

**(1989) 04 P&H CK 0074**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Miscellaneous No. 5501-M of 1987

Kalyan Rice and General Mills and Another

APPELLANT

Vs

Income Tax Officer

RESPONDENT

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**Date of Decision :** 28-04-1989

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Income Tax Act, 1961 — Section 276C, 277

**Citation :** (1989) 180 ITR 41

**Hon'ble Judges :** J.S. Sekhon, J

**Bench :** Single Bench

**Advocate :** S.C. Sibal, for the Appellant; L.K. Sood, for the Respondent

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## **Judgement**

J.S. Sekhon, J.—The petitioners, a partnership firm, is carrying on the business of rice-shelling, etc., at Kartarpur, District Jullundur. On December 31, 1981, the Income Tax Department raided the premises of the firm and seized certain documents, that is, cash book, ledger, a diary and purchase vouchers. A perusal of the diary revealed that it contained entries showing cash in hand, receipts of cash as well as payments made in cash to different parties on day-to-day basis. During the period November 16, 1981, to December 27, 1982, there were entries in the diary showing payments in cash to different parties on different dates but there were no corresponding entries in the regular books of account maintained by the firm. The total of these payments made by the firm to different persons worked out to Rs. 87,124.80. Similarly, there were several entries in the diary showing the receipts of payments from different parties but no corresponding entries were there in the cash book and ledger. The total payments so received and not accounted for in the regular books of account (cash book and ledger) worked out to Rs. 31, 163. The Income Tax Department also compared the entries in the ledger and cash book maintained by the firm with the extracts of the books of account maintained by Kalyan Rice and Trading Co., Kesar Mal Madan Lal and Thind Engineering Works and found that the accused firm had shown the receipt of Rs. 15,000 on December 23, 1981, from Kalyan Rice and

Trading Co. but the account books of the latter concern did not reveal any such payment to the accused firm. Similarly, the accused firm had made a payment of Rs. 2,123 on November 28, 1981, as per entry in the books of Kesar Mal Madan Lal but no such entry was found in the books of the accused firm. Again, Rs. 635 had been found credited in the books of Kesar Mal Madan Lal on account of freight charges but there was no corresponding entry in the books of the accused firm. It was further detected that the accused firm made payment of Rs. 10,000 to Thind Engineering Works through four instalments each of Rs. 2,500 between December 28, 1981, and December 31, 1981, as per books of account maintained by the engineering concern but no such entry was found in the books of account maintained by the accused firm. The Income Tax return for the relevant year was filed by the accused firm on September 21, 1983, showing an income of Rs. 81,484.21 over and above the amount made out from their regular books of account. This income was shown under "Reconciliation account". Thus, under these circumstances, a complaint under Sections 276C and 277 of the Income Tax Act, 1961 (hereinafter "the Act" in short), was filed in the court of the Chief Judicial Magistrate, Jullundur, by the Income Tax Officer of the relevant circle contending that there was a clear-cut attempt on the part of the accused firm to evade payment of Income Tax besides preparing false and forged accounts. The assessment for the relevant period was also completed by the concerned Income Tax Officer on March 30, 1985, that is, much before the filing of the criminal complaint and an ad hoc addition to the tune of Rs. 10,000 was made. The impugned order, annexure P-2, was passed by the Income Tax Officer in the absence of the accused firm because it failed to turn up on that day.

2. Shri Beant Singh Bedi, Chief Judicial Magistrate, Jullundur, vide his order dated March 19, 1987, after recording evidence of the complainant and discussing the relevant record, found a prima facie charge u/s 276C read with Section 278B as well as a charge u/s 277 read with Section 278B of the Act against the partners of the accused firm. The charges above referred to were actually framed on March 30, 1987.

3. Aggrieved against the said order, the accused firm went in revision which was dismissed by the learned Additional Sessions Judge, Jullundur, vide his order dated March 5, 1987, copy whereof is annexure P-5.

4. The accused firm has sought the quashment, u/s 482 of the Criminal Procedure Code, of the criminal complaint, annexure P-1, as well as framing of the charges and the order of the learned Additional Sessions Judge, Jullundur, mainly on the ground that the order of the Income Tax Officer, annexure P-2, has been set aside by the Appellate Assistant Commissioner of Income Tax, Jullundur and the case has been sent back to the Income Tax Officer for affording adequate opportunity to the petitioners to explain their case. Thus, it is maintained, that the criminal prosecution of the petitioners under Sections 276C and 277 of the Act is not sustainable as the findings of the Income Tax Officer regarding the fabrication of record in order to evade payment of Income Tax has

been set aside by the appellate authority. Reliance in this regard has been placed on the findings of the apex Court in *Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar*, and *Kanshi Ram Wadhwa Vs. Income Tax Officer, .*

5. In the return filed by the Income Tax Officer, the above referred to allegations in the complaint were reagitated besides maintaining that there was no legal bar in launching criminal prosecution under Sections 276C and 277 of the Act while the assessment or reassessment proceedings were still pending before the authorities concerned.

6. I have heard learned counsel for the parties besides perusing the record. During the course of arguments, learned counsel for the respondent has also produced the assessment order dated January 8, 1988, of the Income Tax Officer, Jullundur, in order to show that after hearing the accused firm, the earlier assessment of the Income Tax Officer was confirmed.

7. There is no dispute regarding the legal position that if the criminal proceedings are launched against the assessee u/s 276C of the Act on the basis of the order of the Income Tax Officer imposing penalty on the assessee and that if the said order is quashed subsequently by the appellate authority, the criminal proceedings are liable to be quashed. The decision of Single Bench of this High Court in *Kanshi Ram Wadhwa Vs. Income Tax Officer*, as well as *Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar*, can be safely referred to in this regard.

8. Moreover, the standard of proof required in criminal proceedings for convicting the accused is much more than what is required in penalty proceedings under the Act in view of the well-known principle of criminal jurisprudence that benefit of every reasonable doubt has to be given to the accused. In the case in hand, the Appellate Assistant Commissioner had simply quashed the order of the Income Tax Officer on the ground that proper opportunity was not afforded to the assessee-firm for explaining its case. Thereafter, the Income Tax Officer afforded full opportunity to the assessee-firm to explain its case and then passed a fresh order dated January 8, 1988, holding that the accused firm had fabricated the record as well as suppressed some deals in order to evade payment of Income Tax. Under these circumstances, at this stage, it cannot be said that no prima facie case u/s 276C or 277 of the Act has been made out against the petitioners especially when the documentary evidence above referred to clearly spelt out that the accused firm had certainly maintained double records in order to evade payment of Income Tax. The findings of the Supreme Court in *P. Jayappan Vs. S.K. Perumal*, *First Income Tax Officer, Tuticorin*, , can be safely relied upon in support of the proposition that the pendency of the reassessment proceedings cannot act as a bar to the institution of criminal proceedings for the offences punishable under Sections 276C and 277 of the Act.

9. For the foregoing reasons, there being no merit in this petition, it is hereby dismissed. Necessary intimation be sent to the trial court for expeditious disposal

of the case.