
(1990) 10 MAD CK 0040

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 4845 of 1987

K.A. Khaja

APPELLANT

Vs

Sixth Income Tax Officer

RESPONDENT

Date of Decision : 11-10-1990

Acts Referred:

Income Tax Act, 1961 — Section 271(1A), 276C, 277

Citation : (1992) 196 ITR 627

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : Jamal Mohamed, for the Appellant; Ramaswamy, for the Respondent

Judgement

Arunachalam, J.—The petitioner is the sole accused in E.O.C.C. No. 402 of 1987, pending on the file of the Additional Chief Metropolitan

Magistrate (E. O. II), Madras, He is being prosecuted at the instance of the respondent who is the Sixth Income Tax Officer, City Circle III,

Madras-6, for alleged commission of offences punishable under sections 276(1) and 277 of the Income Tax Act, 1961. In this petition filed u/s

482, Criminal Procedure Code, to call for the records and quash the pending prosecution as not maintainable and an abuse of the process of

court, Mr. Jamal Mohammed, learned counsel appearing on behalf of the petitioner, contended that the complaint does not allege that the

petitioner, while he delivered the returns for assessment, either knew or believed to be false, or did not believe to be true, that the contents therein

provided scope for evasion of tax. Similarly, as far as the offence u/s 276C is concerned, learned counsel contended that mere nondisclosure will

not amount to evasion and that relevant facts must be stated in the complaint to indicate that there was willful attempt to evade tax. In other words,

he submitted that the factual foundation, to prove the ingredients of the offence, does not form part of the complaint and, on this sole ground, the pending prosecution was liable to be quashed. He also relied upon section 279(1A) to urge that the petitioner should not have been proceeded against for offences under sections 276C and 277 in relation to the assessment for the assessment year in question, for, subsequently, the penalty imposed had been set aside in appeal. Finally, he contended that, in the exercise of inherent powers u/s 482, Criminal Procedure Code, this court will be entitled to quash the pending prosecution if it had been initiated with an oblique purpose or in any event if the chance of an ultimate conviction was bleak.

2. Mr. K. Ramaswamy, learned counsel appearing for the respondent, while countering the arguments of learned counsel for the petitioner contended that a perusal of the complaint would indisputably show facts in detail which would be sufficient to attract the ingredients of the offences punishable under sections 276C and 277 of the Act. He submitted that section 279(1A) will not be attracted, for, there was no order u/s 273A. He specifically contended that there was no oblique motive to prosecute the petitioner and only after detection by the Assessing Officer of particulars of income or the inadequacy of particulars furnished in respect of such income the petitioner chose to offer an explanation.

3. To appreciate the contentions of counsel on either side, it will be necessary to refer to the averments in the complaint. The averments show that, for the accounting year ended on March 31, 1981, relevant to the assessment year 1981-82, the petitioner had filed the return of income on November 17, 1983, admitting an income of Rs. 7,855, consisting of income from property and business income. During the course of assessment, the Income Tax Officer, on perusing the bank pass book of the accused bearing Savings Bank Account No. 2529, in the State Bank of Mysore, Madras-1, found that the accused had deposited a sum of Rs. 10,000 on July 3, 1980 and Rs. 70,000 on July 25, 1980. When questioned, the accused explained that the above deposits were made out of the realisation of the sale proceeds of his house site at Santhome High Road, Madras. He also stated that the property was purchased by him on September 20, 1979, and sold in July, 1980, for Rs. 80,000. The

complaint also states that the petitioner had filed an application u/s 230A(1) on July 23, 1980, seeking a certificate of tax clearance for the proposed sale of the property. However, while filling the return for the relevant period, he had deliberately not shown the capital gains that arose out of the sale of the said short-term asset. The petitioner, of course, stated before the assessing authority that since he had purchased another property out of the sale proceeds of the Santhome High Road property, he did not disclose the capital gains. On rejection of the plea of the petitioner, the assessment order was passed. It is under these circumstances that the prosecution charges the petitioner for having furnished a false return of income containing inaccurate particulars wilfully in an attempt to evade the tax, penalty and interest chargeable on the real income.

4. Making a false verification in an Income Tax return with the necessary measure is the subject-matter of the offence u/s 277 of the Act. I am unable to hold that the averments in the complaint do not contain basic particulars which will be necessary to allow the trial to be proceeded with.

Detailed facts of the acts of the petitioner have been given, apart from the detection by the assessing authority of the undisclosed income, subsequent to which the petitioner had chosen to give an explanation. The word "evade" occurring in section 276C of the Act will take in non-disclosure as well, depending upon the facts and the means resorted to by the petitioner. The Explanation to section 276C which deals with examples of willful attempt to evade any tax is only "inclusive" and does not catalogue all instances of willful evasion. It may still be that clauses (iii) and (iv) of the Explanation may be attracted on facts.

5. Learned counsel appearing for the petitioner wanted to rely upon the appellate order in which the petitioner had challenged the initial assessment made by the Income Tax Officer, but I did not permit him to do so, for, at this stage, the court will be concerned only with the allegations made in the complaint and the contents of the documents, if any, accompanying the complaint. A perusal of the records shows that no documents have accompanied the complaint. Similarly, learned counsel wanted this court to peruse the returns wherein the petitioner is stated to have mentioned about the sale of the property. Even that cannot be done, since the document is yet to come on record and its genuineness

established. All that the court could do now is to in scrutinies the feasibility or otherwise of sustaining this prosecution on the allegations made in the complaint. I am satisfied that sufficient prima facie allegations are available in the complaint to put the petitioner on trial. If the petitioner claims bona fides and lack of mens rea, it will always be open to him to bring out such facts during the course of trial and allow the trial court to draw its inference on the evidence adduced by both parties. Such exercise cannot be undertaken by this court, while exercising its inherent powers.

6. I am unable to agree that section 279(1A) will be attracted to the facts of this case. The argument of learned counsel was that, while filing the complaint, the respondent must have excluded the possibility of non-prosecution, in view of the provisions of section 279(1A), and that not having been done, there was a basic infirmity in the complaint. I do not think, negatively, that such an averments will have to be made in the complaint and if the provision u/s 279(1A) is applicable to the petitioner, he can always lead evidence or bring it out by cross-examination, in the prosecution evidence itself, to get the advantage claimed. However, learned counsel for the respondent would contend that there was no order u/s 273A of the Act in this case.

7. It will be too difficult to hold that this prosecution had either been launched with an oblique motive or that there is no reasonable possibility of the case ending in a conviction. At this stage, the unchallenged facts found in the complaint, which, of course, may be challenged during the trial, to indicate the commission of the offences alleged. The appellate order of assessment is subsequent to the filing of the complaint and, therefore, neither the petitioner nor the respondent could not have anticipated the nature of the appellate order. I am satisfied that no ground has been made out to exercise inherent powers to stultify the prosecution that has been initiated.

8. Before I conclude, I must refer to the decisions cited by learned counsel for the petitioner to substantiate his contentions. In *Anurag Chopra v.*

State [1989] CrL LJ 2227, whilst considering the scope of exercise of inherent powers u/s 482, Criminal Procedure Code, the Delhi High Court

held that, in a case where not even a remote chance of prosecution resulting in conviction existed, it was a fit case for invoking the inherent powers

for quashing the F.I.R. The apex court in *Madhavrao Jiwajirao Scindia and Others*

Vs. Sambhajirao Chandrojirao Angre and Others, , observed

as follows (headnote) :

The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to

whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special

features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This

is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction

are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into

consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

9. That was a case of breach of trust which, as observed by the Supreme Court, can give rise to a civil wrong as well as a criminal offence. There

will be certain situations where it will be predominantly a civil wrong, and may or may not amount to a criminal offence. On the facts, the Supreme

Court quashed the prosecution. In the instant case, I am satisfied that the court had not been utilised for any oblique purpose or that the chance of

an ultimate conviction is bleak, even if the facts stated in the complaint were to be accepted.

10. Learned counsel for the respondent referred to the judgment in Friends Union Oil Mills and Others Vs. Income Tax Officer and Others, for the

proposition that section 279(1A) will not be available in the instant case, since an order was passed u/s 273A of the Act. Khalid J., as he then

was, observed as under (at page 573) :

This argument cannot stand since the protection contained in section 279(1A) is applicable only when the Commissioner of Income Tax for

reasons mentioned in section 271(1A), reduces the penalty in favour of the assessee. The petitioners have wrongly stated in ground No. 4 that the

penalty was reduced u/s 271(4A). In the instant case the reduction was by the Tribunal and not by the Commissioner. Therefore, the benefit

conferred u/s 279(1A) of the Act is not available. Hence the contention that the prosecution is barred by section 279(1A) has to be rejected.

11. I do not find any merit in this petition and, therefore, it is dismissed.