

(2003) 09 DEL CK 0059

In the Delhi High Court

Case No : Criminal M (M) No's. 3586, 3590 and Criminal M. No's. 4837-38 and 4844-45 of 2003

Ms. Usha Anand and Mohan Anand

APPELLANT

Vs

Assistant Commissioner and Others

RESPONDENT

Date of Decision : 03-09-2003

Acts Referred:

Constitution of India, 1950 — Article 21
Wealth Tax Act, 1957 — Section 35B, 35C

Citation : (2003) 185 CTR 350 : (2003) 264 ITR 14 : (2003) 133 TAXMAN 730

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : O.S. Bajpai and V.N. Jha, for the Appellant; Sayem Sabharwal, for the Respondent

Judgement

J. D. KAPOOR J.

1. This petition can be disposed of at the threshold as the chronological details about the dates of hearing fixed by the learned trial court for the purpose of pre-summoning evidence manifestly demonstrate the abuse of the process of the court. After summoning the petitioner for the offences punishable u/s 35B/35C of the Wealth-tax Act, 1957, prescribing a minimum sentence of six months the learned trial court fixed the matter for the first time on April 5, 1995, for pre-charge evidence. More than eight long years have passed. On as many as 26 occasions the matter was fixed for pre-charge evidence. The complainant is a Government department still no evidence has been recorded till date.

2. The details of proceedings and dates given in para. 25 of the petition, tell a very sorry tale and the infraction of the fundamental right of the accused enshrined in Article 21 of the Constitution of India, that every accused charged with a criminal offence is entitled for expeditious trial. For eight long years the complainant has not been able to produce the pre-charge evidence nor has the trial court been able to procure the same. There can be no worse case of failure

of justice.

3. Merely because the complainant happens to be a department of the Government, that does not mean it is immune from the provisions of procedural law as well as the fundamental rights of an accused. The complainant being the department of Government presumed that it is law unto itself and Therefore took the court for granted. Every complainant is equal before law and is governed by the procedure and provisions of the Code of Criminal Procedure. No department of the Government who files a complaint could be allowed to go into soporific slumber after filing the complaint and setting the machinery of court in motion.

4. However, learned counsel for the petitioner states that after this petition was filed one witness has been recorded by the learned trial court towards pre-charge evidence. In view of this statement and in view of the long and procrastinated proceedings it is directed that the learned trial court shall record the remaining evidence on day-to-day basis and decide the question of framing of charge positively within one month, failing which the proceedings against the petitioner shall stand quashed as no court can be taken for a ride.

5. Till the order as to the consideration of the charge is passed, the petitioner shall be exempted from personal appearance.

6. The petition stands disposed of in the aforesaid terms.