
(1994) 11 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 5008-M of 1994

Mohan Lal Darshan Kumar

APPELLANT

Vs

S.P. Bookal, Income Tax Officer and Another

RESPONDENT

Date of Decision : 24-11-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Income Tax Act, 1961 — Section 245C, 245D, 271(1), 273(3), 276C

Citation : (1995) 124 CTR 57 : (1995) 214 ITR 265 : (1995) 1 RCR(Criminal) 632

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : Satish Jain, for the Appellant; R.P. Sawhney, Senior Advocate and Aradhana Sawhney, for the Respondent

Judgement

N.K. Kapoor, J.—The petitioner seeks quashing of complaint, annexure "P-1", u/s 276C(1) of the Income Tax Act, 1961 (for short, "the Act"), read with Sections 193/467/471/34 of the Indian Penal Code (for short, "the Code") dated November 28, 1981, and the subsequent proceedings pending before the Chief Judicial Magistrate.

2. Petitioner No. 1, Messrs. Mohan Lal Darshan Kumar, is a partnership firm registered under the Partnership Act and is engaged in the business of sale and purchase of foodgrains, oilseeds, wine, etc. Petitioners Nos. 2 to 5 are the partners of the firm. That on November 28, 1981, the Income Tax Officer, Yamuna Nagar, lodged a complaint against the petitioner-firm and its partners alleging commission of an offence u/s 276C(1) of the Act and under Sections 193/467/471/34 of the Code, annexure "P-1". The petitioner-firm moved an application before the Income Tax Settlement Commission u/s 245C of the Act for settlement of its liability and all related matters in respect of the assessment years 1980-81, 1981-82 and 1982-83. In addition thereto, a prayer was made u/s 245H of the Act for grant of immunity from prosecution under the Act or under the Indian Penal Code. The Settlement Commissioner, vide order dated July 6,

1985, allowed the application to be proceeded with in respect of the assessment years 1980-81, 1981-82 and 1982-83. Since the Judicial Magistrate had ordered summoning of the petitioner, an application was filed before the Magistrate that since the Settlement Commissioner has granted the petitioner-firm's application for settlement, vide order dated July 6, 1985, the petitioners are liable to be discharged or in any case further proceedings be stayed till the matter was finally disposed of by the Settlement Commissioner. This application was dismissed by the Chief Judicial Magistrate on November 5, 1986. The Settlement Commissioner examined the matter and finding substance in the contentions raised by the petitioners accepted the application for settlement, vide order dated August 28, 1990. The present petition has been filed for quashing of the complaint on the ground that since the matter has been finally settled as per annexure "P-5", the criminal proceedings no more survive.

3. Learned counsel for the petitioner, in support of his plea, primarily relied upon the order passed by the Settlement Commissioner dated August 28, 1990, whereby the assessment in respect of the years 1980-81, 1981-82 and 1982-83 was commuted. It was also found that the assessee made a true and full disclosure of his income and that there is no specific item or source of income which has been concealed. The Department keeping in view the co-operation extended by the petitioners chose to impose no penalty u/s 271(1)(a), (b) and (c) as well as u/s 273(3) of the Act. Since the very basis of the criminal complaint stands resolved as per order, annexure "P-5", the present complaint is nothing but an attempt to harass the petitioners. Thus, in view of annexure "P-5", the complaint cannot succeed. The apex court in the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, quashed such a complaint.

4. Mr. R. P. Sawhney, learned counsel for the Department, however, challenges the contentions raised by the petitioners in support of his case for quashing of the proceedings. According to Mr. Sawhney, despite the alleged settlement, vide annexure "P-5", the right to prosecute in terms of Section 245H still survives. Despite the request made by the petitioner to grant him immunity from the prosecution, no specific order was passed absolving the petitioners of the same and since this precise prayer has been declined by the Chief Judicial Magistrate no case for interference is made out u/s 482 of the Code of Criminal Procedure for quashing of the pending complaint.

5. The facts are not in dispute. Pursuant to the application filed by the petitioners u/s 245D(1) of the Act relating to the assessment years 1980-81, 1981-82 and 1982-83, the matter was examined by the Settlement Commissioner. The Settlement Commissioner accepted the income as declared by the assessee in the revised return. Considering that the assessee has made a true and full disclosure of the income, it was held that no penalty be imposed upon the assessee-firm for one year and the penalty, if any, imposed u/s 271(1)(c) of the Act for the year 1980-81 is vacated. A bare perusal of the complaint reveals that

the same has been filed u/s 276C(1) of the Act read with Sections 193/467/471/34 of the Code for the assessment year 1980-81 which basis has become non-existent in view of the decision of the Settlement Commissioner, annexure "P-5". Since the order of settlement, annexure "P-5", dated August 28, 1990, has become final, the present complaint, even if allowed to continue, would prove an act in futility. Unless an assessee is found to be guilty of making true and full disclosure of his income by the Income Tax authorities, proceedings for imposition of penalty or holding such a person guilty of fabricating some record per se would be without any foundation. It is in this context that the Settlement Commissioner observed that the powers u/s 245H of the Act and the powers u/s 306 of the Criminal Procedure Code are similar, i.e., to grant immunity to a person accused of evasion of Income Tax. The decision in Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, squarely covers the point in controversy. In the instant case, the Income Tax Appellate Tribunal, on an appraisal of the entire material on record, came to the conclusion that Smt. Janak Rani was a partner of the assessee-firm and that the firm was a genuine firm and so held that in such like circumstances an assessee could not be prosecuted for filing false returns. The proceedings were accordingly ordered to be quashed.

6. The decision in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, cited by Mr. Sawhney, counsel for the respondents, in support of his contention that criminal proceedings are not liable to be quashed has, in fact, no applicability on the facts of the present case. The complaint was filed against the petitioner for deliberately filing false return and of keeping false accounts with the intention of using them as genuine in the assessment proceedings. These proceedings were sought to be quashed on the ground that launching of the prosecution was premature because reassessment proceedings started against the petitioner for six years had not been completed. The High Court dismissed the petition and the matter came up before the Supreme Court against the order of the High Court. The apex court while dismissing the petition held that the pendency of the reassessment proceedings could not act as a bar to the institution of criminal prosecution for the offences punishable u/s 276C or 277 of the Act nor would institution of the criminal proceedings, in the circumstances, amount to an abuse of the process of the court. In the present case, no proceedings for assessment of income of the petitioner-firm for the year in question 1980-81 is pending before the Income Tax authorities. In fact, as per annexure "P-5", the matter has been amicably settled and the Settlement Commissioner in his order dated August 28, 1990, has held that the petitioner has made full and complete disclosure of his income. With such a finding on record, the present proceedings pending before the Chief Judicial Magistrate for the last more than 13 years deserve to be quashed. Accordingly, I accept the petition and quash the complaint. Annexure "P-1", dated November 28, 1981.