
(1987) 08 MAD CK 0025

In the Madras High Court

Case No : Criminal Miscellaneous Petition No's. 6223, 6225, 6227 and 6229 of 1985

Kamala Ganesan and Another

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 24-08-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 139(1), 139(2), 142(1), 144, 276CC

Citation : (1992) 198 ITR 152

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Advocate : G. John Arthur, for the Appellant; Sam V. Chelliah, for the Respondent

Judgement

Padmini Jesudurai, J.—The petitioners who are accused Nos. 6 and 7, respectively, in C.C. Nos. 130 to 133 of 1984, pending before the

Additional Chief Metropolitan Magistrate (E.O.I.) Egmore, Madras, for offences under sections 276CC and 278B(1) of the Income Tax Act,

1961 (hereinafter referred to as "the Act"), invoke the inherent powers of this court u/s 482, Criminal Procedure Code, 1973, to quash the above

proceedings.

2. Facts briefly are : On the allegation that the petitioners are directors of the company, Messrs. Shivaji Films (P.) Ltd. (the First accused in the case), the petitioners are arrayed as accused Nos. 6 and 7 along with the other directors of the first accused company in the complaint filed by the respondent herein.

3. During the trial, PWs-1 and 2 had been examined and the case was posted for

questioning the accused u/s 313, Criminal Procedure Code. At

that stage, the petitioners have come to this court to quash the proceedings on the ground that the petitioners are not the directors of the company

and that, therefore, requiring them to answer questions u/s 313, Criminal procedure Code, amounts to an abuse of the process of law.

4. Thiru G. John Arthur, learned counsel for the petitioners, puts forward two contentions in support of his prayer :

(i) that there was no satisfactory evidence that the petitioners were directors of the company and the memorandum and articles of association

produced in this court showed that they were not actually directors and that, therefore, they should not have been arrayed as accused;

(ii) that the first accused company had filed petitioners before the Income Tax authorities for compounding the offences and, since the same were

pending, the criminal trial should not be proceeded with.

5. Countering the above contentions, Thiru Sam V. Chelliah, learned counsel for the respondents, stated that it was premature on the part of the

petitioners to approach this court, since the accused had not even been questioned and no reliance could be placed upon the memorandum and

articles of association by this court, since the question whether the petitioners are directors would be a question of fact which this court, in these

proceedings, could not go into. Learned counsel also contended that the criminal trial should not be stayed merely because the petition for

compounding the offences was pending.

6. A few facts would be necessary to answer the first of the two contentions of learned counsel for the petitioners. The first accused company had

to file returns u/s 139(1) of the Act for the accounting year ending March 31, 1979, on or before July 31, 1979. Notice u/s 139(2) of the Act was

issued to the first accused and the same was duly served on November 27, 1979. Returns were not filed. Hence a notice u/s 142(1) of the Act

was issued and the same was served on the first accused company and repeated reminders were sent on October 13, 1981, November 7, 1981,

December 17, 1981, January 11, 1982 and January 22, 1982. Despite these notices, there was no response. Hence, an ex parte assessment was

made on February 27, 1982, u/s 144 of the Act. A show-cause notice dated August 26, 1983, was also issued to the first accused and served on

August 27, 1983. Still, there was no reply. Hence, the prosecution in C. C. Nos. 131, 132 and 133 of 1984 for the subsequent years.

7. After the Department had repeatedly issued notices and remind dears to the Company A-1 to find out the names of the directors of the first

accused company for the period between 1978 and 1982 and PW-1, the concerned Income Tax Officer, had not been able to get the names of

the directors through the representatives of the first accused company, whom he contacted, from a communication addressed to accused Nos. 2 to

7, as directors of A-1 company, he learnt as directors, that accused Nos. 2 to 7 were the directors during the relevant period. On the basis of that

information, the present petitioners also were shown as directors. PW-1 has spoken to the above facts. He has stated that the list of directors of

the first accused company was not available in the file and he contacted a representative of the first accused company and asked him to furnish the

names of the directors but the representatives did not comply with the request and that he found a communication addressed to all the accused

Nos. 2 to 7 shown as directors of the first accused company, that he contacted the auditor of the first accused company and asked him to furnish

the list of directors and that it was on the basis of that information that he included accused Nos. 2 to 7. During cross-examination, exhibit D-1, a

document dated December 9, 1983, had been put to PW-1 and, in that document, it was found that the names of the petitioners were not shown

as directors. The memorandum and articles of association dated December 9, 1955, showing the first set of directors has been produced before

this court and learned counsel for the petitioners placed strong reliance upon the above documents to show that the petitioners are not directors.

Learned counsel also contends that none of them can be treated as principal officers. When learned counsel was asked as to who the directors

were during the relevant period and who the principal officer was, he said that it is for the Department to find out and it was not for him to supply

the information to the Department. Whatever that be, now there is the evidence of PW-1 that the petitioners were also directors at the relevant

time. The question as to whether they are directors or not and as to whether they are principal officers or not are questions of fact, which the trial

court alone can go into. It is not for this court, in these proceedings, to receive additional evidence in the form of memorandum and articles of

association and give a finding on facts. Even the memorandum and articles of association produced is dated December 9, 1955, and accused Nos.

3, 4, and 5 alone are shown as directors and the names of the accused Nos. 2, 6, 7 are not found. Instead, one Chinnapillai and one

Shanumugham are shown as directors. The board of directors could always change. It is a question of assessing the evidence let in regarding the

fact that the petitioners were also directors of the first accused company. The first contention of learned counsel for the petitioners, therefore,

cannot be accepted.

8. Regarding the second contention, it is settled law that a criminal trial should not be held up merely because some statutory remedies are being

resorted to by the parties concerned. The Supreme Court in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, has laid down the

law that in appropriate cases the criminal court could adjourn or postpone the hearing of the case in exercise of its discretionary power u/s 309,

Criminal Procedure Code, if the disposal of any proceeding under the Income Tax Act, 1961, has a bearing on the proceedings before the criminal

court. However, even here, the Supreme Court has cautioned that the discretion should be judicially exercised and not in a way that would

frustrate the object of the criminal proceedings. There could be no rigid rule which makes it necessary for a criminal court to adjourn or postpone

the hearing of a case before it indefinitely or for an unduly long period merely because some other proceedings under the Act are pending. It,

therefore, follows that merely because a petition for compounding the offences is pending before the Income Tax authorities, the criminal trial could

not be stayed. I am unable to accept the second contention of learned counsel for the petitioner.

9. In the result, the petitioners are dismissed.