
(1996) 08 PAT CK 0030

In the Patna High Court

Case No : Criminal Miscellaneous No. 157 of 1990

Lal Saraf

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 29-08-1996

Acts Referred:

Income Tax Act, 1961 — Section 139(2), 148, 276CC

Citation : (1997) 224 ITR 306

Hon'ble Judges : Naresh Kumar Sinha, J

Bench : Single Bench

Advocate : K.N. Jain, Navaniti Prasad Singh, R. Usha, Rajesh Roshan and Cijay Kumar Sinha, for the Appellant; S.K. Sharan, for the Respondent

Judgement

Naresh Kumar Sinha, J.—The application is for quashing the entire criminal prosecution initiated against the petitioner in Complaint Case No. 68 of 1986 u/s 276CC of the Income Tax Act, 1961, presently pending before the Special Court (Economic Offences), Muzaffarpur.

2. Only such of the facts as are necessary for disposal of the application need be stated. The Income Tax Officer, O.P. No. 2, filed a complaint alleging that on September 20, 1980, the residential and business premises of the petitioner were searched u/s 132(1) of the Income Tax Act, 1961 (hereinafter "the Act"). In the course of search a large number of incriminating books of account including duplicate sets of books were seized by the officers of the Department. On a scrutiny of the books of account seized, it was detected that the accused had income from other sources and he had not disclosed his true income to the Department and had been evading payment of taxes. As there was concealment of substantial income for the assessment year 1983-84 a notice u/s 139(2) of the Act was issued against the accused. The due date for filing the return of income was June 30, 1983. The accused filed the return of income on December 17, 1985, i.e., long after the expiry of the due date for filing the return for the assessment year 1983-84. The complainant thereafter charged the accused for

having miserably failed to furnish the return by the due date for his income which he was required to file under Sub-section (2) of Section 139 and Section 148 of the Act, which was an offence punishable u/s 276CC of the Act. The complaint was filed after obtaining the sanction order of the Commissioner of Income Tax as required u/s 279(1) of the Act.

3. Sri K. M. Jain, learned counsel for the petitioner, referred to a number of grounds taken in the application for quashing the order dated March 29, 1986, passed by the Special Court taking cognizance on the basis of the complaint as also, the entire criminal prosecution based thereon. A supplementary affidavit has also been filed enclosing a copy of a circular of the Department of Revenue, Central Board of Direct Taxes, Government of India, dated February 7, 1991, on the subject of guidelines for prosecution under the direct tax laws. As per the guidelines there could be no prosecution u/s 276CC of the Act for failure to furnish the return of income, in case the net tax involved is less than Rs. 5,000 (five thousand) and the taxpayers were not habitual defaulters. Since the total tax chargeable was only Rs. 2,577 as per the assessment order, copy of which is annexure "3", it was argued that in terms of the guidelines of the Department referred to above the criminal prosecution of the petitioner ought not to be allowed to continue even if he had committed the alleged offence.

4. Mr. Jain, however, confined his argument mainly to the ground that as per the provision of Sub-section (2) of Section 139 of the Act, as it stood before its amendment with effect from April 1, 1989, the Assessing Officer was required to issue a notice to the petitioner and serve the same upon him before the end of the relevant assessment year. He pointed out that the petitioner-assessee was required to file his return of income by June 30, 1983, and the Assessing Officer within the meaning of Section 139(2) of the Act could have issued the notice to him and served the same on him under the law by the end of the relevant assessment year which happened to be March 31, 1984. The relevant portion of Sub-section (2) of Section 139 of the Act provides that in the case of every person who, in the Assessing Officer's opinion is assessable under this Act, whether on his own total income or on the total income of any other person during the previous year, the Assessing Officer may, before the end of the relevant assessment year, issue a notice to him and serve the same upon him requiring him to furnish, within thirty days from the date of service of the notice, the return of his income, etc., etc. Section 139 of the Act deals with the return of income and Sub-section (2) of the said section provides the circumstances in which the Assessing Officer can issue a notice to the assessee to furnish the return of his income. On behalf of the petitioner emphasis was laid on the words "before the end of the relevant assessment year" and it was argued that the Assessing Officer, under Sub-section (2), was required to issue notice as well as serve it upon the assessee before the end of the relevant assessment year. Learned counsel for the petitioner submitted that the notice purported to have been sent to the petitioner was not received by him before the end of the assessment year. In other words, the notice issued was not served before the

end of the assessment year, i.e., March 31, 1984.

5. Learned counsel for the petitioner further argued that it was for the Department to mention all the ingredients which constituted an offence u/s 276CC of the Act for which the petitioner was being prosecuted and it was for the Department to allege that the notice was both issued and served on the petitioner-assessee before the end of the assessment year. It was pointed out that the complaint petition (annexure "I"), contained no such averment. The important ingredient that the notice had to be served on the assessee before the end of the said assessment year was thus missing and the learned Special Court could not have taken cognizance of the offence.

6. Learned counsel appearing for the Revenue argued that the complaint petition should be read as a whole and it disclosed the necessary allegations as to how the petitioner had sought to conceal other sources of his income which was detected only in the course of search of his business premises in the course of which incriminating documents had been recovered. If paragraphs 5 and 9 of the complaint petition are read as a whole, there appears no doubt whatsoever that the petitioner is being prosecuted as he did not file the return of income pursuant to the notice u/s 139(2) of the Act issued to him by the Income Tax Officer. Paragraph 9 of the complaint petition alleges that the accused wilfully failed to furnish in due time the return of income which he was required to furnish under Sub-section (2) of Section 139 and Section 148 of the Act. There is no mention of any facts in the complaint petition stating that any notice was issued to the petitioner u/s 148 and the complaint petition for all practical purposes is confined to the prosecution of the petitioner for an offence u/s 276CC of the Act for not submitting the return of his income as required, vide notice issued to him u/s 139(2) of the Act.

7. The complaint petition does not contain the most important averment that the notice was issued and served on the petitioner before the end of the relevant assessment year, i.e., by the 31st March, 1984. In its absence, the notice would not be a legal and valid notice u/s 139(2) of the Act and the prosecution of the petitioner u/s 276CC of the Act on that ground was thus not competent in the eye of law.

8. The application is, therefore, allowed and the impugned order taking cognizance on the basis of the complaint as also the criminal prosecution of the petitioner on that basis are an abuse of the process of the court and they are accordingly quashed to secure the ends of justice.