

(1984) 07 DEL CK 0035

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 121 of 84

Lalji and Co. and Others

APPELLANT

Vs

Delhi Administration and Others

RESPONDENT

Date of Decision : 19-07-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 278

Citation : (1984) 2 Crimes 345 : (1985) 44 CTR 27 : (1984) 26 DLT 301 :
(1985) 154 ITR 728 : (1985) 1 RCR(Criminal) 421 : (1985) 21 TAXMAN 78

Hon'ble Judges : D.R. Khanna, J

Bench : Single Bench

Advocate : K.K. Desai, K.J. John, G.S. Sharma and D.K. Jain, for the Appellant;

Judgement

D.R. Khanna, J.

(1) This petition u/s 482 Criminal Procedure Code . and Article 227 of the Constitution of India has arisen in following circumstances :

(2) A complaint stands filed by one R.K. Roye, Income Tax officer District X(3), Delhi against M/s. Shanti Vijay & Co. and 17 others ,with allegations that they have committed offences u/s 277/278 of the Income Tax Act, 1961 arid Section 193\\196 Indian Penal Code . It is pending in the court of Additional Chief Metropolitan Magistrate, Delhi. On its basis summons were issued to all the respondents for appearance and facing trial. M/s. Lalji & Co. and its three partners who are imp leaded as respondents No. 6 to 8 in that complaint, feeling aggrieved against the service of those summons on them have now moved this petition for setting aside and/or quashing the issue of process to them by the Additional Chief Metropolitan Magistrate.

(3) Notice to show cause why this petition be not admitted ,was issued to the respondents including the complainant Income- tax Officer. Some of them have been served. The petition is contested and opposed by the complainant Income

Tax Officer.

(4) After hearing the present petitioners and the said complaint, I am of the opinion that this is a fit case for admission. The petition is accordingly admitted.

(5) Since arguments have been heard on the merits of this petition. I proceed to dispose of the same as I find that in terms of the averments made in the complaint, no case was made out against the present petitioners which could have justified the issue of process against them. Here it may be mentioned that the petitioner firm is situate at Bombay, and so are all its partners. The complaint as it is, is likely to take considerable time and hearings before it finally gets decided, and I do not see any point in requiring the petitioners to continue making appearance in the Delhi Court in that protracted trial, when no case whatsoever has been made out against them in the complaint itself.

(6) I am conscious in this regard that inherent powers u/s 482 Criminal Procedure Code . are not to be too readily exercised when the complainant has had no opportunity to substantiate the allegations made against the accused persons, much less that any evidence was tendered by him. This court has also not to scam minutely the merits of the allegations made and embark upon assessing the possibilities which may ultimately result in bringing home to the accused the offence alleged against him. In case a prima facie case existed with the trial court justifying the issue of process the High Court would keep its hands off and decline to interfere. However, at the same time where the averments made in the complaint, even if taken at their face value and accepted in their entirety ,do not bring out the commission of the offence alleged, there would be no question of appreciation of the evidence or possibilities. It would be merely looking at the complaint to decide whether the offence alleged is disclosed or not and if it is patent that none such is disclosed, it would be manifestly unjust and an abuse of the process of the court to allow the issue of process to subsist and the trial to proceed. I am of the considered opinion that the present case falls in this later category.

(7) Briefly stated the averments made in the complaint are that the Maharaja of Gwalior wanted to dispose of his jewellery worth about Rs. 40 lakhs. M/s. Shanti Vijay & Co. (hereinafter mentioned as accused No. 1) entered into negotiations with the Maharaja and struck a deal. In this process, this accused associated M/ s. Lalji & Co. as well (hereinafter mentioned as accused No. 6) and what they mutually agreed was that the purchase of jewellery to the extent of Rs. 13,25,000.00 would be financed by this accused No. 6 with corresponding sharing of the jewellery so purchased. Thus each of these accused No. 1 and 6 had to arrange substantial cash for the purchase of jewellery. Accused No. 1 on its part claimed to have borrowed different amounts from 11 persons totalling rupees 8.15 lacs. They were all from Bombay and are imp leaded as other accused in the complaint filed in the trial court. The amounts so obtained from those persons were entered in the account books of accused No. 1 as cash credits obtained from them. During the course of assessment for the assessment

year 1972-73 (the previous year of which these cash credits were), the Income Tax Officer required accused No. 1 to substantiate that those cash credits were genuine loans obtained from the said third parties. The accused No. 1 then produced affidavits purported to be given by these persons affirming the giving of loans, but the enquiries later from those persons revealed that they had not given any such amounts nor had stated so in any affidavit. The Income Tax Officer, Therefore, held that those cash credits were fake. and were mere hawala loans. Thereby the accused No. 1 was purported to have utilised its own concealed income in the guise of cash credits, and allowed some commission to those persons for lending their names. The amounts of those cash credits were, Therefore, treated as part of the income of the accused No. 1. This addition in the assessment has been upheld by the Income Tax Appellate Tribunal.

(8) Accused No. 6 i.e. M/s. Lalji & Co, in similar manner purported to obtain loans worth Rs. 13,25,000 from different persons and made entries of cash credits in their account books. Their scrutiny at the assessment stage of this accused at Bombay, cast considerable cloud on their genuineness. Ultimately this accused made a voluntary disclosure before the Income Tax authorities and entered into a settlement with them u/s 271(4A) of the Income Tax Act. The settlement covered assessment years 1966-67 to 1971-72 and tax amounting to Rs. 2,65,000.00 was paid. So far as this accused is concerned that settlement has closed the chapter of the loans which it had purported to obtain for the purchase of the said jewellery.

(9) In the complaint which is now pending before the Additional Chief Metropolitan Magistrate, the Income Tax Officer has alleged that accused No. 1 and its partners made and delivered false accounts, statements and declarations relating to their income chargeable to tax for assessment year 1972-73 and thus. committed an offence u/s 277 of the Income Tax Act. The persons who had purported to lend their names in the creation of those fictitious cash credit entries in the account books of accused No. 1 are alleged to have abetted and induced accused No. 1 and its partners in the making and delivering of the said accounts statements and declarations. The trial has still to proceed against them.

(10) The allegations against M/s. Lalji & Co. accused No.6 and its partners, who are all the petitioners before this court, are contained in para 5 of the complaint. The same is to the following effect: "M/s. Lalji & Co. of Bombay no partners accused No. 7 to 10 had also claimed to have raised loans in respect of the amount of Rs. 13,25,000.00 and some of the parties from whom the loans were raised were common with accused No. 1 as a matter of fact, these loans were bogus and were merely "Hawala unreiwa". No such loans were in fact advanced by any of these parties either to accused No. 1 or to accused No. 6. The amount of Rs. 8,15,000 in the books of accused No. 1 was in fact its concealed income from undisclosed advances. Investigations revealed that most of these parties were introduced to the accused firm by accused No. 6. When the fraud came to light, M/s. Lalji & Co. accused No. 6 came up with a settlement petition u/s

271(4A) of the Act surrendering a total amount of Rs. 2,65,009 which included the loans allegedly raised from the following parties : - 1. M/s. Rasik Lal C. Shah. 2. Shri Rasik Lal Tribhuvan 3. Shri Kanti Lal Khokhani 4. Shri N. R. Vakharia."

(11) As already noted above, so far as the raising of loan of Rs. 13,25,000 the chapter already stands closed and is not germane to the trial of the present case. It is with respect to the accused No. 6 having introduced accused No. 1 to those parties who had purported to give loans to accused No. 1 that the complainant has sought to implicate accused No. 6 in the abetment and inducement as envisaged by Section 278 of the Income Tax Act. Except for this allegation, there is no averment against accused No. 6. Of course, in para 11 of the complaint it is further added as under : "Accused No. 6 to 17 abetted and / or induced the accused 1 to 5 to make and deliver accounts / statements and declaration relating to income of accused No. 1 which was chargeable to tax which was false and which they either knew to be false and/ or did not believe to be true. They have committed an offence punishable u/s 278 of the Act." In the reply which the Income Tax Officer has filed to the present petition before this Court, various other allegations have been made against accused No. 6 and its partners, and it is pointed out that some loans had been purported to be obtained by accused No. 6 from the same persons as well. Reference has also been made to earlier dealings between accused No. 1 and 6 and passing, off some money or adjustment of the amounts in the course of those transactions. However, I am not inclined to allow new allegations and averments relating to the commission of the offence by accused No. 6 and its partners to be raised which go beyond the scope of the complaint. It is the complaint which has been filed in the trial court which has to be looked into for ascertaining the nature and extent of allegations and the complainant cannot travel beyond the same. The accused persons too have to meet the allegations made in the complaint, and not that they are to be confronted unaware and taken by surprise with new or additional allegations. The basic document thus remains the complaint and it has to be ascertained on its plain reading whether any case at all is made out against accused No. 6 and its partners.

(12) As noted above, the only allegations against accused No. 6 is that it had introduced those parties to the accused No. 1. Such introduction does not per se amount to commission of any offence or abetment in the filing later by accused No. 1 of any wrong return, statement or account. No mala fide, collusion or conspiracy in the said introduction is alleged. There is no averment that accused No. 6 or its partners had any hand or say in what followed between accused No. 1 and those persons thereafter. It has thus been a case of introduction simplicities with no motives or designs. Such introduction could as well have resulted in genuine transactions between accused No. 1 and those persons. In case they chose to indulge in fictitious hawala hundi deals, the matter was entirely between them, and accused No. 6 or its partners are not alleged in any manner to have a say or connivance in the same. Even the knowledge of what transpired thereafter is not imputed to accused No. 6.

(13) The loan transactions which accused No. 6 entered into with any of those persons were independent transactions, and the matters have been already settled with the Income Tax department. That settlement provides an immunity to this accused from prosecution qua those transactions. The deals which accused No. 1 had with those persons were entirely separate and inter se them only in the creation of which accused No. 6 did not come into the picture. This is irrespective of there being a sort of common venture between accused No. 1 and 6 for the purchase of the jewellery from the Maharaja of Gwalior.

(14) AS. regards averments in para 11, they are more in the nature of deductions claimed to follow from the facts and allegations earlier stated in the complaint. It was accused No. 1 and its partners who had purported to file false return, statement of their accounts etc. If at all, the persons who lent their names in the creation of fictitious cash credit entries in the account books may be said to have abetted or induced the offence u/s 278. No opinion, however, is expressed about the same at this stage. Accused No. 6 is not a party to the return or statement of accounts filed by accused No. 1 before the Income Tax authorities. I, Therefore, do not see how the present petitioners, who are accused No. 6 and its partners, have, in any manner, abetted or induced the commission of offence envisaged by Sections 277 and 278 of the Income Tax Act. There are no allegations of commission by them of any offence under Sections 193 and 196 Indian Penal Code . either.

(15) The result, Therefore, is that the petition is allowed, and the issue of process against the petitioners in the complaint pending in the trial court is quashed.