
(2013) 07 RAJ CK 0184

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 859 of 2013

Manna Lal Jhalani

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 244, 245, 246
Income Tax Act, 1961 — Section 132, 132(5), 148, 276C, 276C(1)

Citation : (2014) 2 RLW 1318

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : S.R. Surana and Mr. Abhishek Bhargava, for the Appellant;

Judgement

R.S. Chauhan, J.—The petitioner, Manna Lal Jhalani, is aggrieved by the order dated 30.11.2010 passed by the Additional Chief Judicial Magistrate (Economic Offences) Jaipur City, Jaipur whereby the learned Magistrate has framed charges against the petitioner for offences under Sections 276-C(1) and 277 of the Income Tax Act, 1961 (for short, 'the Act'). The petitioner is also aggrieved by the order dated 29.8.2012 passed by the Additional District Judge (Fast Track) No. 6, Jaipur Metropolitan whereby the learned Judge has dismissed the revision petition filed by the petitioner, and has confirmed the order dated 30.11.2010. The brief facts of the case are that the petitioner is a resident of Village Bansa, Tehsil Chomu, District Jaipur. He is a businessman by profession. On 25.9.1990, a search and seizure was carried out by the Income Tax Department u/s 132 of the Act. During the search, assets worth about Rs. 40 Lacs were discovered and some valuables were also seized. The petitioner as an income tax assessee, surrendered Rs. 38.53 Lacs during the course of search. The seized assets were retained by the Department under an order passed u/s 132(5) of the Act. Since as a result of the search incriminating documents and undisclosed assets were discovered, the assessment of the earlier years starting from the assessment year 1981-82 onwards were reopened and the assessments were finalized after the scrutiny of the seized documents. Since the petitioner was aggrieved by a

large number of assessment orders passed for different years from 1981 till 1991, he has filed a series of appeals before the CIT (Appeals). However, the CIT(Appeals) had set aside the assessment orders and had remanded the case back to the Assessing Officer. Subsequently also the petitioner was aggrieved by the series of assessment orders dated 27.3.1996. Therefore, he again filed a series of appeals before the CIT (Appeals). The said appeals were decided by a common order dated 24.2.1998. Since the Department was aggrieved by the order dated 24.2.1998, it filed a series of appeals before the Income Tax Appellate Tribunal, and the assessee filed his cross-objections. By order dated 22.2.1999, the learned Tribunal not only dismissed the appeals filed by the department, but, most importantly, dismissed the cross-objections filed by the assessee for the year 1984-85. This case concerns the Assessment Year 1984-85.

2. Meanwhile, on 30.3.1996, the Assistant Income Tax Commissioner filed a complaint against the petitioner for offences under Sections 276-C(1) and 277 of the Act for the assessment year 1987-88. By order dated 30.11.2010, the learned Magistrate took cognizance against the petitioner for the said offences. Since the petitioner was aggrieved by the said order, he filed a revision petition before the learned Judge. However, by order dated 29.8.2012, the learned Judge dismissed the revision petition, as mentioned above. Hence, this petition before this court.

3. Mr. S.R. Surana, the learned senior counsel for the petitioner, has raised the following contentions before this court: firstly, at the time of framing of charge, the learned Magistrate need not limit himself only to those documents which were produced by the prosecution. In fact, he is free to consider also those documents which are produced by the defence. Since the Magistrate has failed to consider those documents which were in favour of the petitioner, he has committed an illegality.

4. Secondly, prior to the learned Magistrate framing the charges on 30.11.2010, the learned Tribunal had already passed its order dated 22.2.1999. Therefore, the learned Magistrate ought to have considered the order dated 22.2.1999. Since the said order is in favour of the petitioner, the learned Magistrate should have desisted from framing the charges against the petitioner and should, in fact, have discharged him.

5. Thirdly, the learned Judge has passed its order in a mechanical manner without appreciating the contentions raised by the petitioner. Therefore, the order dated 29.8.2012 also deserves to be interfered with.

6. Heard the learned senior counsel for the petitioner, considered the order dated 24.2.1998 passed by the CIT(Appeals), and the order dated 22.2.1999 passed by the learned Tribunal, and perused the impugned orders.

7. A bare perusal of the complaint clearly reveals that according to the department, the petitioner was not only running a general store, but was also indulging in the business of money lending and was generating income from

rented premises. When the raid was carried out on 25.9.1990, incriminating documents, valuable assets were recovered from his house. The documents revealed the fact that the petitioner was indulging in the business of money lending. Initially, the department had issued him a notice u/s 148 of the Act asking him to declare his income. In his reply, he had claimed that he has merely earned Rs. 2,76,000/- in the assessment year 1984-85. However, when the raid was carried out it was discovered that from the business of money lending, the petitioner had earned Rs. 1,86,703/- from the interest. He did not disclose this amount to the department. Moreover, he had earned certain amount from tractor investment account, from running his business of general store and from other sources. However, these amounts were not disclosed by the petitioner to the department.

8. Section 276-C of the Act is as under:-

276-C. Willful attempt to evade tax, etc.-

(1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,-

(i) in a case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

Explanation.-For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person-

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(ii) makes or causes to be made any false entry or statement in such books of account or other documents; or

(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.

Section 277 of the Act is as under:-

277. False statement in verification, etc.-

If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable,-

(i) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

9. A bare perusal of these provisions would clearly reveal that while Section 276-C deals with willful attempt to evade tax, Section 277 deals with false statement in verification. Thus, at the time of framing of charge, the learned Magistrate is required to see whether the ingredients of these offences exist or not and whether the needle of suspicion points to the petitioner or not?

10. The principles for framing of the charge have been elaborately laid down by the Apex Court in the case of Sajjan Kumar Vs. Central Bureau of Investigation, Although these principles relate to Sections 227 and 228 Cr.P.C., but as Sections 244, 245 and 246 Cr.P.C. are similar in nature, it would be worthwhile to reproduce the principles as under:-

(i) The Judge while considering the question of framing the charges u/s 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

11. Chapter-XIX of the Code of Criminal Procedure deals with trial of warrant cases by a Magistrate. Part-B of the said Chapter deals with the cases instituted otherwise than on police report. Naturally this refers to a complaint either filed by a private individual, or by a public officer. Sections 244, 245 and 246 Cr.P.C. are as under:-

244. Evidence for prosecution.- (1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

245. When accused shall be discharged.- (1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

246. Procedure where accused is not discharged.- (1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion

that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has any defence to make.

(3) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

(4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under subsection (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken.

(5) If he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall be discharged.

(6) The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross-examination and re-examination (if any), they shall also be discharged.

12. A bare perusal of Section 244 Cr.P.C. clearly reveals that in a case instituted on the basis of a complaint, if the case is to be tried as a warrant case, then the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. According to Section 245 Cr.P.C., if upon taking all the evidence, the Magistrate is of the opinion that no case is made out against the offender, he shall discharge him. However, according to Section 246 Cr.P.C., if after taking all the evidence the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, he shall frame the charge in writing against the accused. Thus, at the time of framing of the charge, the Magistrate is merely concerned with looking at the evidence produced by the prosecution. At this stage he, possibly, cannot consider, or examine, or rely on any evidence which may be produced by the defence. Therefore, the first contention raised by the learned senior counsel that the learned Magistrate should have considered the evidence produced by the petitioner is untenable.

13. A bare perusal of the order dated 24.2.1998 passed by the CIT(Appeals) clearly reveals that while the learned Commissioner had given certain directions to the Assessing Officer for reassessing the income generated by the interest for the assessment year 1984-85, and while granting a relief of Rs. 14,868/- in the amount to be assessed as the income from general store business, the rest of the appeal filed by the petitioner were dismissed. Moreover, those relief's which

were given by the learned Commissioner to the petitioner, were challenged by the department by filing an appeal before the learned Tribunal. Meanwhile, the petitioner had also filed his cross-objections. A bare perusal of the order dated 22.2.1999 passed by the learned Tribunal clearly reveals that both the appeals as well as the cross-objections were dismissed. Thus, the relief's given by the learned Commissioner were confirmed by the learned Tribunal. Hence, the contention raised by the learned senior counsel that by order dated 22.2.1999 the learned Tribunal had completely absolved the petitioner from his income tax liability or from his criminal liability under the Act is a misplaced contention. For, such a contention is belied by the orders dated 24.2.1998 and 22.2.1999.

14. A bare perusal of the order dated 30.11.2010 clearly reveals that the learned Magistrate has considered the testimony of P.W.1, Man Singh Meena and P.W.3, P.S. Dheema, testimonies which were recorded at the pre-charge stage. According to Man Singh Meena (PW.1), the petitioner had concealed an income of Rs. 10,42,250/- from the department. Moreover, while cross-examining, the petitioner could not demolish their testimonies. Thus, there is no reason for disbelieving their testimonies at the initial stage of framing of the charge.

15. The learned Magistrate has also noticed the fact that the petitioner had challenged the cognizance order before this court. However, this court had dismissed his petition and had upheld the cognizance order. It is only after noticing all these facets of the case that the learned Magistrate had framed the charges against the petitioner for the aforementioned offences. Since the learned Magistrate has judiciously applied his mind, no fault can be found with the impugned order dated 30.11.2010.

16. Similarly, the learned Judge has also considered different aspects of the case. Hence, it cannot be said that he has passed his order in a mechanical manner. For the reasons stated above, this court does not find any merit in this petition. It is, hereby, dismissed. The stay application is also dismissed.