(1995) 11 PAT CK 0045

In the Patna High Court

Case No : Crl. Misc. No. 5161 of 1987

MAHADEO LAL AGARWALA APPELLANT

Vs

STATE OF BIHAR and Another RESPONDENT

Date of Decision : 24-11-1995

Acts Referred:

Citation : (1995) 11 PAT CK 0045

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Judgement

NARAYAN ROY, J. :

Heard Mr. K. N. Jain, learned senior counsel appearing on behalf of the petitioner, and Mr. K. K. Vidyarthi, standing counsel appearing on behalf of the Revenue.

2. This application under s. 482 of the Cr. PC is directed against the order dt. 6th March, 1987, passed by the learned Special Judge (Economic Offences), Muzaffarpur, in Trial No. 777 of 1987, refusing to discharge the petitioner in a prosecution under s. 277 of the IT Act, 1961 (hereinafter referred to as "the Act").

3. It appears that the petitioner has been prosecuted for the offence under s. 277 of the Act on the ground that the petitioner had fraudulently and dishonestly made a false statement about his income in the verification of his return for the asst. yr. 1974-75 and thereby dishonestly induced the IT authority to assess on lesser amount causing wrongful loss to the Department and wrongful gain to him.

Upon the basis of the complaint petition, the learned special judge took cognizance of the offence under s. 277 of the Act. It appears that before charge, the petitioner appeared before the learned special judge and prayed for his discharge on the ground that there was no sufficient material for proceeding against him in the case, as the proceeding drawn against him under s. 271(1)(c) of the Act had been dropped by the assessing authority, vide order dt. 30th June,

1980. The learned special judge, however, considering the facts and circumstances of the case refused to discharge the petitioner in the case, specially on the ground that dropping of the penalty proceeding cannot be ground for holding that there is no case against the accused-petitioner.

4. Mr. Jain, learned counsel appearing on behalf of the petitioner, submitted that this question has already been answered by several decisions of the various High Courts and also the apex Court. In this case, he has relied upon the decisions in the case of Kanshi Ram Wadhwa Vs. Income Tax Officer, and in the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar,

In the case of Kanshi Ram Wadhwa (supra), the Punjab and Haryana High Court has held, taking into consideration the decision rendered by the Supreme Court in the case of Uttam Chand (supra), that once a proceeding under s. 271(1)(c) of the Act has been dropped, there is no question of criminal prosecution against the assessee.

Here, I find that the proceeding under s. 271(1)(c) has been dropped by the assessing authority by order dt. 30th June, 1980, as contained in annexure "2" to this application.

Learned standing counsel appearing on behalf of the Revenue, however, in view of the legal proposition laid down in the aforementioned referred cases very fairly conceded that the criminal prosecution launched against the petitioner, after dropping of the proceeding under s. 271(1)(c) of the Act, was not maintainable. Learned standing counsel also stated that there is a recent circular of the Department endorsing the same view and, in that view of the matter also, the prosecution launched against the petitioner is not maintainable.

5. Having heard counsel for the parties and in view of the legal proposition noticed above, I allow this application and quash the order impugned and the petitioner is hereby discharged from the criminal liability.