
(1996) 08 PAT CK 0029

In the Patna High Court

Case No : Criminal Miscellaneous No. 1760 of 1993

Md. Moinul Haque and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 20-08-1996

Acts Referred:

Citation : (1996) 08 PAT CK 0029

Judgement

Loknath Prasad, J.—This is an application u/s 482 of the Code of Criminal Procedure, 1973, for quashing the order of cognizance dated January 4, 1993, and also the entire prosecution relating to Complaint Case No. 3 of 1993 pending in the court of Shri B.K. Sinha, Special Court for Economic Offences, Dhanbad.

2. The facts, in short, for the purpose of this application are that the petitioners are the partners of a firm known as Shah Mohammad, at Sahibganj, and the firm was an assessee under the Income Tax Act and according to the complainant they were doing business in purchase and sale of tobacco and bidi leaves. For the assessment year 1990-91, the petitioners on behalf of the firm submitted a return of income and on examination by the complainant, the Income Tax Officer, it was found that the petitioners purchased tendu leaves worth Rs. 1,11,528 from the Bihar State Forest Development Corporation and under the provisions of Section 44AC of the Income Tax Act, 1961, the accused got profit to the tune of Rs. 39,035 but they had only shown the profit to the extent of Rs. 5,754 and so there was concealment of profit to the tune of Rs. 33,281. Thus it was found by the assessing authority that the petitioner-accused persons wilfully attempted to evade the tax chargeable and submitted a false income account and, thus, prosecution report was also submitted under Sections 276C and 277 of the Income Tax Act, 1961, and then this complaint was filed and on that basis the court below took cognizance of the offence.

3. It was contended on behalf of the petitioners that the entire allegation of the complainant is not maintainable in the eye of law and under a wrong interpretation of Section 44AC of the Act assessment was made and the

assessing authority wrongly came to the conclusion that there was concealment of income to the tune of Rs. 33,281 and penalty was imposed and for that and against the assessment the petitioner preferred appeal before the Commissioner of Income Tax (Appeals) and the appeal was allowed in Appeal No. 283/(P) of 1992-93 and Appeal No. 600/(P) of 1990-91, vide order dated October 4, 1992, that is, annexures "2" and "3", and it was held by the appellate authority that the assessing authority was wrong in imposing penalty and so the entire penalty and assessment was set aside.

4. It was next contended that the entire basis of the prosecution regarding concealment of the income and for which penalty was imposed was set aside by the appellate authority and if the basis of the case is now no more available due to subsequent developments, then the prosecution of the petitioners is a misuse of the process of the court and the complaint case will not proceed. In support of this contention, learned counsel for the petitioner has relied upon a case law of our own High Court reported in Banwarilal Satyanarain and Others Vs. State of Bihar and Another, and it was held by a Bench of this court on the basis of the decision of the Supreme Court in Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, that when the appellate authority that is the Commissioner accepted the explanation of the assessee and deleted the entire amount of penalty imposed after consideration of the entire materials on record, then in such a situation for such violation, the prosecution launched earlier has got to be discontinued.

5. On the other hand, learned counsel for opposite party No. 2 submitted that even though the petitioners' appeal was accepted by the Commissioner and the penalty was set aside, this will not be a ground for quashing the criminal prosecution and the petitioners can very well raise this fact before the court below by filing an application and the court below will consider this aspect and will pass orders according to law. In support of his contention, he has relied upon a case law of the Kerala High Court in P.K. Narayanan Vs. Commissioner of Income Tax and Another, .

6. So from a perusal of annexures "1" and "2" it can be said that the entire allegation of the complainant regarding concealment of income and imposition of penalty is now no more in existence in view of the decision of the appellate authority, that is, the Commissioner of Income Tax, and so the basis of the prosecution is now no more in existence. In that view of the matter, in view of the decision of our own High Court in Banwarilal Satyanarain and Others Vs. State of Bihar and Another, , the prosecution is liable to be quashed. The authority cited by learned counsel for opposite party No. 2 that is of the Kerala High Court simply indicates that this may be agitated in the trial court itself. If that is so, and if it apparently appears and is also supported by the authorities of our own High Court that such prosecution is not maintainable, then certainly no useful purpose will be served in remitting the case to the trial court itself for consideration of the same fact.

7. Under such circumstances this application is allowed and the order of cognizance dated January 4, 1993, and the entire prosecution as against the petitioners in Complaint Case No. 3 of 1993 pending in the court of Shri B.K. Sinha, Special Court, Economic Offences, Dhanbad, is hereby quashed.