
(1981) 02 AHC CK 0030

In the Allahabad High Court

Case No : Criminal Miscellaneous Cases No. 1721 and 1723 of 1980

Modi Industries Ltd.

APPELLANT

Vs

B.C. Goel

RESPONDENT

Date of Decision : 25-02-1981

Acts Referred:

Income Tax Act, 1961 — Section 2(31), 277, 278

Citation : (1983) 54 CompCas 835 : (1983) 144 ITR 496 : (1981) 7 TAXMAN 213

Hon'ble Judges : Satish Chandra, C.J.; Kamta Nath Seth, J

Bench : Division Bench

Advocate : P.C. Chaturvedi and G.S. Chaturvedi, for the Appellant; Ashoke Gupta, M.M. Katju and R. Gulati, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, C.J.—On November 28, 1979, the Income Tax Officer, Central Circle III, Meerut, filed two complaints under Sections 277 and 278 of the I.T. Act, 1961, against nine persons, the ninth of which was M/s. Modi Industries Ltd., Modinagar, through its chairman, Sri K.N. Modi. One complaint related to the assessment year 1965-66, while the other related to the year 1966-67. It was alleged that M/s. Modi Industries Ltd., accused No. 9, filed returns of its income for the aforesaid assessment years wherein deliberately excessive expenditure was claimed in the form of payment of agency commission to several firms. The assessments were completed on March 24, 1970, for the assessment year 1965-66, and on March 26, 1971, for the year 1966-67. For both the years the excessive claim was disallowed on the finding that the firms to whom the agency commission was alleged to have been paid were bogus and non-existing firms to the knowledge of the concerned persons. In para. 30 of the complaint, it was stated that accused No. 1 in collusion with other accused at serial numbers 2, 3, 4, 5 and 8 had fabricated false evidence in supporting the false accounts to avoid payment of rightful taxes. In para. 41 of the complaint, it was alleged that accused No. 1 in collusion with accused No. 7 had fabricated

false evidence in supporting these false accounts. In para. 42 of the complaint, it was stated that the accused persons mentioned above have committed offence punishable under Sections 277/278 of the I.T. Act. It was prayed that the accused be punished according to law.

2. In due course, the Chief Judicial Magistrate, Meerut, summoned the accused. Thereupon, M/s. Modi Industries Ltd., Modinagar, through its chairman, Sri K.N. Modi, came to this court u/s 482, Cr. P. C. for quashing the proceedings pending against the petitioner-company.

3. The grounds urged in support of the petition were that according to law, as it stood at the relevant time, offences under Sections 277 and 278 of the I.T. Act were punishable with minimum imprisonment of six months only. A company which is a juristic person cannot be punished with imprisonment and hence cannot be prosecuted for breach of Sections 277 and 278 of the I.T. Act.

4. When these cases came up for hearing, reliance was placed upon a single judge, decision in Criminal Misc. Case No. 2529 of 1979, J.K. Synthetics v. CIT, decided on March 27, 1980. In that case, it was held that a company being a juristic person cannot be given corporal punishment and consequently prosecution under Sections 277 and 278 of the I.T. Act was not maintainable against the company. Hon"ble Bakshi J., before whom these petitions came up for hearing, felt unable to agree with this opinion. He was inclined to agree with the decision of the Madras High Court in A.D. Jayaveerapandia Nadar and Co. and Others Vs. Income Tax Officer, . He accordingly referred the matter to a larger Bench. That is how the matter has come before this Bench. :

5. We may at the threshold clear up a preliminary matter. Sections 211 and 278 of the I.T. Act have been subjected to amendment mote than once. The present section states :--

" 277. 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. "

6. The present section was substituted for the following with effect from October 1, 1975,

" 277. False statement in declaration.--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 with rigorous imprisonment for a term which may extend to two years :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months,"

7. In the above section the underlined words have been substituted for "punishable with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both by the Finance Act, 1964, with effect from April 1, 1964.

8. Thus, the position is that prior to April 1, 1964, this provision provided for punishment with simple imprisonment or with fine or with both. Between April 1, 1964, and October 1, 1975, the offence was punishable only with rigorous imprisonment which shall not be less than six months under Clause (i) or shall not be less than three months under Clause (ii). After October 1, 1975, the offence u/s 277 became punishable with imprisonment and with fine.

9. Section 278 of the Act deals with abetment of false returns, etc. An offence under it was punishable prior to April 1, 1964, with simple imprisonment or with fine or with both. With effect from April 1, 1964, and till September 30, 1975, the offence of abetment u/s 278 was punishable with rigorous imprisonment which shall not be less than six months but which may extend to two years. With effect from October 1, 1975, an offence u/s 278 became punishable with a term of rigorous imprisonment and with fine.

10. The position thus is that both u/s 277 as well as Section 278 the offender was, on conviction, bound to be punished with a term of rigorous imprisonment between April 1, 1964, and October 1, 1965. In the present case, M/s. Modi Industries Ltd. the petitioner, filed its return of income for the assessment year 1965-66 on October 15, 1966, and for the year 1966-67 on November 1, 1966. The returns were verified and signed by the late Sri G.M. Modi, who was at that time the chairman and principal officer of the company. The complaint filed by the ITO alleges that false statements were made knowing them to be false in the aforesaid returns of income. Thus the date of the commission of the offences was October 15, 1966, and November 1, 1966, respectively. It has been held in this court that the punishment for an offence for violating Section 277, I. T. Act, shall be such as is prescribed by it on the date when the offence is committed, i.e., when the untrue returns were filed involving the false statements of account (See Income Tax Officer Vs. Sita Ram and Others, . Sections 277 and 278 of the IT. Act do not make any provision to the contrary. We did not hear the counsel for the complainant to submit to the contrary. Hence the punishment imposed u/s 277 or 278 was such as was prescribed by those provisions on the date of the commission of the offence. u/s 277 as well as Section 278, the punishment prescribed in 1966 was rigorous imprisonment for the prescribed term, the

minimum and maximum of which were laid down in the sections. It is thus evident that if the petitioner, M/s. Modi Industries Ltd., is found guilty of the offence, the only punishment which could be awarded was a term of rigorous imprisonment.

11. The question which squarely arises for our consideration is whether a sentence of imprisonment for a term could, in law, be awarded against a juristic person like a company registered under the Indian Companies Act and if the answer is in the negative can the prosecution be validly continued ?

12. Sections 277 and 278 both apply to a "person". Section 2(31) defines a "person" to include :

- (1) an individual,
- (2) a Hindu undivided family,
- (3) a company,
- (4) a firm,
- (5) an association of persons or body of individuals whether incorporated or not,
- (6) a local authority,
- (7) every artificial juridical person not falling in any of the preceding sub-clauses.

13. Accordingly, the word " persons " occurring under Sections 277 and 278 will, in view of the definition clause, include a company. A company is hence prima facie liable to be prosecuted for commission of an offence under Sections 277 and 278.

14. The law is well settled that a corporation cannot be subjected to bodily punishment. In *Director of Public Prosecutions v. Kent and Sussex Contractors Ltd.* [1944] 1 KB 146 (KB), it was held that though a company cannot be found guilty of several criminal offences such as treason or other offences for which it is provided that death or imprisonment is the only punishment, yet a company can be convicted Of certain other offences.

15. In *Rex v. L.C.R. Haulage Ltd.* [1944] 1 All ER 691, the Court of Appeal held (p. 693):

" Offences for which a limited company cannot be indicted are exceptions to the general rule arising from the limitations which must inevitably attach to an artificial entity, such as a company. Included in these exceptions are the cases where, from its very nature, the offence cannot be committed by a corporation, for example, perjury, an offence which cannot be vicariously committed or bigamy, an offence which a limited company, not being a natural person, cannot commit vicariously or otherwise."

16. It was then held :

"A further exception, but for a different reason comprises offences of which murder is an example, where the only punishment the court can impose is corporal, the basis on which this exception rests, being that the court will not stultify itself by embarking on a trial in which, if a verdict of guilty is returned, no effective order by way of sentences can be made."

17. Coming nearer home, the Bombay High Court in *State of Maharashtra Vs. Syndicate Transport Co. (P) Ltd. and Others*,

" A company cannot be indictable for offences, like bigamy, perjury, rape, etc., which can only be committed by a human individual or for offences punishable with imprisonment of corporal punishment."

18. Learned counsel for the petitioner relied upon *Kapurchand Shrimal Vs. Tax Recovery Officer, Hyderabad and Others*, . In that case, it was held that a karta HUF cannot be arrested and detained in prison for the default of the HUF for payment of taxes. Shah J, opined that the expression " per son " occurring under Sections 277 and 278 of the I.T. Act penalises only those individuals who fail to carry out the duty cast by the specific provisions of the statute or are otherwise responsible for the acts done. In that case, in the course of recovery proceedings of the tax demand for the assessment years 1955-56 to 1959-60, the TRO directed that Kapurchand Shri- mal, the manager of the firm, be detained in civil prison for fifteen days. Under the rules, the TRO could proceed only against the defaulter. The point taken there was whether the manager of an HUF could be a defaulter in a case where the assessee was an HUF. Here, in the present case, the position and the question raised for our consideration is some what different. The question is whether an assessee like a company, which commits violation of Section 277 or 278, can be prosecuted and convicted where the only imposable punishment is imprisonment.

19. The view that a juristic personality cannot be sentenced to imprisonment has consistently been taken in the country (see *Kusum Products Ltd. Vs. S.K. Sinha, ITO*, , *D.C. Goel and Others Vs. B.L. Verma and Others*, and *A.D. Jayaveerapandia Nadar and Co. and Others Vs. Income Tax Officer*, .

20. Learned counsel for the respondents, however, relied upon the decision of the Madras High Court in *A.D. Jayaveerapandia Nadar*. In that case, the complaint was lodged u/s 277 against a firm and its partners for having knowingly filed a false return of income on January 5, 1963, for the accounting period April 1, 1961, to March 31, 1962. As mentioned above, in the year 1963 on offence u/s 277 was punishable with imprisonment or with fine or with both. At that time such an offence was not punishable only with imprisonment. In that case the firm which was treated as a juristic personality could be and in fact was sentenced to fine. There was hence no difficulty in its being prosecuted.

21. Learned counsel for the respondents invited our attention to the decision of a Full Bench of the Delhi High Court in *Municipal Corporation of Delhi Vs. J.B. Bottling Company Private Limited*, , In that case, under the relevant provisions of

the Prevention of Food Adulteration Act, a punishment of imprisonment and with fine could be imposed. By a process of interpretation and reading down, the Full Bench held that if a punishment of imprisonment could not possibly be imposed upon a juristic person it was permissible to award the punishment of fine only. Such a situation does not arise in our case. In our case, only imprisonment, was awardable. This decision seems to run counter to the view of the Supreme Court in *State of Maharashtra Vs. Jugamander Lal*, . There, it was held that the expression "shall be punishable with imprisonment and also with fine "means that the court is bound to pass sentence consisting both of imprisonment and fine.

22. The position appears to be that a juristic person like a registered company cannot be awarded the punishment of imprisonment. In such a situation, the observation of Stable J. in *Rex v. I. C. R. Haulage Ltd.* [1944] 1 All ER 691, is appropriate and apposite. There, it was held that (p. 693);

" Where the only punishment the court can impose is corporal, the basis on which this exception rests being that the court will not stultify itself by embarking on a trial in which, if a verdict of guilty is returned, no effective order by way of sentence can be made."

23. Hence no useful purpose or public interest will be subserved by continuing this prosecution against the company which is a registered company.

24. It was faintly suggested that a court may after holding the; company guilty of the offence, not award any punishment because it cannot send it to prison. Section 277 as well as Section 278 use the phrase " shall be punishable". Referring to a similar phrase "shall be punishable" in" Section 3(1) of the Suppression of Immoral Traffic in Women and Girls Act; 1956, the Supreme Court in *State of Maharashtra Vs. Jugamander Lal*, , held that the word "punishable" does not postulate any discretion in the court to impose the sentence. Upon the conviction of a person under a particular section the court is bound to award punishment. The phrase "shall be punishable" means nothing different from "shall be punished". Punishment is obligatory. The same view was taken by this court in *Nanak Chand v. State of Uttar Pradesh* [1971] All LJ 1229.

25. In the premises, continuing the proceedings against the petitioner-company would not subserve any public purpose.

26. Learned counsel for the petitioner also submitted that a registered company is a juristic person liable to be sued in its own name and not through any human being. Section 305, Cr, PC, enjoins upon a juristic" company to nominate a representative in any enquiry or proceeding against it. Further, the Income Tax returns in question were filed under the signatures of Sri G.M. Modi who has died long back. The present chairman, Sri K.N. Modi, has had no concern with the alleged offence. There is no averment that the present Chairman had any hand in the commission of the offence. Hence, the impleadment of the company through its chairman, Sri K.N. Modi, was illegal. Since we are of the opinion that

prosecution against the applicant-company cannot be validly proceeded with, it is unnecessary to say any thing further on this aspect.

27. In the result, the application succeeds and is allowed. The proceedings pending against the petitioner-company by virtue of the complaint lodged by the ITO are quashed.