
(1991) 09 P&H CK 0110
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 673 of 1989

Jagmohan Singh

APPELLANT

Vs

Income Tax Officer, A-Ward

RESPONDENT

Date of Decision : 13-09-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Income Tax Act, 1961 — Section 194A, 276B
Income Tax Rules, 1962 — Rule 30

Citation : (1992) 196 ITR 473

Hon'ble Judges : G.S. Chahal, J

Bench : Single Bench

Advocate : G.S. Punia, for the Appellant; Ajay Mittal, for the Respondent

Judgement

G.S. Chahal, J.—This order will dispose of 11 connected Criminal Revision Petitions Nos. 672, 673, 674, 675, 676, 677, 678, 679, 680, 681 and 682 of 1989, preferred against the order of Shri S. K. Chopra, Additional Sessions Judge, Hoshiarpur, dated July 10, 1987. I will draw up the facts in brief from Criminal Revision No. 673 of 1989.

2. Prosecution u/s 194A read with Section 276B of the Income Tax Act, 1961, was instituted against the present petitioners by the Income Tax Officer, A Ward, Hoshiarpur, on the allegations that Jagmohan Singh was the Chairman, Bhagat Singh General Finance Private Limited, Hoshiarpur, who filed the return for the assessment year 1982-83, the accounting period 1981-82, for himself and on behalf of the company. It was also verified by him. The income for the assessment year was shown as a loss of Rs. 6,258 and the amount was rounded off to Rs. 6,260. Along with the return, other documents such as balance-sheet, etc., were also filed. In the process of assessment, the Income Tax Officer found that the company had paid a sum of Rs. 10,425 as interest to various creditors during the assessment year. He also furnished a list of 32 depositors regarding whom he had deducted the tax at source on interest on March 31, 1982. The

Income Tax was deposited on November 13, 1984, thus committing a default of 31 months in making the deposit. Proceedings u/s 201(1) of the Act were initiated and interest at the rate of 12 per cent. per annum was charged. The assessee had committed a default with respect to the cash amount, but, keeping in view the provisions of Section 201, only 2 defaults have been clubbed together. Failure to deduct the Income Tax at source and to deposit the same within the time is an offence punishable u/s 276B of the Act.

3. Shri M. M. Bhalla, Chief Judicial Magistrate, Hoshiarpur, vide his order dated March 27, 1987, ordered the discharge of the petitioner and the company, on the ground that, from the complaint, the necessary ingredients of the offence had not been made out, since the assessee had deposited the tax along with the interest though the deposit was made late.

4. The complainant went in revision against that order which was heard and disposed of by Shri S. K. Chopra, Additional Sessions Judge, as aforesaid. Shri Chopra, relying on SEQUOIA CONSTRUCTION CO. P. LTD. AND OTHERS Vs. P. P. SURI, ITO, CENTRAL CIRCLE XX, NEW DELHI., , set aside the order of the Chief Judicial Magistrate and remanded the case to him for further enquiry according to law.

5. Shri G. S. Punia, learned counsel for the petitioner, has urged that, since the amount in question had been duly deposited, no offence had been committed ; secondly, since the Income Tax Department had only charged interest on the amount deducted at source and no penalty had been imposed, no criminal prosecution should be launched and, thirdly, that since there was no plea in the complaint itself that the petitioner was in charge of or responsible to the company for its business, he could not be held liable in view of the provisions of Section 276B of the Act.

6. After hearing learned counsel for the parties, I am unable to agree with this contention. u/s 194A of the Act, read with Rule 30 of the Income Tax Rules, the tax deducted at source has to be deposited within the stipulated period. It is not disputed that the deposit was made late. Since the offence was complete on the due date on which the amount should have been deposited but not deposited, the late deposit will not absolve the company and its officers from the criminal charge. If the petitioner can show some cause for this late deposit, that is a matter to be considered at the trial by the learned Magistrate.

7. It was open to the Income Tax authorities to impose penalty on the amount which had not been deposited. It is a different matter that the Income Tax Officer felt satisfied by charging only interest on the late deposit. This fact, again, will not absolve the petitioner of criminal liability.

8. In the complaint, it has been specifically described that Shri Jagmohan Singh was the chairman of the company and the return had been filed by him for himself and on behalf of the company though specific allegations of the petitioner being in charge of the business and being responsible to the company for its

business were not added. In the petition filed, the petitioner has not urged that there was some other person acting for the company and looking after its business affairs. In the course of arguments, learned counsel has urged that the question of his responsibility to the company may be left open so that he may show it to the trial Magistrate that, in fact, the petitioner was not in charge of and responsible to the company for its business. This question is left open.

9. In view of the foregoing discussion, I find no force in the criminal revisions which are hereby dismissed.

10. The parties, through their counsel, are directed to appear before the trial Magistrate on October 10, 1991.