
(1976) 02 CAL CK 0031
In the Calcutta High Court
Case No : Matter No. 329 of 1972

Mulchand Bothra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-02-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 195(1)(b), 476, 479
Penal Code, 1860 (IPC) — Section 193, 196

Citation : 80 CWN 804

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : N.C. Banerjee and U.C. Banerjee, for the Appellant; B.L. Pal, for the Respondent

Judgement

S. Mukharji, J.—The petitioner in this application under Article 226 of the Constitution is challenging the petition of complaint filed by the income tax Officer on the 14th March, 1972. The said petition of complaint is annexure "D" to the petition. The said complaint was filed by one Shri S.K. Bhakta who was income tax officer, G. Ward, Hundi Circle. The complaint was filed before the Chief Presidency Magistrate, Calcutta. The complainant was the income tax Officer and the accused was a partner of Messrs Askaran Kissenlal dealers of raw jute and the complaint was in respect of the assessment year 1955-56 in respect of which a notice u/s 22(3) of the Indian income tax Act, 1922 was issued calling upon the assessee to file the return of income. The said notice was issued on the 1st July, 1955. On the 1st July, 1955, 5th of September, 1955 and 15th January, 1957 notices were issued by the income tax officer on the assessee for filing of return u/s 22(3) of the Indian income tax Act, 1922. It was stated that the returns of income were filed on 13th June, 1957 and a letter was issued to the assessee. It has been further stated that on the 11th July, 1957 a duly verified return signed by the accused showing a total income of Rs. 90,560/-along with a supporting balance-sheet and profit and loss account was filed before the income

tax Officer. On the 25th July, 1957 notice u/s 22(4) of the Indian income tax Act, 1922 was issued for production of books of account from 2008 to 2011 Ram Navami years. On 30th July, 1957 the authorised representative of the accused appeared and the books of account for 2011 corresponding to 1955-56 were produced. After inspection and scrutiny of the books of account these were returned with the direction to produce books of account from 2008 to 2011 Ram Navami Years all at a time in the 5th August, 1957. On the 14th August, 1957 again the books of account of 2011 Ram Navami year only were produced without the books of account for 2008 to 2010 Ram Navami Year. It has been further alleged that the accused had caused fabrication of false evidence in the books of account by not posting all entries showing purchases and sales and also in the profit and loss account filed with the return intending that such entries appearing in the books of account and the accompanying profit and loss account might be used as evidence in income tax assessment proceeding. In the premises, it was stated that the accused had rendered himself punishable u/s 193 of the Indian Penal Code and further the accused had used or attempted to use fabricated books of account containing false entries produced before the dealing income tax Officer knowing the same to be false or fabricated and thereby had rendered himself punishable u/s 196 of the Indian Penal Code. In the circumstances, it was prayed that cognizance of offences u/s 193 and 196 of the Indian Penal Code might be taken against the accused person. As mentioned hereinbefore the complainant in the instant case one Shri S.K. Bhakta was the income tax Officer, G Ward, Hundi Circle, Calcutta. The assessment was made on 31st June, 1957 by one Shri P.K. V. Raghavan who was the income tax Officer, N.C.E.P.T., (Dist. I) Calcutta. In the main order of assessment it was stated that a notice u/s 28(3) of the Indian Income Tax Act, 1922 had been issued in view of non-production of the books of account called for u/s 22(4) as well as for concealment of income and furnishing inaccurate particulars thereof. The assessee, thereupon, preferred an appeal before the Appellate Assistant Commissioner and the Appellate Assistant Commissioner by his order dated 31st January, 1958 modified the assessment to certain extent and granted certain relief to the assessee. The assessee, thereupon, preferred a further appeal to the tribunal and the matter was disposed of by the tribunal on 11th September, 1971. It may be mentioned that in view of the fact that the tribunal had given certain relief to the assessee, it was for the income tax Officer now to give to the assessee those reliefs. Under the scheme of the Act the assessment order after disposal of the appeal by the tribunal in a case where the assessment is modified has to go back to the income tax Officer to give effect to the order of the tribunal. It may also be mentioned as indicated in the order of the income tax Officer that proceedings had been taken for imposition of penalty and those proceedings had taken sometime for completion and during the pendency of the said proceeding under Act of 1922 it was not possible for the revenue to take proceeding by way of prosecution against the accused. In paragraph 12 of the affidavit-in-opposition filed in answer to the rule nisi in this case the income tax Officer concerned has stated that the income tax district formerly known as

N.C.E.P.T. district I have been renamed as Hundi Circle and the income tax Officer, G Ward, Hundi Circle has" been vested with the jurisdiction over the said assessee firm. In the case of Balwant Singh v. L.C. Bharupal, I.T.C., New Delhi, ITR 70 89 the Supreme Court held that though proceedings before income tax Officer for the registration of a firm u/s 26A of the Indian income tax Act, 1922 were judicial proceedings in a court and section 195(1) (b) of the Code of Criminal Procedure, 1898 would apply, the income tax Officer could not be treated as a revenue court and neither section 476 nor section 479A of the Code would be applicable. It was not incumbent upon the income tax Officer, according to Supreme Court, to follow the procedure laid down in either of those two sections before he could validly file a complaint for offences u/s 193 and 196 of the Indian Penal Code when forged documents were produced and false statements were made on oath in proceedings u/s 26A of the Act. Similarly, in the case of Gulab Chand Sharma Vs. H.P. Sharma etc., the Delhi High Court held that making of complaint by income tax Officer had to satisfy the requirements of section 195 (1) (b) of the Code of Criminal Procedure in respect of complaint u/s 193 of the Indian Penal Code and though the income tax Officer was a court for the purposes of section 195 (1) (b) of the Code of Criminal Procedure he was not a civil, revenue or criminal Court for the purposes of sections 476 and 479 of; the Code and it was not necessary for him to comply with those sections. It is clear therefore, that the income tax Officer was competent to lodge complaint u/s 193 and section 196 of the Indian Penal Code and proceedings before him were judicial proceeding and section 195(1) (b) of the Code of Criminal Procedure applied though the income tax Officer was not a revenue, civil or criminal court and as such section 476 or 479A of the Code would be in applicable.

2. Counsel for the petitioner did not concede this position but in view of the aforesaid decisions was unable to contend otherwise in this application

3. The main question urged by counsel for the petitioner in this case was that in view of the fact that there was an appeal from the assessment order to the Appellate Assistant Commissioner and thereafter before the tribunal the order of the income tax Officer had merged into the order of the tribunal and as such the income tax officer after the passing of the order of the tribunal was incompetent to make the complaint in the manner done. If anybody was entitled to lodge complaint, according to the counsel for the petitioner, then it was the tribunal or the final appellate authority which had disposed of the matter. In aid of this submission that there was merger of the order reliance was placed by counsel for the petitioner on the decision of the Supreme Court in the case of Gojer Bros. (Pvt.) Ltd. Vs. Shri Ratan Lal Singh, where the Supreme Court had observed that where a decree of trial court was carried in appeal and appeal court had disposed of the appeal after contested hearing, the decree to be executed was the decree of the appellate court and not of the trial court. The reason for this rule was that in such a case the decree of the trial court had merged with the decree of the appeal court. It is true that where the decision of a trial court is taken up in appeal to the higher forum then it is the decision of the higher forum that

prevails as the effective order and the decision of the trial court merges with the decision in the appeal or of the appellate court. But this theory of merger cannot be so applied as to obliterate all the consequences of the decision of the trial court. The complaint here is u/s 193 and section 196 of the Indian Penal Code. Section 193 of the Indian Penal Code stipulates that whoever intentionally gives false evidence in any stage of judicial proceeding or fabricates false evidence for the purpose of being used in any stage of judicial proceeding shall be visited with certain consequences. Similarly, section 196 of the Indian Penal Code provides that whoever corruptly uses or attempts to use as true or genuine evidence any evidence he knows to be false or fabricated should be punished in the manner indicated in the section. Therefore, the offence is the offence of giving false evidence in any stage of judicial proceeding or attempting to use as genuine evidence which he knows to be false. These are the main offences under sections 193 and 196 of the Indian Penal Code. These offences were committed, according to the complainant, at the time of the proceeding before the first income tax officer. The fact that subsequently the order of the income tax officer has merged in the order of the tribunal, in my opinion, does not in any manner obliterate the guilt of the offence and as such the officer who is successor to the office of the forum from where the complaint had been made, in my opinion retains the jurisdiction to make the complaint. Furthermore, in this case after the disposal of the appeal by the tribunal as mentioned before the income tax Officer gets seisin of the matter for the purpose of implementing the order of the tribunal. In the aforesaid view of the matter, I am unable to accept the contention that because there was an appeal before the Appellate Assistant Commissioner and thereafter before the tribunal the income tax Officer concerned has lost jurisdiction to proceed to make the complaint.

4. It was, then, contended that the original income tax Officer had not made the complaint. That is true. But his successor to that office, in my opinion, the present income tax Officer who has filed the complaint was competent to make the complaint. In this connection, reliance may be placed on the observations of the Supreme Court in the case of *Balwant Singh and Another Vs. L.C. Bharupal, Income Tax Officer, New Delhi and Another*, at page 94.

5. It was then contended that the complaint was belated. That is true; but the appeal was disposed of by the Tribunal in September 1971 and the complaint was filed in March 1972, presumably after the matter had come to the income tax Officer on disposal of the appeal by the tribunal. Furthermore, it appears that the proceedings for imposition of penalty u/s 28 of the Indian income tax Act, 1922 were pending. In these circumstances, the complaint as such, in my opinion, cannot be held to be malafide on the ground of belatedness. In the aforesaid view of the matter I am unable to sustain the objection urged in this application against the complaint filed on 14th March, 1972. In the premises, this application must fail and is accordingly dismissed. Rule Nisi is discharged. Interim order, if any, is vacated.

There will be no order as to cost.

There will be a stay of operation of this order for four weeks.