
(1992) 09 DEL CK 0040

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 1515 of 1991

M.R. Punj

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 09-09-1992

Acts Referred:

Income Tax Act, 1961 — Section 278B

Citation : (1993) 1 Crimes 188 : (1992) 24 DRJ 371 : (1993) 199 ITR 87 :
(1993) 1 RCR(Criminal) 506 : (1992) RLR 523

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Anoop Sharma and R.D. Jolly, for the Appellant;

Judgement

Usha Mehra, J.

(1) The short point in the present revision petition is that the summons could not be issued against the petitioners as they were not responsible for the affairs of the company. Some of the petitioners were not even partners of the company at the relevant time. Hence the complaint filed against them is liable to be quashed.

(2) In order to appreciate the contention the brief facts are that petitioners I to 3 were partners of the firm working under the name and style of M/s. Dayagen. The said partnership firm consisted of six partners and they remained so till 7th August, 1987. Thereafter, on account of some dispute among the partners the partnership was dissolved. It was re-constituted with effect from 7th August, 1987 with the four partners. This re-constituted firm further changed its constitution on 15th November, 1989 when one of the partners retired from the same leaving behind three partners. None of the petitioner was a managing partner of the firm during the accounting year relevant to the assessment year 1988-89 nor had any knowledge regarding the affairs and responsibilities of the reconstituted firm. Even prior to the re-constitution of the firm, none of the petitioner acted as a managing partner or acquainted himself/herself with the income Tax matters nor was in charge of/or responsible for the conduct of the

business of the. firm.

(3) In the complaint filed by the respondent the allegations are that the reconstituted firm did not submit its return of the total Income Tax for the accounting year 1988-89 which was due to be submitted by 30th June, 1988. The re-constituted firm also did not comply with the provisions of Section 142 of the Act for which an assessment order u/s 144 of the Act was passed on 7th March, 1991. For these two defaults, the respondent No. 3 filed the impugned complaint. The learned Additional Metropolitan Magistrate on the basis of the said complaint, took cognizance and issued summons to the petitioner to appear. It is mentioned in the complaint that the accused No.8, Shri V.P. Punj (who is not the petitioner herein) was the proprietor of the firm M/s. Dayagen and that he was associated with the firm since March, 1988 and had been looking after the day to day business of the firm. He was the one who signed the Income Tax returns and filed the documents on behalf of the re-constituted firm relevant for the accounting year 1988-89. The notice u/s 142 was also served on accused No.8, Shri. V.P. Punj and so was the show cause notices. These facts would show that the petitioners had no part to play nor were having any knowledge of the proceedings relating to the assessment of the reconstituted firm for the accounting year 1988-89.

(4) It is in this background that the order of summon has been challenged inter-alia on the grounds that once a firm is reconstituted the assessment has to be made only on the firm as reconstituted at the time of making the assessment. Furthermore, the petitioners seized to be the partners of the firm after its re-constitution and when the return was to be filed for the Accounting Year ending 31st December, 1987, petitioners were no more partner of the firm. Therefore, they could not be held responsible for the same. Moreover, u/s 140 of the Income Tax Act, it is the Managing partner of the firm who has to sign and verily the return. Consequently none of the petitioners-accused had any legal obligation in the matter of furnishing the return. Therefore, the complaint filed against the petitioners is entirely misconceived, contrary to the provisions of Section 276Cc, 276D and 278B of the Act.

(5) Admittedly, accused No. 1 is a firm and accused 2 to 7 were the partners. Accused No. 8 was the proprietor of accused No. 1 associated with the functioning of the firm since March, 1989. Now the question for consideration is whether after the introduction of Section 278B of the Taxation Laws (Amendment Act 1975) all persons are to be responsible or only the managing partner would be responsible for the functioning of the firm? Counsel for the petitioner, contended that on 30th June, 1988 all these three petitioners were not partners. They stood retired. The assessment was made subsequently. Therefore, tax liability and demand could be raised on the reconstituted firm of which these three persons were not partners. In support of his contention, he has placed reliance on the decision of Punjab and Haryana High Court in the case of Murari Lal and others Vs. Income Tax Officer reported in 154(1985) Itr 227. In that case

while interpreting Section 276C and 278B of the Income Tax Act, it was held that no criminal liability could be fixed on the petitioners because of the allegation contained in the complaint showed that it was only Shri Murari Lal who was in charge of and responsible to the firm for the conduct of the firm and he was actually the person who signed and verified the particulars in the return and submitted the same to the Department. The Court also took note of the fact that in the complaint it was specifically mentioned that Shri Murari Lal filed the return and he was responsible. Therefore, relying on the allegation in the complaint the Court came to the conclusion that the complaint could survive only against Murari Lal and not against the other partners. Therefore, relying on this judgment, the counsel contended that in this case also in the complaint and in particular in para 2 it had been specifically mentioned that accused No. 8 was associated with the firm since March, 1989. Accused No. 8 i.e. Shri V.P. Punj was actively participating in the functioning of the firm since March, 1988. It was accused No. 8, Shri V.P. Punj, who had signed the relevant papers on behalf of accused No. 1 and had been filing the documents on behalf of the firm during the proceedings relevant to the assessment year 1988-89. That in his letter dated 19th March, 1991, in reply to show cause notice dated 13th March, 1991, accused No. 8 i.e. Shri V.P. Punj admitted that he was associated with the accused No. 1 since March 1988. It is further the allegation in the complaint that the offences, which are the subject matter of the complaint, have been committed with the consent and connivance of accused No. 8 and are also attributable to the negligence on the part of accused No.8. Therefore, he submitted that in view of this specific averment made in the complaint, the criminal liability cannot be fastened on the petitioners because they were not responsible for the functioning of the firm and, Therefore, the judgment of Punjab and Haryana High Court is in all force applicable to the facts of this case.

(6) On the other hand, Mr. Jolly contended that the complaint cannot be read in isolation. It has to be read as a whole and reading of the complaint as a whole clearly establishes that the prosecution has been sought against all the partners as is apparent from the reading of paras 7 and 8 of the complaint. Moreover, the fact whether Shri V.P. Punj was only responsible or all including the petitioners were responsible has to be gone into before the Court concerned where the complaint has been filed. At this stage, this Court cannot come to the conclusion that the petitioners were not partners at the relevant time or were not responsible. He further contended that in view of the latest pronouncement of the Supreme Court in the case of M.R. Partap. Vs. M. Muthukrishnan, Income Tax Officers, Central Circle- Iii, Madras reported in Judgments Today 1992(4) S.C.22 has held that, "by the introduction of Section 278B by the Taxation Laws (Amendment) Act of 1975, with effect from 1st October, 1975, it is enacted that where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be

liable to be proceeded against and punished accordingly. The effect of the new section is to make every person connected with the affairs of the company, apart from the managing director who has signed the return, liable to be proceeded against and punished." Therefore relying on the observation made in the above said case, Mr. Jolly contended that whether the petitioners were partners or had resigned and whether they were connected with the affairs of the company or not, is a matter of fact to be gone into after recording of the evidence. At this stage, this Court in the revision cannot decide this fact. In view of this pronouncement of the "Supreme Court, the petitioner cannot taken advantage of the fact that Mr. V.P, Punj, accused no. 8 since signed the return he alone is liable. Now in view of the. new Section 278B every partner of the accused No. 1 would be equally liable. Whether these petitioners stood retired from partnership firm is a matter of fact which has to be gone into after recording evidence. At this stage relying on the decision of Supreme Court in the case of M.R. Partap (supra) where the scope of the new Section 278B which was introduced by the Taxation Laws (Amendment) Act, 1975 came up for interpretation and Supreme Court held that every person connected with the affairs of the company, apart from the Managing Director who has signed the return would be equally liable. They would be proceeded against and punished. In this case whether the petitioners were connected with the affairs of the company is a matter to be gone after the evidence is recorded. At this stage, suffice it to say that in view of Section 278B as interpreted by the Supreme Court, no case is made out by the petitioner for interference.

(7) The revision petition is accordingly dismissed.