

(1993) 04 DEL CK 0032

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 2838 of 1992

J.K. Synthetics Ltd. and Others

APPELLANT

Vs

N.C. Shrma

RESPONDENT

Date of Decision : 28-04-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1993) 113 CTR 27 : (1993) 59 DLT 579 : (1993) 26 DRJ 374 :
(1993) 2 ILR Delhi 584 : (1993) 202 ITR 284 : (1993) 2 RCR(Criminal) 426 :
(1993) 71 TAXMAN 17

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : S. Ganesh, P. Venugopal and R.D. Jolly, for the Appellant;

Judgement

R.\\L. Gupta, J.

(1) This petition has been filed u/s 482 of the Code of Criminal Procedure (Code for short) for quashing proceedings started on a complaint dated 26.3.1992 filed by respondent Sh. N.C. Sharma, Assistant Commissioner of Income Tax against the petitioners for having committed offences u/s 276C(I), 277 read with Section 278B of Income tax Act (Act for short) in relation to the Income tax return filed on 30.7.1985 by the first petitioner for assessment year 1985-86.

(2) For appreciating the contentions raised in this petition, it is necessary first to advert to the allegations made in the complaint against the petitioners by the respondent. A copy of the complaint is Annexure A with this petition. The substance of the allegations is that petitioner No.1 is a limited Company registered under the Companies Act, 1956 while petitioners 2 and 3 were the Managing Director and Vice Chairman-cum-Managing Director of petitioner No.1 during the assessment year 1985-86. The company filed a return of income for the aforesaid assessment year on 30.7.85, declaring a loss of Rs.91,55,88,488.00 along with various statements, accounts and other documents. They claimed depreciation allowance to the tune of

Rs.5,07,59,917.00 in respect of Padam Polyester Division as they claimed to have installed a new plant and machinery. Trial production was alleged to have been started in March,1985. It was further claimed that part of the plant and machinery was installed in the Nylon division of this unit, where the production had started in various divisions between 28.6.84 and 13.9.84 with uninterrupted power supply system. Other part of the plant and machinery was claimed to have been installed in the same division in which production had started on 30.3.85. Various supporting ledger, project register etc. were also produced. Thus the company also claimed investment allowance to the tune of Rs.3,72,697.00 . Plant was stated to have been inaugurated on 21st March, 1986. But the enquiries conducted by the Assessing Officer revealed that the plant and machinery were not installed as claimed and that it did not start production during the period relevant to the assessment year 1985-86. Enquiries from Income tax department, Jaipur, Inspector of Factories and Boilers and Electricity Board of Rajasthan also indicated that no such production was commenced. Various officers of the accused company were also examined. All these factors indicated that the claim of the Company was false and bogus. Other circumstances were also mentioned in this complaint which further supported the fact that no such production was commenced and the claim was incorrect. During the assessment proceedings the Company also filed some invoices of a foreign company showing services rendered by them during the period from November, 1986 to April, 1987. A totality of the circumstances indicated that no plant and machinery belonging to Padam Polyester Division were installed in the Nylon division. As such no depreciation could be allowed. The Company could not even produce satisfactory evidence to show if any employee was working in the Unit during the relevant period. Thus it was confound that the Company was not entitled to claim depreciation or installation allowance. The assessment was completed with passing of the assessment order on 28.3.88. It was held therein that the Company had claimed bogus depreciation amount of Rs.5,7,59,917.00 an installation charges of plant and machinery amounting to Rs.3,84,72,697.00 . The total income of the Company was also assessed at Rs.3,06,11,9,460/ An appeal was filed by the Company and the findings recorded above were confirmed by Commissioner of Income tax (Appeals). Thus it was alleged in the complaint that petitioners made willful attempt to evade tax, penalty or interest chargeable or recoverable under the Act, had in their possession or control books of accounts and other documents containing false entries or statements in books of accounts and other documents, willfully omitted or caused to be omitted relevant entries or statement in such books of accounts or documents and caused such circumstances to exist which had the effect of enabling these persons evade tax. It was also established that the petitioners made a statement in verification under the Act and delivered accounts or statements, which were false, which they either knew or believed to be false or did not believe to be true and thus had committed offences under Sections 276(1), 277 read with Section 278B of the Act.

(3) I have heard arguments advanced by learned counsel for the parties. The first contention raised on behalf of the petitioners is that even if all the allegations and contentions set out in the complaint are taken as correct and proved, even then no case of evasion or attempted evasion of tax by the petitioner company was made out. In support of this proposition my attention has been drawn to three cases, namely, Madhu Limaye Vs. The State of Maharashtra, , State of U.P. Vs. R.K. Srivastava and Another, and Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, . In the First case the bare facts were that in a press conference at New Delhi on 27.9.74 the appellant was said to have made certain statements and handed over a "press hand-out" containing allegedly some defamatory statements concerning Sh. A.R. Antulay, the then Law Minister of the Government of Maharashtra. Those statements were published in various newspapers. The State Government decided to prosecute the appellant for an offence u/s 500 of the Indian Penal Code as the Law Minister was defamed in-respect of his conduct in the discharge of his public functions. Necessary sanction u/s 199(4) of the 1973 Code was purported to have been accorded by the State Government. The complaint was filed by the Public Prosecutor in the court of Sessions Judge, Greater Bombay. Process was issued against the appellant. Chief Secretary of the State was examined as a witness to prove the sanction order. Then the appellant filed an application for dismissal of the complaint on the ground that the Court had no jurisdiction to entertain the complaint because the allegations were made against Sh. Antulay in relation to what he had done in his personal capacity and not in the capacity of discharging his functions as a Minister. The Sessions Judge rejected various contentions raised on behalf of the appellant. That order was challenged in revision before the High Court. High Court did not go into the merits and dismissed the revision application on the ground that it was not maintainable in view of Section 397(2) of the Code. After noticing Amar Nath and Others Vs. State of Haryana and Another, wherein it was held that a revision to the High Court against the order of the subordinate Judge was expressly barred u/s 397(2) of the 1973 Code, the inherent power u/s 482 would not be available to defeat the bar contained in Section 397(2), the Supreme Court held that generally the following principles have been followed almost invariably, barring a few exceptions, in relation to the exercise of the inherent power of the High Court.

(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party; (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice; (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code. Then the court proceeded to examine the correct position of law after introduction of sub section 2 of Section 397 in the 1973 Code. It held in para 15 finally for the reasons given in the earlier portion of the judgment as follows, "We feel no difficulty in coming to the conclusion, after due consideration, that an order

rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of Section 397(2)"

(4) From the rule of law laid down by the Supreme Court in this case it is, Therefore, clear that the mere order of summoning by a Magistrate is purely an interlocutory order But when a challenge is made to that order by moving a proper application before the Magistrate against order of summoning and such a prayer is rejected by the Magistrate, such order will no longer remain within the domain of interlocutory order. It may be noted that in the present case the order of summoning by the Magistrate has not at all been challenged by the petitioners before the learned ACMM. Simply after receiving summons from his court, the petitioners have challenged that order u/s 482 of the Code and, Therefore, even according to this authority, the summoning order being an interlocutory order could not have been challenged straight away before this Court. In the second case State of U.P. through C.B.I. S.P.E., Lucknow and another (supra), an Fir was lodged under Sections 120B, Indian Penal Code and 5(2) r/w5(l)(d) of Prevention of Corruption Act,1947 and respondent R.K.Srivastava was facing criminal proceedings in crime caseNo.40/ 83 in the court of Special Judge, anti-corruption. It was at that stage that the proceedings against Srivastava were quashed u/s 482 of the Code by the High Court which order was upheld by the Supreme Court for the reason that the allegations in the Fir clearly indicated that the accused had no intention whatsoever to make any wrongful gain to himself or to make any wrongful loss to the bank. Therefore, it is clear in this case also that R.K.Srivastava was already facing prosecution before the Special Judge and it was not a case wherein the petition u/s 482 of the Code was filed before the accused put in appearance in the court. In the third case of Madhavrao Jiwajirao Scindia and others (supra) the High -Court quashed proceedings qua accused 2 and 4 only and sustained the order of the Metropolitan Magistrate in regard to the remaining two accused persons. A reading of the entire judgment indicates that the facts of this case were quite peculiar in the sense that the Supreme Court observed that a court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction were bleak, .the court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage. It is clear from this authority also that in a rare case where the prosecution against any person is utilised for oblique purpose, prosecution can be quashed even at the preliminary stage. The Court also took into consideration the natural relationship between the settler of the trust who was the mother and the accused who Were her son and his wife. Even according to the argument of the complainant's counsel in that case a breach of trust could be both a civil wrong and a criminal offence, and the son's wife in whose favor tenancy of trust property was created had offered to surrender property when lawyer's notice was served upon her. So the case was replete with so many special circumstances on account of which the prosecution was quashed.

(5) However the present case does not belong to that category. It is a case wherein there are serious allegations against the petitioners according to which they claimed huge depreciation and installation allowances in respect of plant and machinery which were allegedly not at all installed during the relevant period. In fact, if proceedings, are quashed in such a case at an initial stage, it may rather amount to a travesty of justice and encourage people who, without actually installing plant and machinery claim certain tax benefits in regard to such installation and later on come forward with such a petition when they are pushed to the wall. The position of law as laid down in the above . referred three authorities has been further clarified in the case of K.M. Mathew Vs. State of Kerala and another, to the effect that if an accused person against whom a summons has been issued in pursuance to a complaint, he can apply before the Magistrate for recalling or rescinding that order because the order issuing the process is an interim order and not a judgment. In that situation the Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. Therefore, in the facts and circumstances of the present case the order of summoning issued against the petitioners being simply an interim order which can be recalled by the ACMM on proper cause being shown before him by the petitioners cannot be the subject of challenge in a petition u/s 482 because of the bar imposed by Section 397(2) of the Code. But if the summoning order is challenged before the ACMM by the petitioners and request in that regard is declined, that order can be subject of challenge u/s 482 of the Code.

(6) Learned counsel for the petitioners also contended that in K.M.Mathew's case (supra) the challenge before the Magistrate was that there was no allegation at all in the complaint against Mathew on account of which he could be prosecuted and so it was only appropriate that Mathew should have prayed before the Magistrate for recalling the order. But in the present case, according to the learned counsel, there are specific allegations of tax evasion and attempted tax evasion in the complaint and, Therefore, they could not contend before the ACMM that issue of summons was a palpable error and that fact can only be challenged u/s 482. It is further contended that Mathew's case does not deal with Section 482. Both these contentions have no force. Factually, Mathew's case was on a better footing for being dealt with u/s 482 because according to him there was no allegation against him at all in the complaint on account of which he could be summoned. So far as the interpretation of Section 482 and the stage when it may be applicable, it is specifically dealt with the earlier referred Supreme Court authorities in which it is specifically ruled that Section 482 cannot be applied against a summoning order because of the bar created by Section 397(2). It may be quite a different thing to apply Section 482 in a situation where despite a specific challenge to the summoning order before the Magistrate there is an inordinate delay in the disposal of the plea or the prosecution of an

accused has fruitlessly lingered for a long time which may compel the conscience of this Court to intervene in the interest of justice u/s 482. It is not possible to enumerate various situations where resort may have to be had to Section 482. It will depend on the facts and circumstances of each case. But in view of the law laid down by the Supreme Court and Section 397(2) of the Code, it can be said with reasonable certainty that Section 482 will not be applicable on account of a summoning order implicate without even putting in appearance before the Magistrate and making a prayer for recalling the same for seeking his decision.

(7) In view of the above conclusion; I think it is not necessary logo into other submissions made on behalf of the petitioners. Petition is, accordingly, dismissed.