06 KL CK 0013

In the High Court Of Kerala

Case No : Criminal Appeal No. 332 of 1984

Income Tax Officer, B-Ward

APPELLANT

Vs

T. Abdul Majeed

RESPONDENT

Date of Decision : 11-06-1987

Acts Referred:

Evidence Act, 1872 — Section 114

Income Tax Act, 1961 — Section 132(4A), 277, 278D, 279, 279(1)

Citation : (1987) 64 CTR 266 : (1988) 169 ITR 440

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : P. Ramakrishnan and M.K. Abdullah, for the Appellant; M.N. Sukumaran Nayar, Sunny Varghese, S. Vijaya Kumar and B. Raman Pillai, for the Respondent

Judgement

K.T. Thomas, J.—The Income Tax Officer, Ernakulam, filed a complaint against the respondent for offences under Sections 276C(1) and 277 of the Income Tax Act, 1961 (for short "the Act"). The Chief Judicial Magistrate, Ernakulam, who tried the case, acquitted the respondent. Hence the Income Tax Officer filed this appeal.

2. The respondent is a wholesale dealer in textiles. The respondent is the proprietor of the shop by name Textile Centre, Broadway, Ernakulam. For the assessment year 1977-78, he filed his returns in which he had shown the closing stock as on December 31, 1976, as Rs. 10,36,384.75. According to the Income Tax Officer, the aforesaid return contained incorrect and untrue statements and by filing a false return of income, the respondent wilfully attempted to evade the tax payable by him under the Act. The basis for the said allegation is that when a search was conducted by the Income Tax authorities on January 12, 1977, the inventory of the stock as on December 30, 1976 was obtained from exhibits P-2 and P-3 books of account. The inventory revealed the closing stock as on December 30, 1976, as Rs. 12,17,725.72. The Income Tax Officer, who conducted the search, recorded the statement of the respondent which is marked

in this case as exhibit P-1. On the strength of the closing stock found in the inventory, the Income Tax Officer made the assessment by adding Rs. 1,71,341 to the income returned by the respondent as the value of the undisclosed closing stock. Consequently, a penalty of Rs. 1,20,000 was levied on the respondent. Therefore, the respondent, according to the Income Tax Officer who filed the complaint, committed the offences mentioned above.

3. The Chief Judicial Magistrate acquitted the respondent mainly on two grounds. The first is that the complainant has not proved that sanction was accorded by the Commissioner of Income Tax u/s 279(1) of the Act and hence the institution of the prosecution proceedings was without authority. The second ground is that the order imposing penalty on the respondent was set aside by the Commissioner of Income Tax on appeal filed by the respondent which was confirmed by the Income Tax Appellate Tribunal and hence the stand of the Income Tax Officer that the respondent furnished incorrect or false return is not sustainable. It is also found that mere seizure of exhibits P-2 and P-3 and the statement alleged to have been given by the respondent on the date of seizure are not sure grounds to conclude that the income returned by the respondent is false to his knowledge.

4. The complainant had filed along with the complaint, the proceedings of the Commissioner of Income Tax u/s 279(1) of the Act authorising and directing the complainant to proceed against the respondent for the offences. But the trial Magistrate was not prepared to act on the said proceeding as the complainant had not gone to the witness box to swear about the complaint and to prove the sanction accorded by the Commissioner of Income Tax. As per Section 279(1), "a person shall not be proceeded against for the said offences except at the instance of the Commissioner". The Chief Judicial Magistrate who received the complaint on file would naturally have verified whether the complaint was at the instance of the Commissioner. The proceedings of the Commissioner of Income Tax had been produced along with the complaint and the same would have reached the notice of the magistrate who received the complaint and took cognizance of the offence. Process would have been issued to the respondent only on such satisfaction. Proceedings u/s 279(1) of the Act are official acts and the document evidencing the proceedings of the Commissioner is a public document, the production of which would be sufficient to enable the court to take judicial notice thereof. Even if the document containing the proceedings of the Commissioner has not been formally marked as an exhibit, the document cannot be overlooked by the criminal court. No formal proof through oral evidence is required for a public document. In *Income Tax Officer, Hassan Vs. Dharmachand Multanml*, a similar situation arose. In that case, counsel for the accused pointed out at the time of arguments that there was no sanction to prosecute him and hence the complaint was liable to be dismissed. At that stage, the Income Tax Officer filed an application for recalling the first witness for the purpose of formally proving the proceedings by which sanction was accorded. As the Magistrate did not accede to the request, the matter was taken up before the

High Court of Mysore. It was observed by the High Court that recalling of the witness for the purpose of proving the sanction was not necessary "as it would be open to the Magistrate to look into the sanction produced by the prosecution". I respectfully agree with the aforesaid reasoning of the learned single judge of the Mysore High Court. I, therefore, hold that the acquittal, on the ground that there was no formal proof of sanction, cannot be sustained.

5. The contention of learned counsel for the respondent is that the trial court should have acted on the closing stock as revealed from exhibits P-2 and P-3 account books seized from the shop of the respondent as there is a presumption of truth of the entries therein. He also pointed out that the presumption of truth drawable from those entries is fortified by exhibit P-1 statement given by the respondent to the Income Tax Officer who made the search. Learned counsel tried to draw support from Section 279(1) of the Act wherein it is provided that the contents of the books of account found in the possession of any person in the course of a search may be presumed to be true. Learned counsel also relied on. Section 279(1) of the Act which enables the criminal court to act on the presumption in a prosecution launched against the person from whose possession such account books have been seized. It is true that Section 279(1) of the Act enables the court to presume the truth of the contents of such books. However, it is a presumption which can be rebutted. Moreover, the presumption envisaged therein is only a factual presumption. It is in the discretion of the court, depending upon other factors, to decide whether the presumption must be drawn. The expression used in the sub-section is "may be presumed" as is used in Section 114 of the Evidence Act, 1872. It is not a mandate that whenever the books of account are seized, the court shall necessarily draw the presumption, irrespective of any other factors which may dissuade the court from doing so.

6. It was contended by learned counsel for the appellant that the respondent had admitted the correctness of the entries in exhibits P-2 and P-3 account books, as he has given a statement to that effect in exhibit P-1 and hence the stock returned by him as per exhibits P-4 and P-5 must be false. On the other hand, the stand of the respondent is that there were duplications in exhibits P-2 and P-3 inventories prepared by his staff, that damaged goods were also included in the inventories and that it was only on rechecking and reverification that the respondent found that the value of the stock was only the amount which he has shown in the return. It must be borne in mind that when the respondent filed exhibits P-4 and P-5 returns, the account books seized from him earlier were in the custody of the Income Tax officials. That shows that P.W. 1 had knowledge about the stock as per the entries in those account books and hence it cannot be said that the true state of affairs was kept concealed by the respondent. Simply because the respondent gave a statement in exhibit P-1 admitting the correctness of the entries in exhibits P-2 and P-3, it cannot be said that the respondent is estopped from informing the Income Tax officials that his earlier statement was vitiated by mistakes. P.W. 2 admitted that he has not checked the correctness of the entries contained in exhibits P-2 and P-3.

7. There is yet another circumstance which shows that the respondent's contention is more probable. The penalty proceedings initiated against him by the Income Tax Officer were quashed by the Commissioner of Income Tax. Exhibit D-1 is the copy of the order passed by the Income Tax Appellate Tribunal on December 22, 1983, confirming the order of the Commissioner of Income Tax. The Tribunal found that "it cannot be said that by filing the return showing a stock of a smaller value, the assessee concealed any income or intended to furnish inaccurate particulars thereof". It is a finding of fact by a competent Tribunal in respect of the very same assessment proceedings.

8. Learned counsel for the appellant contended that the finding of the Appellate Tribunal is not a bar for initiating prosecution proceedings for filing returns containing false or incorrect statements. Reference was made to *Dr. D. N. Munshi v. N. B. Singh* [1978] 112 ITR 173, *Telu Ram Raunqi Ram and Another Vs. Income Tax Officer, "A" Ward and Another*, and *P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin*. In the last mentioned case, mere pendency of the reassessment proceedings was found to be not a ground for quashing prosecution proceedings. Even so, the Supreme Court made the observation that (p. 700) "the criminal court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and in an appropriate case, it may drop the proceedings in the light of an order passed under the Act". Of course, the Supreme Court pointed out that it does not mean that the result of a proceeding under the Act would be binding on the criminal court, as the criminal court has to judge the case independently on the evidence placed before it. At the same time, a sound rule of procedure is indicated in the said judgment that (p. 702) "it may be that in an appropriate case, the criminal court may adjourn or postpone the hearing of a criminal case in exercise of its discretionary power u/s 309 of the Cr.P.C. if the disposal of any proceeding under the Act which has a bearing on the proceedings before it is imminent so that it may take also into consideration the order to be passed therein". A learned single judge of the Allahabad High Court in *Dr. D. N. Munshi's case* [1978] 112 ITR 173, observed that the order of the Tribunal setting aside the penalty may be utilised as a piece of evidence to show that there was no offence committed by the accused, although that by itself is not sufficient to direct the dismissal of the complaint. In *Telu Ram Raunqi Ram and Another Vs. Income Tax Officer, "A" Ward and Another*, the accused filed a petition in the High Court for quashing the criminal complaint against him on the ground that a reference was pending in the High Court against the order of the Income Tax Tribunal. It was held that mere expectancies of such proceedings should not stand in the way of the criminal court from proceeding in the matter. In this context, it is useful to refer to *Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar*. In that case, an Income Tax Officer passed orders holding that a particular firm was not a genuine one and hence he cancelled the registration of that firm. The assessee's appeal before the Appellate Assistant Commissioner was dismissed. But the Appellate Tribunal set aside the order in second appeal. In the meanwhile, a

criminal prosecution was launched against the assessee who raised the preliminary objection before the criminal court that since the assessment proceedings are yet to be finalised, the criminal court has no jurisdiction to proceed. The preliminary objection was overruled by the magistrate and that order was confirmed by the Punjab and Haryana High Court. It was held by the High Court that the findings of the Income Tax Appellate Tribunal are not binding on the criminal court. But the Supreme Court reversed the judgment of the High Court. In the short judgment passed by the Supreme Court, their Lordships observed as follows : "In view of the finding recorded by the Income Tax Appellate Tribunal that it was clear on the appraisal of the entire material on the record that Shrimati Janak Rani was a partner of the assessee-firm and that the firm was a genuine firm, we do not see how the assessee can be prosecuted for filing false returns. We, accordingly, allow this appeal and quash the prosecution. Strong reliance was placed on the above decision by learned counsel for the respondent.

9. In this case, even apart from exhibit D-1 order of the Appellate Tribunal, the evidence does not show that the respondent filed a return which was false and incorrect to his knowledge. Therefore, I agree with the learned Chief Judicial Magistrate that the respondent is not liable to be convicted. In the result, I dismiss this appeal.