(1987) 04 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 7185-M of 1986

Jasbir Singh and Others APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 27-04-1987

Acts Referred:
Income Tax Act, 1961 — Section 277, 278B

Citation : (1987) 63 CTR 160 : (1987) 168 ITR 770 : (1987) 2 RCR(Criminal) 235

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : Bhagirath Dass and Romesh Kumar, for the Appellant; Ashok Bhan and R.K. Garg, for the Respondent

Judgement

I.S. Tiwana, J.—The four petitioners, who happened to be partners of the firm known as M/s. Sohan Lal Savinder Singh, are sought to be prosecuted u/s 277 of the Income Tax Act, 1961 (for short the ""Act"), read with some of the offences under the Indian Penal Code, such as Sections 467, 468 and 471, for filing a return on behalf of the firm on October 1, 1971, with a false verification or at least knowing it to be false. The relevant allegations in this regard are contained in para. 6 of the complaint, annexure P-1, which reads as follows :

"That in the return of Income Tax filed by the firm on October 1, 1971, in the office of the Income Tax Officer duly signed and verified by Shri Sohan Lal, partner, on September 29, 1971, at Jagadhari an income of Rs. 68,207 was shown in the said return, although Form No. 12 was duly signed by all the 7 partners on March 25, 1971, and along with it the assessee filed the profit and loss account in which it was shown that the assessees have paid a commission of Rs. 73,068.79 to M/s. Anand Sales Corporation."

2. As a result of the pre-charge evidence recorded by the trial court, the petitioners along with four others, i.e., the firm, Sohan Lal who actually signed and verified the abovenoted return and had filed the relevant account, Sawal

Singh and Faqir Chand, since dead, were summoned, vide its order dated November 14, 1986.

3. The petitioners impugn these proceedings and pray for the quashing of the same qua them at least in view of the non-fulfilment of the requirements of Section 278B of the Income Tax Act. The relevant part of this section, i.e., Sub-section (1), reads as follows :

"Section 278B(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this Sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence."

4. The solitary submission of Mr. Seth, learned senior advocate for the petitioners, is that it has nowhere been alleged by the complainant, i.e., the Income Tax Officer, A-Ward, Yamuna Nagar, in the complaint, annexure P-1, that any of the petitioners was either in charge of, or was responsible to, the company or the firm, for the conduct of its business and in the absence of the same, the petitioners could not be proceeded against for the offence u/s 277 of the Act. On the contrary, says learned counsel, that it is the precise case of the complainant that it was only Sohan Lal, partner of the firm, who had signed and verified the return filed on October 1, 1971, and again it was he alone who had filed the requisite supporting material along with the return, i.e., the accounts, etc. To counter this argument, Mr. Ashok Bhan, learned senior advocate for the complainant, though sought to argue at one stage that the case in hand is covered by Sub-section (2) of Section 278B of the Act, at a later stage he accepted the position that for an offence u/s 277 of the Act, only that person who actually makes a statement or verifies the return filed under the Act is liable to be prosecuted, if it can be shown that the said statement or verification was false to his knowledge or he believed it to be false or did not believe it to be true. In the light of this accepted position by Mr. Ashok Bhan, it is patent that the petitioners, who never signed the abovenoted verification of the return nor made any statement before the Income Tax Officer or produced any account in that regard, cannot possibly be proceeded against. This is more so when there is not even an allegation to the effect that at the time of the commission of the offence, they were in charge of the affairs of the firm or were conducting its business in any manner. Similarly, it is nowhere alleged that the petitioners prepared any false record or accounts and used these in any manner.

5. In an earlier case under the Foreign Exchange Regulation Act, 1973, i.e., Criminal Misc. No. 528-M of 1987, J.R. Grover, Director of K.D. Woollen Mills (P.)

Ltd. Vs. Assistant Director, Enforcement Directorate, Ministry of Finance, Government of India, , I had almost in similar circumstances taken the view which is propounded on behalf of the petitioners. The relevant section, i.e., Section 68 of the abovesaid Act and Section 278B of the present Act, are almost in pari materia. Thus, for all the reasons recorded in that judgment, i.e., J.R. Grover, Director of K.D. Woollen Mills (P.) Ltd. Vs. Assistant Director, Enforcement Directorate, Ministry of Finance, Government of India, , I allow this petition and quash the proceedings so far as these concern the petitioners. For the sake of clarity, it may be mentioned here that the prosecution of Sohan Lal and the firm as such would not be affected in any manner by this order.