
(1980) 08 CAL CK 0005
In the Calcutta High Court
Case No : Criminal Revision No. 1526 of 1979

Kusum Products Ltd.

APPELLANT

Vs

S.K. Sinha, ITO

RESPONDENT

Date of Decision : 19-08-1980

Acts Referred:

Income Tax Act, 1961 — Section 2(31), 277

Citation : (1980) 126 ITR 804

Hon'ble Judges : R.K. Sharma, J;P.C. Barooah, J

Bench : Division Bench

Advocate : Debi Pal, B.C. Ray, Satyen De and Ramesh Choudhury, Ramen Bose and P.K. Roy, for the Appellant; Balai Pal, Biswaranjan Ghosal, Ajit Kr. Sengupta, for the Respondent

Judgement

P.C. Barooah, J.—The petitioner, M/s. Kusum Products Ltd. (hereinafter "the company"), has its registered office at 9, Brabourne Road, Calcutta. It carries on business in the manufacture and sale of vanaspati and other products. On July 30, 1974, the company filed a return of income for the assessment year 1974-75, under the signature of one Kundanmal Lakhotia, who at the material time was the accountant and also the constituted attorney of the company.

2. On March 27, 1979, the opposite party, Sri S. K. Sinha, ITO, Central Circle-X, Calcutta, filed a petition of complaint in the court of the Chief Metropolitan Magistrate, Calcutta, against the company and Kundanmal Lakhotia alleging the commission of an offence punishable u/s 277 of the I.T. Act, 1961 (hereinafter "the Act"). It was alleged, inter alia, that in the aforesaid return the company had shown a total profit in its business amounting to Rs. 66,62,114 from which a total amount of deduction amounting to Rs. 12,89,107 was claimed. The deduction included a sum of Rs. 1,14,212 which was received by the company as interest on advance Income Tax paid for the assessment year 1967-68. It was further alleged that in claiming the said amount as deduction it was stated in page 6 of the return that it had been assessed in an earlier year, although no

such assessment had taken place, and the company also could not produce any evidence to show that the said amount had been assessed to tax in any previous year. In the draft assessment order deduction was disallowed in respect of Rs. 1,14,212 and it was added to the assessable income. The company also did not prefer any objection to the inclusion of the said amount as income for the relevant year. Thereafter, the final assessment order was passed, but the company neither preferred any appeal nor raised any dispute in respect of the said sum. Under the circumstances, it was alleged that the accused persons had made a false verification in the return of income for the assessment year 1974-75, knowing or believing it to be false or not believing it to be true.

3. The learned Magistrate by an order dated March 27, 1979, took cognizance and directed issue of summons against the company and Kundanmal Lakhota. Pursuant to the said summons the company appeared before the learned Magistrate through its representative, one Sri Manoranjan Sengupta, an accounts assistant under its employment. In this application, it is prayed that the proceeding pending against the company in the court of the learned Magistrate be quashed.

4. Dr. Debiprosad Pal, appearing on behalf of the petitioner, has submitted that as the allegations in the complaint do not disclose a prima facie case against the company nor disclose the essential ingredients of the offence u/s 277 of the Act, the continuance of further proceedings against the company would tantamount to an abuse of the process of law. Dr. Pal further submitted that the petitioner being a company and a juristic person no prosecution can be initiated against it for an alleged offence u/s 277 of the Act as mens rea is an essential ingredient of the offence and the company cannot be charged for verification of a statement with the knowledge or belief that the said statement is false. Dr. Pal's further submission in this respect was that as imprisonment has been made compulsory for violation of Section 277 of the Act, it would clearly go to show that it was not the intention of the Legislature to punish a juristic person but an actual person who made the false statement in the verification. Dr. Pal also argued that in any event the company cannot be deemed to have committed any offence u/s 277 of the Act inasmuch as the return of income for the assessment year 1974-75 gives a true picture of the profit and loss of the company and even if the company had claimed the sum of Rs. 1,14,212 as a deduction, it would not necessarily go to show that there was any false statement in the return. It will, however, not be necessary for us to go into this aspect of the matter as we intended to decide the case on the prior submissions of Dr. Pal.

5. Mr. Balai Chandra Pal, appearing on behalf of the revenue, has contended that Section 2(31) of the Act includes a company within the definition of a person, and as such a company can be prosecuted for an offence u/s 277 of the Act. Mr. Pal also contended that although under the law, as it now stands imprisonment is compulsory on a conviction u/s 277 of the Act, there is no bar to the prosecution of a company for the commission of an offence under the said section, because,

in case the company is convicted, it will be open to the court to award any appropriate punishment or if the court so thinks fit not to award any punishment at all. Mr. Pal has strengthened this branch of his argument with reference to a decision of the Madras High Court in the case of A.D. Jayaveerapandia Nadar and Co. and Others Vs. Income Tax Officer, . Mr. Pal has also referred to a decision of the Court of Appeal in England in the case of Regina v. St. Margarets Trust Ltd. [1958] 1 WLR 522 (CCA), wherein it was held that a company could be prosecuted for violation of the Hire Purchase and Credit Sale Agreement (Central) Order, 1956, and although Parliament had prescribed imprisonment as one of the punishments that may be inflicted for breach of the order, nevertheless, it would be left open to the court to use its powers to inflict any manner of punishment or none at all in appropriate cases. Mr. Pal also drew our attention to the decision of the Supreme Court in the case of State of Maharashtra Vs. Hans George, , where the decision of the Court of Appeal in the case of Regina v. St. Margarets Trust Ltd [1958] 1 WLR 522 (CCA) was referred to.

6. In the case of A.D. Jayaveerapandia Nadar and Co. and Others Vs. Income Tax Officer, , the Madras High Court was dealing with the filing of a false return by one of the partners of the appellant-firm for the assessment year 1962-63, and the court held that the firm could be prosecuted for an offence u/s 277 of the Act. It must, however, be borne in mind that Section 277 of the Act, as it then stood, prescribed punishment of simple imprisonment extending to six months or with fine extending to Rs. 1,000 or with both. This was the law till March 31, 1964, wherein after it was amended and imprisonment was made compulsory. Moreover, the Madras High Court in page 420 of the judgment made the following observations :

" A corporation could not be subjected to bodily punishment. It could, however, be fined ; and to this date fine remains the only mode of punishment applicable to a corporation. Since fine only is the type of punishment appropriate to a corporation, if a crime is not punishable with fine, a corporation cannot be convicted of it."

7. The Supreme Court, in the case of State of Maharashtra v. Mayer Hans George [1965] 35 Comp Cas 557, was dealing with a case of an offence under s. 23(1 A) of the Foreign Exchange Regulation Act, 1947, under which imprisonment was not compulsory.

8. In the instant case, we are concerned with the assessment year 1974-75. Section 70 of the Taxation Laws (Amendment) Act, 1975, further amended Section 277 of the Act. The section as it stood with effect from October 1, 1975, when the Amending Act came into force is as follows :

"If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he

shall be punishable,--

(i) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine."

9. That mens rea is an essential ingredient of an offence u/s 277 of the Act is clear from the section itself and only an actual person who does any of the acts indicated therein with a specific knowledge or intent can be made liable. Although u/s 2(31) of the Act the definition of a person is wide enough to include a company or any juristic person, the word person could not have been used by Parliament in Section 277 of the Act in the sense given in the definition clause. That this was the intention of Parliament is clear because imprisonment has been made compulsory for an offence u/s 277 of the Act. A company or a juristic person cannot possibly be sent to prison, and it is not open to a court to impose a sentence of fine or not to award any punishment if the court finds a company guilty under the said section. If the court does so it would be altering the very scheme of the Act and usurping the legislative function. In this connection, reference may be made to the case of *Kapurchand Shrimal Vs. Tax Recovery Officer, Hyderabad and Others*, , where the Supreme Court at page 629 of the judgment made the following observations :

" In the context in which the expression "person" occurs in Sections 276, 276A, 277 and 278, there can be no doubt that it seeks to penalise only those individuals who fail to carry out the duty cast by the specific provisions of the statute, or are otherwise responsible for the acts done. For the default of the Hindu undivided family, therefore, in payment of tax, the karta cannot be arrested and detained in prison."

10. In view of what has been stated above, we must hold that as the petitioner cannot be attributed with the requisite mens rea, its further prosecution in the court of the learned Magistrate for an offence u/s 277 of the Act would tantamount to an abuse of the process of the court. The application must, therefore, succeed and the proceedings pending against the petitioner-company in case No. C449 of 1979, in the Court of the Chief Metropolitan Magistrate, Calcutta, is quashed.

11. The rule is made absolute.

12. Mr. Ghosal, learned advocate appearing on behalf of the revenue, orally prays for leave for the grant of a certificate to appeal to the Supreme Court. The prayer is refused.

R.K. Sharma, J.

13. I agree.