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**(2002) 08 P&H CK 0098**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Miscellaneous No. 15943 of 2001 13 August 2002

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APPELLANT

Vs

Smt. (Dr.) Usha Gupta

RESPONDENT

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**Date of Decision :** 13-08-2002

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 244, 245, 482  
Income Tax Act, 1961 — Section 271, 276C, 277

**Citation :** (2002) 178 CTR 439

**Hon'ble Judges :** Nirmal Singh, J

**Bench :** Division Bench

**Advocate :** N.L. Sharda, for the Revenue Mahavir Singh for Deepak Bajaj, for the Assessee, for the Appellant;

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## **Judgement**

Nirmal Singh, J.

A complaint under sections 276C and 277 of the Income Tax Act (hereinafter referred to as the Act) was filed by the Income Tax Officer, Ward No. 1, Muktsar, against respondent Dr. Usha Gupta, proprietor M/s. Bansal Nursing Home, Muktsar on the ground that respondent had not shown Rs. 1 lakh in the income tax return filed by her on 29-8-1988.

2. The respondent was summoned in those proceedings. During the pendency of those proceedings the respondent filed an application for dropping the criminal proceedings against her. The petitioner pleaded in the application that she is being prosecuted for an offence that she had paid Rs. 1 lakh to M/s. Uniscan and Sonics Ltd., Chandigarh, and this amount has not been shown by the respondent in her account books. In the application, it was further pleaded that the respondent filed a revised return in which she had shown the amount. Even though, the respondent claimed that she came to know that M/s. Uniscans and Sonics Ltd., Chandigarh had wrongly credited this amount. The revised return was filed to avoid the legal complications.

3. On filing of the revised return by the respondent, the assessment was reopened and a sum of Rs. 1 lakh was taken as concealed income of the respondent by the complainant upon the petitioner. The petitioner again served notice u/s 271(1)(c) of the Act upon the respondent and penalty proceedings were launched against her. The Income Tax Officer imposed penalty upon the respondent vide order dated 24-9-1991. The respondent filed an appeal before the Commissioner (Appeals) who maintained the penalty but reduced the amount of penalty from Rs. 150 per cent to 100 per cent vide order dated 28-1-1992.

4. The respondent challenged the order of the Income Tax Officer as well as the Commissioner (Appeals) imposing penalty before the Tribunal. The appeal of the respondent was accepted by the Tribunal vide order dated 6-6-1994. The Tribunal while accepting the appeal observed that the respondent has not concealed income and imposition of penalty was set aside. On this ground, it was prayed that the proceedings may be dropped. The petitioner was given notice of the application. The petitioner filed reply to the application.

5. The learned Magistrate after hearing the counsel for the parties and perusing the record, dropped the proceedings vide order dated 13-10-1999. Aggrieved by the order, petitioner filed criminal revision before the Sessions Judge, Faridkot, which was dismissed on 8-6-2002. Aggrieved by which, the present petition u/s 482 Cr.PC has been filed for quashing the orders passed by the courts below.

6. Mr. N.L. Sharda, learned counsel for the petitioner submitted that the courts below have erred in passing the order dated 13-10-1999 and 8-6-2002. He submitted that after recording the preliminary evidence, the respondent has been summoned to face the trial u/s 276C/277 of the Act as the respondent has concealed the income of Rs. 1 lakh. He contended that charge against the respondent has been framed. After framing of charge, the proceedings cannot be dropped in the midway, as there is no such provision in the Cr.PC. He further contended that on the basis of the order passed by Tribunal, the criminal proceedings cannot be dropped. He also contended that those proceedings were for imposing the penalty whereas the proceedings under the Cr.PC can continue despite the fact that penalty has been waived off by the Tribunal.

7. I have heard learned counsel for the petitioner and perused the record. The submissions made by learned counsel for the petitioner that the proceedings cannot be dropped after framing of charge are without any foundation.

8. Section 245 Cr.PC deals with the provisions when an accused shall be discharged. Section 245 Cr.PC reads as under :

"245. When accused shall be discharged.(1) if upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from

discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless" .

9. A bare perusal of the above quoted section shows that the accused is to be discharged after taking into consideration all the evidence referred to in section 244 and if evidence remains unrebutted, no case is made out against the accused. Sub-section 2 to section 245 Cr.PC empowers the Magistrate to discharge the accused at any previous stage of the case, if for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

10. It has been repeatedly held by the Apex Court and this court that once the concealment of income has not been proved and the penalty has been deleted by the Tribunal, then criminal proceedings cannot continue.

11. In Procolor and Others Vs. Chief Judicial Magistrate and Others, this court in the concluding para has held as under :

"One finds oneself in complete agreement with the said view. Once the findings on the basis of which the complaint was filed have been set aside, it would be an exercise in futility for allowing the criminal complaint to continue. The very basis on which the complaint was filed no longer exists. Once the said basis has ceased to be existent the complaint necessarily should come to its natural death. For these reasons, the petition is accepted and the proceedings pending in the court of Chief Judicial Magistrate, Chandigarh on the basis of the complaint of the Income Tax Officer, are quashed."

12. In Income Tax Officer Vs. Taran Taran Steel Sales and Others, it has been held as under :

"Mr. Sawhney submits that the judgment of the trial court cannot be sustained in view of the decision of their Lordships of the Supreme Court in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, . This was a case where the assessee had approached the court and it was held that the mere pendency of reassessment proceedings could not operate as a bar to the institution of criminal prosecution for offences punishable u/s 276C or 277. Such is not the situation in the present case. Herein, the Tribunal has found that no case for the imposition of penalty u/s 271(1)(c) was made out against the assessee. When it has been found by the Tribunal that the assessee has not concealed any income or furnished any inaccurate particulars, it cannot be said that the assessee is guilty of an offence as contemplated u/s 276C or section 277."

Similar view has been taken in Shastri Sales Corporation and others Vs. Income Tax Officer, , M.A. Quddus Vs. Income Tax Officer, , Assistant Commissioner of Income Tax Vs. Thirumal Agencies and Others, .

13. In the instant case, it is admitted case of the parties that Tribunal has waived the penalty. The revenue filed an application for making reference to this court. The Tribunal declined the application of the revenue by observing as under :

"On further appeal by the assessee, the Tribunal deleted the penalty for the reasons given in detail in paras 7, 8 and 9 of the Tribunal's order relying on the decision of the Hon"ble Punjab & Haryana High Court in case of Commissioner of Income Tax Vs. Central Studios (P.) Ltd., . Since the penalty has been deleted relying on the judgment of the Hon"ble Jurisdictional High Court in the case of Krishan Lal Shiv Chand Rai (supra) referred extensively in the judgment, no referable question of law arises out of the order of the Tribunal in view of the decisions of the Hon"ble Punjab & Haryana High Court in cases of Commissioner of Income Tax (Central) Vs. Shiv Parshad, and in the case of Telu Ram Raunqi Ram Vs. Commissioner of Income Tax, ".

So, the order deleting the penalty has become final.

In view of the above discussion. I am of the considered opinion that the courts below have rightly allowed the application of the assessee as the assessee cannot be held guilty u/s 276C and 277 of the Act, in view of the findings recorded by the Tribunal. Therefore, this petition is dismissed.

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