(2002) 10 P&H CK 0105

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 5243-M of 1995

Mohan Singh and Others APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 16-10-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 269SS, 276DD, 278B

Citation : (2003) 262 ITR 547

Hon'ble Judges : Ashutosh Mohunta, J

Bench : Single Bench

Advocate : S.C. Chhabra, for the Appellant; N.L. Sharda, for the Respondent

Final Decision : Partly Allowed

Judgement

Ashutosh Mohunta J.—This is a petition u/s 482 of the Code of Criminal Procedure, for quashing the complaint annexure P1 dated January 25, 1991, filed u/s 276DD read with Section 278B of the Income Tax Act, 1961, and order dated March 25, 1991, annexure P2, passed by the Chief Judicial Magistrate, Ferozepur, vide which the petitioners were summoned in this case.

2. The brief facts of the case are that the complainant filed a complaint annexure P1, before the Chief Judicial Magistrate, Ferozepur, alleging that the petitioners, who are running the firm in the name of Dua Rice Mills at Fazilka, took a loan of Rs. 1,20,000 on different dates from two persons, namely, Angrej Singh and Smt. Ajit Kaur. That amount was taken in cash and not through "account payee cheques/bank drafts." Thus, according to the complainant, the petitioners committed an offence punishable u/s 269SS of the Income Tax Act, 1961.

3. On the basis of the complaint, the petitioners were summoned by the learned Chief Judicial Magistrate, Ferozepur, vide order dated March 25, 1991, annexure P2.

4. Mr. S.C. Chhabra, learned counsel for the petitioners, contends that as per the

allegations made in the complaint, apart from the aforesaid allegations being there against Mohan Singh, there are no other allegations against any of the partners. It is pointed out by learned counsel that Mohan Singh had filed Income Tax return on behalf of the said firm and it was Mohan Singh, who had been prosecuting his case before the Income Tax Officer. Apart from the above, petitioner No. 5 is an old person, whereas petitioner No. 5 is residing at Shah-jahanpur, U. P., whereas petitioner No. 6 is resident of Udeypur in Rajasthan. It is contended that none of these persons are involved in any manner in the running of partnership concern, Dua Rice Mills, Fazilka. Thus, it is contended by learned counsel for the petitioners that the complaint against the aforesaid persons is not maintainable. He relies upon a decision of the Delhi High Court in Parameet Singh Sawney Vs. Dinesh Verma and Another, , to contend that in the complaint, the prosecution should have mentioned in what manner every partner was in charge and responsible for the business. Mr. Chhabra contends that in the present complaint, there are no other allegations against any of the partners.

5. The allegations of the petitioners have been controverted by Dr. N.L. Sharda, standing counsel for the Income Tax Department. Learned counsel contends that even in the petition, the petitioners has contended that petitioners Nos. 5 and 6 were not responsible in any manner with the conduct of the business of the firm. The petitioner has nowhere stated that the other partners of the firm were not responsible in any manner with regard to the running of the partnership concern. Thus, at the most, the complaint can be quashed only against petitioners Nos. 5 and 6 and not against the others.

6. After perusing the allegations made in the complaint as well as the averments made in the petition, I find that there are no allegations against petitioners Nos. 5 and 6, namely, Gurdial Singh and Smt. Ajit Kaur, wife of Jit Singh, who were residents of U.P. and Rajasthan, A perusal of this petition shows that the other partners were responsible for the work and conduct of the partnership concern, Dua Rice Mills.

7. In this view of the matter, I quash the complaint annexure P1 and the summoning order dated March 25, 1991, annexure P2, Gurdial Singh and Ajit Kaur, petitioners Nos. 5 and 6, only. However, all the other petitioners shall face trial before the Chief Judicial Magistrate, Ferozepur. The petitioners are, however, given liberty to raise all the pleas as raised in this petition before the trial court and the trial court shall decide the case expeditiously.

8. This petition stands allowed partly.

