(1979) 10 PAT CK 0003

In the Patna High Court

Case No : Criminal Appeal No. 174 of 1976

Ishwar Prasad Chhauchharia APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 24-10-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 342
Income Tax Act, 1961 — Section 141, 271(1)
Penal Code, 1860 (IPC) — Section 193, 467, 467

Citation : (1980) 123 ITR 579 : (1977) 10 PLJR 162

Hon'ble Judges : S. Shamsul Hasan, J

Bench : Single Bench

Advocate : Lalit Mohan Prasad, for Department, Thakur Prasad, Chandramauli Kumar Prasad and N.K. Agrawal, for the Appellant; U.P. Chainpuri, for the Respondent

Judgement

Shamsul Hasan, J.—The appellant has been convicted under Sections 467 and 193 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and seven years, respectively. The sentences have been ordered to run concurrently. He has also been convicted under Sections 471/467 of the Indian Penal Code, but no separate sentence has been awarded thereunder.

2. The appellant, who is said to be a partner in the firm of Mukund Ram Ram Kumar of Deoghar, filed a return of the firm on March 3, 1965, for the assessment year 1964-65, on the basis of which the provisional assessment u/s 141 of the I.T. Act, 1961, was made. The total income shown therein was Rs. 44,457. Since the return was filed after the due date, the assessee-firm was liable for a penalty u/s 271(1)(a) of the I.T. Act. Regular assessment was completed on March 31, 1969, and a demand notice was issued. The prosecution further alleged that the appellant realising his mistake and in order to escape the liability of a penalty got the return, which was filed by him on March 3, 1965, surreptitiously removed from the file some time in between March 3, 1965, and March 31, 1969, and got another return, purported to have been signed by him

on June 30, 1964, substituted in place of the return filed on March 3, 1965. The fraudulent nature of this transaction is manifest from the fact alleged by the prosecution that the form on which the subsequent return was filed was not in existence prior to July 1, 1964, which is the date mentioned in that form as the date of its printing. These facts were discovered when an inspection was made of the records of the office of the Commissioner of Income Tax, Bihar. A complaint was thereafter filed on March 30, 1971, by the ITO, Deoghar (P.W. 4). After commitment and trial, the appellant has been punished and sentenced as indicated above.

3. The defence of the appellant as appears from his examination u/s 342 of the Code of Criminal Procedure is that he had not filed any return on March 3, 1965, for the assessment year 1964-65. He has denied having substituted any return. His only answer was that when his munshi, Rajeshwar Lal, informed him that the return filed by him was missing, he directed his munshi to file a copy of the return on the basis of the office record.

4. The whole question in this appeal turns on the decision of the fact as to whether the appellant affixed his signature on Ex. 2, the substituted return.

5. It may be stated Here that there is no direct evidence of the fact that the appellant had substituted the return as alleged by the prosecution and the only incriminating substance against him is the allegation that he had signed Ex. 2. The signature of the appellant on Ex. 2 has been proved by P.Ws. 1, 4 and 6. P.W. 1 has also proved the date on it to be in the handwriting of the appellant. Assuming all the allegations to be true, for the purpose of disposing of this appeal, the prosecution has still to prove beyond reasonable doubt that the signature on the document (Ex. 2) was that of the appellant. In my view, they have singularly failed Jo achieve that end. It is true that three officers of the Income Tax department have proved the signature of the appellant on Ex. 2, but, in my view, since the only circumstance appearing against this appellant is the signature, some independent witness like an expert or some one unconnected with the Income Tax department, who was in full know of the Writing of the appellant, should have been examined. P.W. 1, while proving the signature of the appellant in his examination-in-chief, has stated in his cross-examination that he did not see the return being filled up and signed. He further stated that the return in question was not filed before him nor he could say how and when it became a part of the record. He also stated that he was not acquainted with the signatures and writings of all the Income Tax assessees. He further stated that he could not identify the signatures of the partners of those firms whose files he dealt with two or four times. He further stated that he did not remember if he dealt with the file of the firm of the accused only for once. P.W. 4, who is the complainant, also proved the signature of the appellant but he does not go beyond saying that he knew the signature. He has not stated how he was familiar with the signature of the appellant. He also stated that there was no return for the assessment year 1964-65 in the assessment record of the firm,

Mukund Ram Ram Kumar. He further stated that he was not posted at Deoghar between 1964 to 1969 and that he had no personal knowledge of the allegation against the accused. P.W. 6 has also proved the signature of the appellant in a formal way as the others have done. He has also stated that the disputed return (Ex. 2) did not beat his signature nor does it indicate that on March 30, 1969, it was put up before him. He does not say how he was familiar with the handwriting of the appellant. The situation is further aggravated by the fact that even if the signature can be said to have been property proved, which does not seem to have been done, it was the only circumstance against the appellant and still the prosecution did not bring it to his notice in his examination u/s 342 of the Code of Criminal Procedure. The trial court has not put any specific question to the appellant to bring to his notice the fact that he had signed the return (Ex. 2) and that his signature had been proved as Exs. 1 and 1/1. The only question put to him was that he got a substituted return filed which bore his signature and the date June 30, 1964, had been written by him. The signature itself was not specifically brought to his notice. In his reply, the appellant denied that he had filed any return on March 3, 1965. He also completely denied all the allegations against him.

6. Learned counsel for the State brought to my notice his examination before the committing court. There he was asked whether he had substituted the return originally filed which contained his signature. It does not appear that the signature itself was brought to his notice. However, while answering this question, he stated that the whole allegation was untrue. He could not say positively that the signature on the substituted return was his. In the face of this answer, it was incumbent upon the prosecution to get his signature verified and compared by an expert at the sessions stage. In this state of affairs, it is very difficult to use this solitary circumstance against the appellant. In my view, the case has not been proved beyond reasonable doubt.

7. In the result, the appeal is allowed and the conviction and the sentence imposed upon the appellant are set aside. He is acquitted and discharged from his bail-bond.

