(1988) 06 RAJ CK 0004

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Application No''s. 1416 and 1428 of 1987

J.P. Singh APPELLANT

Vs

Inspecting Assistant Commissioner of Income Tax RESPONDENT

Date of Decision : 13-06-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Income Tax Act, 1961 — Section 254(2), 256(1), 276C, 277

Citation : (1990) 185 ITR 659 : (1988) 2 RLW 472 : (1988) 2 WLN 393

Hon'ble Judges : Milap Chandra, J

Bench : Single Bench

Advocate : J.P. Joshi, for the Appellant; B.R. Arora, for the Respondent

Judgement

Milap Chandra, J.—The Inspecting Assistant Commissioner of Income Tax (Assessment)-II, Jaipur, filed a complaint in the Court of the Chief Judicial Magistrate (Economic Offences), Jaipur, under Sections 276C(1) and 277 read with Section 278B of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), against the accused-petitioners and their private limited company, Messrs. Registan (P.) Ltd., Jaipur, with the allegations, in short, that in the return of income of the company in respect of the assessment year 1981-82, deductions to the tune of Rs. 1,63,153 and Rs. 4,69,259 were shown as bad debts and commission paid respectively and on an examination of the return and account books, both these amounts were found to have been falsely claimed with a view to evade tax. Accordingly, the Inspecting Assistant Commissioner (Assessment), Jaipur, added these amounts in the taxable income and assessed the assessee. On appeal by the assessee, the Commissioner of Income Tax (Appeals), Jaipur, allowed these deductions. Thereafter, the Department filed an appeal before the Income Tax Appellate Tribunal, Jaipur ; it was allowed and the order of the learned Commissioner of Income Tax (Appeals) was set aside. The accused-petitioners were in charge of and were responsible to the said company for the conduct of its business. The said offences were committed by them with an intention to evade tax.

2. On December 5, 1987, the learned Chief Judicial Magistrate (Economic Offences), Rajasthan, Jaipur, took cognizance of the said offences against all the accused persons and ordered the issue of non-bailable warrants against the accused-petitioners for their appearance before him on January 5, 1988.

3. The first petition was filed on December 14, 1987, and the second petition on December 15, 1987, and on the same day, it was ordered that meanwhile, the petitioner will not be arrested in pursuance of the non-bailable warrants issued against them.

4. It has been contended by learned counsel for the accused-petitioners that the order of the Income Tax Appellate Tribunal, Jaipur, has not become final as an application for its rectification has been moved u/s 254(2) of the Act and another application for making a reference to this court has been made u/s 256(1) of the Act, and they have not been decided as yet and it cannot, therefore, be said that the said offences have actually been committed by the accused-petitioners. He further contended that in fact the order of the Commissioner of Income Tax (Appeals), Jaipur, is correct, there was no concealment of any fact and all necessary particulars about the bad debts and commission paid were duly submitted before the assessing authority. He also contended that the accused petitioners are not required for the purpose of any investigation, no recovery is to be effected therefrom and there is no apprehension that they would influence the prosecution witnesses. He lastly contended that as the accused-petitioners are responsible persons, no useful purpose will be served by their arrest and it would simply tarnish their image.

5. In reply, learned counsel for the Department contended that the applications under consideration have been moved without first approaching the learned Sessions Judge, Jaipur, and on this ground alone, they should be rejected. He relied upon Hajialisher v. State of Rajasthan [1976] RLW 232, I.C. Iyya v. State of Karnataka [1985] Cri LJ 214 and Smt. Vijai Laxmi v. State [1988] RCC 43. He further contended that the case relates to Jaipur District and petitions should have been filed before the Jaipur Bench and on this ground also they should be rejected. He relied upon Syed Zafrul Hassan v. State [1986] Cr. LJ 605. He also contended that the said offences are economic offences and the accused persons are not generally released on bail in such cases. He relied upon Surja Ram v. State of Rajasthan [1977] RLW 505, S.A. Ismail v. Inspector of Police Vigilance Cell, Tirupathi [1984] Cr. LJ 1855 and Vasudeo v. State of Rajasthan [1987] RCC 370. He lastly contended that under the facts and circumstances of the case, the said offences are well established and the accused-petitioners should not be granted anticipatory bail.

6. In reply to the aforesaid contentions of learned counsel for the Department, learned counsel for the petitioners contended that the accused-petitioners have approached the learned Sessions Judge, Jaipur, and their applications moved u/s 438, Criminal Procedure Code, have already been rejected. He further contended that in Suresh Chand @ Sohanlal and Others Vs. State of Rajasthan and Others,

it has been held that the High Court has power to grant anticipatory bail to a person accused of an offence punishable under the Essential Commodities Act.

7. There is no force in the first contention of learned counsel for the accused petitioners. In P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , it has been held that the pendency of the assessment proceedings could not act as a bar to the institution of criminal prosecution for offences punishable under Sections 276C and 277 of the Act. It has further been observed at page 700 as follows :

"A mere expectation of success in some proceeding in appeal or reference under the Act cannot come in the way of the institution of the criminal proceedings u/s 276C and Section 277 of the Act. In the criminal case all the ingredients of the offence in question have to be established in order to secure the conviction of the accused. The criminal court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and in an appropriate case it may drop the proceedings in the light of an order passed under the Act. It does not, however, mean that the result of a proceeding under the Act would be binding on the criminal court. The criminal court has to judge the case independently on the evidence placed before it. Otherwise, there is a danger of a contention being advanced that whenever an assessee or any other person liable under the Act had failed to convince the authorities in the proceedings under the Act that he has not deliberately made any false statement or that he has not fabricated any material evidence, the conviction of such person should invariably follow in the criminal court. The High Court of Punjab and Haryana has correctly applied the rule regarding the maintainability of a prosecution in such circumstances in Telu Ram Raunqi Ram and Another Vs. Income Tax Officer, ''A'' Ward and Another, We do not, however, agree with the view expressed by the High Court of Calcutta in Jyoti Prakash Mitter Vs. Haramohan Chowdhury, ."

8. There is no force in the contention of learned counsel for the Department that anticipatory bail cannot be granted in cases involving economic offences. It has clearly been held in Suresh Chand @ Sohanlal and Others Vs. State of Rajasthan and Others, that the High Court has power to grant anticipatory bail to a person accused of an offence punishable under the Essential Commodities Act. It has observed in Income Tax Officer Vs. Gopal Dhamani and Laxmi Narain Dhamani, as follows :

"Mr. Dhankhar and Mr. Bhandari appearing for the non-petitioners produced before me a judgment of this court in which the hon''ble Justice M.B. Sharma granted anticipatory bail to Ram Ratan Dhamani, father of Gopal Dhamani, in connection with some search and seizure and in that case, the amount involved was more than Rs. 14 lakhs."

9. This case also finds reference in Vasudeo v. State of Rajasthan [1988] RCC 370.

10. There is no force in the contention of learned counsel for the Department that the bail application should have been filed before the Jaipur Bench. It is well settled law that a case arising out of the area of Jaipur Bench may be filed before the Rajasthan High Court, Jodhpur, and not vice versa.

11. In a similar case reported in Vasudeo v. State of Rajasthan [1988] RCC 370, it has been observed in paras Nos. 5 and 6 as follows :

"5. Keeping in view all facts and circumstances of the case I deem it proper to direct the accused persons to appear before the Chief Judicial Magistrate (Economic Offences), Jaipur, on or before September 21, 1987, which date is also notified to the Public Prosecutor with an application u/s 437, Criminal Procedure Code, and argue the same. It is expected of the learned Magistrate to decide the applications forthwith. The points sought to be raised in this application for anticipatory bail should be advanced before the learned Magistrate and he will, in turn, give due consideration to the same also considering that the petitioner, Subhash Chand, is a Government servant.

6. The parties are directed to appear before the learned Chief Judicial Magistrate (Economic Offences), Jaipur, on or before September 21, 1987. The accused-petitioner shall, however, notify the date of surrender 48 hours in advance to learned counsel for the Department and meanwhile the warrant of arrest issued against the petitioners shall not be executed."

12. Similar order deserves to be passed in the present case also. As such it is neither necessary nor expedient to touch on the merits of the case.

13. Consequently, the parties are directed to appear before the learned Chief Judicial Magistrate (Economic Offences), Jaipur, on or before July 21, 1988. The accused-petitioners shall, however, notify the date of their surrender 48 hours in advance to learned counsel for the Department and till then the warrants of arrest issued against them shall not be executed. With these observations, the bail applications are disposed of.

