
(1986) 03 AP CK 0002

In the Andhra Pradesh High Court

Case No : Criminal Miscellaneous Petition No. 231 of 1986

M. Murali Mohan

APPELLANT

Vs

State (Income Tax Officer, Nalgonda)

RESPONDENT

Date of Decision : 18-03-1986

Acts Referred:

Income Tax Act, 1961 — Section 277, 278

Citation : (1987) 168 ITR 729

Hon'ble Judges : R. Rao, J

Bench : Single Bench

Advocate : Naram Bhaskar Rao, for the Appellant; N.V.S.R. Gopala Krishnamacharyulu, for the Respondent

Judgement

Rama Rao, J.—This petition is to quash the proceedings of the Special Judge for Economic Offences, Hyderabad, in CrI. M.P. No. 1524 of 1984, in C.C. No. 94 of 1984, confirmed by the Metropolitan Sessions Judge, Hyderabad. The facts arising in this petition may be briefly stated :

For the assessment year 1980-81, the petitioner filed the return under the Income Tax Act admitting a total income of Rs. 15,481. On scrutiny of the books of account, the Income Tax Officer, Nalgonda, found that in collusion with the second accused, he had introduced fictitious purchases of yarn of Rs. 75,000 for the manufacture of bandage cloth by him and on that basis a sum of Rs. 75,000 was added to the income declared by the petitioner. On appeal against the said assessment, the Appellate Assistant Commissioner, Hyderabad, by his order dated January 27, 1984, set aside the orders passed by the Income Tax Officer and directed him to redo the assessment. After the assessment order was passed, the Income Tax Officer filed a complaint with the approval of the Commissioner of Income Tax against the petitioner and another person for offences under sections 277 and 278 of the Income Tax Act and sections 193 and 196, IPC. Summonses were issued in C.C. No. 94 of 1984, and thereafter the petitioner filed CrI. M.P. No. 1524 of 1984, stating that the prosecution does not

subsist in view of the setting aside of the order of the Income Tax Officer. This order was dismissed by the special judge and on revision the Metropolitan Sessions Judge confirmed the same. Learned counsel for the petitioner, Sri N. Bhaskar Rao, contends that the assessment order in respect of which the prosecution was launched is not subsisting as it was set aside and, therefore, the prosecution proceedings are not maintainable. It is not in dispute that the assessment order was set aside. But, however, the learned Metropolitan Sessions Judge held that the criminal proceedings can continue irrespective of the fact whether the assessment is set aside. It may be stated that this approach of the learned judge is erroneous. When the assessment itself is set aside by the appellate authority, it cannot be said that the assessment still continues in the eye of law and when the assessment order itself is not in existence, the question of maintaining the prosecution does not arise. The Metropolitan Sessions Judge also held that the revision is not maintainable. This technical objection need not be considered as the High Court has ample power u/s 482, CrI. PC, to quash the original order itself. In this view, the proceedings in C.C. No. 94 of 1984, on the file of the Special Judge for Economic Offences are quashed. The criminal miscellaneous petition is allowed.