

(2003) 03 P&H CK 0101

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 13777-M of 1990

Narain Dev Dhablania

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 14-03-2003

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 276C, 277

Citation : (2003) 184 CTR 254 : (2003) 262 ITR 206

Hon'ble Judges : Adarsh Kumar Goel, J

Bench : Single Bench

Advocate : Rajesh Garg, for the Appellant; N.L. Sharda, for the Respondent

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—The petitioner filed the Income Tax return for the assessment year 1975-76 on March 10, 1976, in respect of which an assessment was framed on February 26, 1977. The petitioner filed a revised return on October 20, 1978, in response to a notice u/s 148 of the Income Tax Act, 1961 (for short, "the Act"), and thereafter, assessment was framed on October 16, 1979. Against the order of the Income Tax Officer, the petitioner preferred an appeal which was accepted on November 30, 1974, but on further appeal by the Department, the Tribunal vide order dated May 5, 1987, decided the matter against the petitioner against which a reference is pending in this court. The Department filed a complaint on March 26, 1990, under Sections 276C and 277 of the Act alleging concealment of income.

2. This petition for quashing has been filed on the ground that the cause of action for filing a complaint was on November 16, 1979, when a finding of concealment of income was recorded and in any case on May 5, 1987, when the Tribunal restored the said finding. It is submitted that a complaint cannot be allowed to be filed long after the finding of concealment of income is recorded

unless there is a valid explanation.

3. Learned counsel for the Department submits that the reason for the delay in filing of the complaint was that after the order of the Tribunal dated May 5, 1987, the matter was examined and penalty was imposed which was finalised by the Deputy Commissioner (Appeals) on August 16, 1988, and thereafter, steps were taken for obtaining authorisation order u/s 279(1) for launching the prosecution and in that process, time was taken and authorisation was received on March 26, 1990, and complaint was filed on the same day.

4. Counsel for the petitioner relied on the judgment of the Madras High Court in *S. VAIDYANATHAN, Income Tax OFFICER Vs. DR. B. MATHURAM AND SONS AND OTHERS.*, . In the said judgment, it was held that the proceedings will be liable to be stayed, if further proceedings are pending before the Department even though the complaint may be held to be maintainable.

5. I have considered the rival submissions. No doubt, there cannot be a hard and fast rule to hold when delay is a ground for holding that the prosecution is vitiated. The extent of sentence, nature of offence and circumstances of the case have to be taken into account. The maximum punishment for the offence alleged (concealment of income of Rs. 20,000) is three years u/s 276C. Though the cause of action for initiating prosecution is furnished on the date when income is concealed or on the date when concealment becomes known to the Department. Once proceedings are finalised, the prosecution has to be commenced within a reasonable period.

6. Chapter XXXVI of the Criminal Procedure Code provides for limitation for taking of cognizance of certain offences. However, the provisions of the Economic Offences (Inapplicability of Limitation) Act, 1974, makes the said Chapter inapplicable to offences under the enactments in the Schedule, which includes the Income Tax Act.

7. Learned counsel for the Department relied on *C.G. Balakrishnan and Others Vs. Income Tax Officer*, wherein the Kerala High Court held that conviction was not liable to be quashed merely on the setting aside of an assessment order. In *Ashok Biscuit Works and Others Vs. Income Tax Officer, Hyderabad*, the Andhra Pradesh High Court held that whether or not false statement and verification had been made, was to be judged with reference to the date of filing of the return and, therefore, proceedings were not liable to be quashed on account of subsequent proceedings. In *P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin*, the apex court observed that though the criminal court was to give due regard to the result of proceedings under the Income Tax Act and may drop proceedings in the light of the order passed under the Act, the result of proceedings under the Act was not binding on the criminal court, the same has to be judged by the criminal court independently on the evidence produced before it.

8. Even though a bar of limitation laid down under Chapter XXXVI of the Criminal Procedure Code is not applicable, Article 21 of the Constitution confers a right to

speedy trial and even where there is no statutory bar of limitation, prosecution can be held to be barred, if there is undue delay. In *P. Ramachandra Rao Vs. State of Karnataka*, a seven-judge Bench of the apex court held (page 602): "It must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case if the quantum of time consumed up to a given point of time amounted to violation of Article 21 of the Constitution and if so, then to terminate the particular proceedings, and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted." It was held that there cannot be a hard and fast rule as all situations cannot be foreseen and no generalisation could be made.

9. No doubt, as held in *S. VAIDYANATHAN, Income Tax OFFICER Vs. DR. B. MATHURAM AND SONS AND OTHERS.*, a complaint is maintainable even if further proceedings are pending before the Department even though they may be liable to be stayed and counsel for the petitioner is right in submitting that a complaint could have been filed as soon as the alleged concealment was noticed. However, pendency of proceedings in the higher court cannot be ignored as the order of a higher court may have bearing on prosecution. It cannot also be ignored that some delay is bound to take place in considering the matter. In the present case, delay after finalisation of the matter is about 11/2 years. Sometimes, the affected party may also be responsible for getting the matter delayed and if any rigid rule is laid down, this may prejudice even a legitimate prosecution. It may, therefore, not be justified to quash proceedings on the ground of delay, if otherwise an offence has been committed. It goes without saying that the concerned authorities have to initiate proceedings expeditiously, but if some delay has taken place in launching the prosecution, it will not be in the public interest to quash prosecution on that ground alone at the pre-trial stage, unless some special feature or prejudice is shown, which will depend on the facts of each case.

10. For the above reasons, this petition is dismissed. However, in the facts and circumstances of the case, the petitioner will be granted exemption from personal appearance on appropriate conditions to be laid down by the trial court on an application of the petitioner.