

(1999) 05 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 1130 of 1996 4 May 1999 A.Y.
1983-84

KANHAIYALAL

APPELLANT

Vs

STATE OF MADHYA PRADESH

RESPONDENT

Date of Decision : 04-05-1999

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Income Tax Act, 1961 — Section 276, 277, 278

Citation : (1999) 156 CTR 261

Hon'ble Judges : S. B. Sakrikar, J

Bench : Single Bench

Advocate : S. C. Bagadia, with R.S. Chhabra, for the Assessee and S.K. Pawanekar, for the Revenue, for the Appellant;

Judgement

S. B. Sakrikar, J.

The unsuccessful petitioners (accused) have filed this petition u/s 482 CrPC for quashing of the proceedings of Criminal Case No. 10/86 of the Court of ACJM (Economic Offences), Indore.

2. Briefly stated the facts of the case are that the non-applicant, Income Tax Officer "A" Ward, Khandwa, filed a complaint in the Court of Additional Chief Judicial Magistrate, (Economic Offences), Indore, against the petitioners and deceased partners of the firm M/s Kanhaiyalal Deepchand Jain alleging commission of offence punishable u/s 276E/278B of the Income Tax Act, 1961. It is alleged that during the course of assessment proceedings for the year 1983-84 of the applicant No. 1, assessee-firm, it was found that the firm repaid the loan amount in cash i.e., otherwise that A/c Payee cheques or the draft, respectively, to Smt. Basanti Bai W/o Kanhaiyalal; Rajeshkumar Roopchand Rs. 1,000 and Rs. 10,200 when the balance in their account was exceeding Rs. 10,000.

That after recording the evidence u/s 200 CrPC a criminal case was registered

against the present petitioners and the deceased partners Shri Kanhaiyalal Jain Deepchand Jain of the applicants/firm u/s 276E/278B of the Income Tax Act, 1961. The applicants raised objections before the trial court and prayed for quashment of the proceedings of the said criminal case on various grounds but the learned trial court rejected the objection and framed charges against the applicants for the offence punishable u/s 276E/278B of the Income Tax Act, 1961. Revision petition filed by the applicants against the order of the trial court framing charges against them, was dismissed by the ASJ, Indore, by the impugned order. Aggrieved the petitioners have filed this petition u/s 482, CrPC for quashment of the proceedings of the aforesaid criminal case registered against the applicants.

3. Right at the threshold the main contention of the counsel for the applicants is that when it is alleged that the offence has been committed by a firm under sections 276, 277 or 278 of the Income Tax Act then only person or partner of the said firm who at the time of commission of the offence was in charge of, and was responsible to the firm for the conduct of the business of the company besides the firm will be liable for the offence committed. He also submitted that when no allegation to the effect that the petitioners were in charge of and were responsible to the firm for the conduct of its business at the time of commission of the offence alleged in the complaint, the complainant could not sue the petitioners for any criminal act unless the petitioners were shown to be running the affairs and were responsible to the firm for the conduct of its business. The counsel submitted that in the present case no allegations have been made in the complaint to the effect that the petitioners No. 2 and 3 were in charge of and responsible to the firm for the conduct of its business at the commission of the alleged offence. As such the applicants No. 2 and 3 though they are partners of the assessee-firm cannot be prosecuted for the alleged offence. The counsel contended that in view of the facts and circumstances of the case on hand, no useful purpose would be served by dragging the prosecution against the applicants and to prevent abuse of process of the court proceedings of the criminal case registered against the applicants deserve to be quashed in exercising the powers u/s 482, CrPC. The counsel relied on the undernoted decisions of the various High Courts :

B. Rajagopal v. Asst. Director of Inspection (Investigation) (1994) 121 CTR (Mad) 330

Sat Pal & Anr. v. State of Punjab & Anr. (1992) 103 CTR (Pat) 200

K. Subramanyam Vs. Income Tax Officer,

Ganesh Steel Traders & Anr. v. CIT (1998) 232 ITR 496

4. As against this the counsel for the non-applicant/department supported the impugned order of the framing the charges against the applicants and submitted that at this stage proceedings of criminal case cannot be quashed u/s 482, CrPC.

5. I have considered rival submission of the counsel for the parties and carefully perused the record as also the relevant provisions of the Income Tax Act in force at the time of filing of the complaint against the applicants.

6. On perusal of the judgment of various High Courts relied on by the petitioners, it is well settled law that before prosecuting a person under the provisions of sections 276, 277/278B of the Income Tax Act, 1961, prosecution must prove that a person was in charge of and responsible to the firm or company.

In case of Ganesh Steel Traders & Anr. (supra) Honble Patna High Court has that in case off prosecution under the Income Tax Act with regard to the offence alleged to have been committed by a firm or company there should be a specific averment in the complaint that director or partners were in charge of and responsible for the conduct of the business of the firm or company at the time of commission of alleged offence. In absence of such averment their prosecution is not sustainable in law.

7. Similar principal is laid down by the Punjab & Haryana High Courts in Sat Pal & Anr.s case (supra) as also by the Honble Madras High Court in case of S. Rajgopal (supra) and K. Subramanyam (supra).

8. On perusal of the complaint filed by the non-applicant before the ACJM (Economic Offence), Indore, it emerged that no specific averment in the complaint has been made that the applicants (No. 2 and 3) or the deceased partners or the firm were in charge of and responsible for the conduct of the business of the firm at the time of alleged offence. The aforesaid fact is not stated in the statement of PW 1 Rajeev Nayan Prasad, recorded u/s 200, CrPC. In view of the omission of the said allegation in the complaint or in the applicants No. 2 and 3 cannot be prosecuted for the said offences alleged to have been committed by the assessee-firm.

9. On perusal of the record of the trial court it also emerged that the complaint against the petitioners and deceased partners of the firm was filed in the trial court on 21-3-1996, and till today no evidence is recorded in the said criminal case after framing of alleged charges against the applicants. In view of the aforesaid delay on useful would be served by continuing criminal case instituted against the applicants. In Sheela Borses case 1986 CrLJ 249 and Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , it is held by the Apex Court that fundamental right of speedy trial is impulsive under Art. 21 of the Constitution and the consequences of the violation of that right would be the prosecution itself would be liable to be quashed on the ground that it is breach of fundamental rights.

10. In view of the facts and circumstances of the case on hand the law applicable, in my considered opinion, continuance of the prosecution against the applicants will be sheer wastage of public time and money. I am also of opinion that continuance of the criminal prosecution against the applicants of the present case amounts to abuse of process of court and that to secure ends of justice the

quashing of proceedings of the criminal case pending against the applicants in the trial court deserves to be quashed.

11. In the result this petition filed by the applicants is allowed and the Criminal Case No. 10/86 and the proceedings thereof instituted against the applicants pendencies in the Court of ACJM (Economic Offence), Indore, stands quashed, exercising the powers u/s 482, CrPC. No. orders as to costs.