
(2000) 09 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 1212 of 1987 1 September 2000 A.Y. 1977-78

Mahender Kumar

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 01-09-2000

Acts Referred:

Income Tax Act, 1961 — Section 277, 278

Penal Code, 1860 (IPC) — Section 120B, 193, 276C, 477A

Citation : (2001) 165 CTR 37

Hon'ble Judges : V.K. Bali, J

Bench : Division Bench

Advocate : B.S. Gupta with Sanjay Bansal, for the Assessee R.P. Sahney with Sanjiv Ghai and Rajesh Bindal, for the Revenue, for the Appellant;

Judgement

V.K. Bali, J.

Challenge in this petition is to orders of conviction and sentence, dated 18-7-1983, and 19-7-1983, respectively, rendered by the Additional Chief Judicial Magistrate, Bhiwani, as also order dated 30-11-1987, vide which Additional Sessions Judge, Bhiwani, set aside the conviction and sentence of the accused Mahender Kumar for an offence punishable u/s 278 of Income Tax Act, 1961, but maintained the conviction and sentence for an offence punishable u/s 277 of the Income Tax Act, 1961, and reduced the sentence from one year and six months to nine months.

2. Brief facts of the case reveal that a partnership concern known as M/s. Sat Narain Mahender Kumar at Tosham had three partners, namely, Mahender Kumar, Raj Kishan Gupta and Daropadi Devi. The accounts of this partnership firm were maintained by one Ram Kishan, Munim. The income tax return for the financial year 1976-77 was filed in the year 1977 by Mahender Kumar, partner, the documents accompanying the Income Tax return were also signed by Mahender Kumar.

Inasmuch as the concerned department was of the view that in the Income Tax return aforesaid, the firm has concealed the total income to be shown in the return, it lodged a complaint against the firm, its three partners as also Ram Kishan, Munim. The complaint was lodged under sections 277 and 278 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), as also under sections 193 and 477A of Indian Penal Code. To substantiate its case, the department examined two witnesses, namely, Uma Sharma, L.D.C, of the Income Tax Department as PW-1 and Rattan Lal, Income Tax Officer, as PW-2, who happened to be the complainant as well. It requires to be mentioned here that from the statement of the witnesses, it is clear that the firm is a partnership concern and it had concealed an amount of nearly, Rs. 13,000. The assessment was completed on 30-8-1976, as would be clear from the assessment order, Ex. P-3. The complaint aforesaid was lodged on 14-3-1977, against the firm, Mahender Kumar, Raj Kishan Gupta, Daropadi Devi and Ram Kishan, Munim under sections 277 and 278 of the Act, 1961, as also 193/477-A of Indian Penal Code. The charge came to be framed on 13-2-1980. It is pertinent to mention here that no charge was framed against the firm. Rather the charges were framed against its partners aforesaid and Ram Kishan-Munim under sections 277 and 278 of the Act, 1961, as also sections 193, 477A read with section 120B of Indian Penal Code.

Against this charge, Daropadi Devi filed a revision before the Additional Sessions Judge, Bhiwani, which was accepted vide order, dated 16-11-1981.

Insofar as Raj Kishan Gupta is concerned, he was acquitted in appeal preferred by him. So far as Ram Kishan, Munim is concerned, he died when his appeal was pending before the Additional Sessions Judge.

3. In the facts, referred to above, it is only Mahender Kumar, who is in revision against the orders, referred to above. Charge was framed against Mahender Kumar under sections 277 and 278 of the Act of 1961 as also 477-A and 120-B of Indian Penal Code. He was held guilty by the trial court under sections 277 and 278 of the Act, and was acquitted of the charge framed against him under sections 477A and 120B of Indian Penal Code. He was sentenced to undergo rigorous imprisonment for one year and six months u/s 277 of the Act, 1961, and one year u/s 278 of the Act, 1961. Both the sentences were ordered to run concurrently. In appeal filed by the present petitioner against the orders passed by the trial court, the Additional Sessions Judge, vide his order, dated 30-11-1987, held that insofar as section 278 of the Act, 1961, is concerned, no case is made out against him but at the same time, he was held guilty u/s 277 of the Act, 1961, but his sentence on the aforesaid count was reduced to nine months.

4. On the facts, as fully detailed above, Mr. Gupta, representing the petitioner, without touching the merits of the case, only states that in view of the facts and circumstances of this case as also the fact that litigation is going on for the last more than 25 years, it will not be in the interest of justice at this stage to order

the petitioner to undergo a jail sentence. Not only that, the petitioner has undergone the agony of protracted trial, spanned over a period of 25 years, the allegation against the petitioner was only to the extent that a sum of Rs. 13,000 and odd had been concealed. This too, as per learned counsel for the petitioner, on the basis of evidence available on record, i.e., statement of Income Tax Officer and that of petitioner, was because of some acts of cheating and negligence of Ram Kishan, Munim. Further, insofar as the firm is concerned, no charge has been framed against it and insofar as other partners are concerned, one of them has been acquitted and the other has died.

5. Learned counsel for the petitioner further states that the petitioner, who was 42 years of age in the year 1979, was the first offender. No doubt, under the provisions of section 277 of the Act, 1961, minimum punishment prescribed is six months but the proviso thereto really suggests that special reasons have to be recorded for awarding the sentence that may be less than minimum.

6. Learned counsel for the petitioner, while relying upon the judgment of this court in the case of SMT. RAM PIARI Vs. STATE AND ANOTHER., contends that if the trial is not concluded within a reasonable time, the accused can be sentenced to the period which he has already undergone. The facts of the case in Smt. Ram Piari (supra) would reveal that the assessee had submitted her return for the assessment year 1977-78 declaring an income of Rs. 20,985. It was alleged that she had concealed a property and derived capital gains amounting to Rs. 1,27,000 and had concealed this income while furnishing her return. The assessee was convicted under sections 276(C)(1) and 277 of the Income Tax Act, 1961, and was sentenced to undergo simple imprisonment for six months u/s 276C(1) and further sentenced to undergo simple imprisonment for six months u/s 277 by the Chief Judicial Magistrate. The appeal filed by the assessee was dismissed by the Additional Sessions Judge. On a revision petition, this court, while holding that period of more than 10 years and 6 months had gone by and thus, assessee had undergone sufficient mental harassment, ordered that no useful purpose would be served by sending her to jail for undergoing the remaining period of sentence. The sentence of imprisonment was limited to the period already undergone.

7. While, examining the facts and circumstances of this case, as have been referred to above, and while following the decision of this court in the case of Smt. Ram Piari (supra), I am of the considered view that it is a fit case where the sentence awarded by the appellate court u/s 277 of the Act, 1961, should be reduced to the one already undergone by the petitioner. The records of the case would reveal that the petitioners in all, including the period when his bail was cancelled by this court, has undergone sentence of about two months. While, thus, maintaining the order of conviction u/s 277 of the Act against the petitioner, I reduce the sentence, as imposed by the appellate court to the one already undergone.

The revision petition is, thus, partly allowed, in the manner fully detailed above.