

(2008) 02 AHC CK 0242
In the Allahabad High Court

Neeraj Dyeing, Shri Suraj Prasad, Smt. Chanda Devi and
Smt. Krishan Devi

APPELLANT

Vs

Union of India (UOI) and State of Uttar Pradesh

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155, 156, 482
Income Tax Act, 1961 — Section 132, 139, 277, 278

Citation : (2008) 02 AHC CK 0242

Hon'ble Judges : Saroj Bala, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Saroj Bala, J.—By means of this application u/s 482 Cr.P.C, the applicants have prayed for quashing the complaint of Criminal Case No. 834 of 1985-Union of India through Income Tax Officer, Fatehgarh v. Neeraj Dyeing and Ors. u/s 277 of the Income Tax Act 1961 (hereinafter referred to as the "Act") pending in the Court of Special Chief Judicial Magistrate (Economic Offences), Allahabad.

2. The relevant facts giving rise to these proceedings are:

The Criminal Complaint was instituted with the allegations that accused applicant No. 1 was a firm registered with the Income Tax Department and accused applicants No. 2 to 4 are its partners having shares of profit and loss at the rate of 60%, 25% and 15% respectively. The return of the firm for the assessment year 1983-84 showing income at Rs. 30,780/- was verified by accused applicant No. 2. The search of business and residential premises of applicants u/s 132(1) of the Act was conducted and unaccounted purchases were detected from the purchase vouchers seized. The purchase made through vouchers seized was not entered in the account book. Unaccounted Hundis and loan transactions were also detected. The accused applicant No. 2 Suraj Prasad when confronted offered Rs. 80,000/- to be clubbed in the income of the firm for the assessment year 1983-84. A revised return u/s 139(5) of the Act was filed by him on 19.1.1984

showing income of Rs. 1,10,780/- for the assessment year 1983-84. It was alleged that the accused-applicant No. 2 verified the return for the assessment year 1983-84 submitted on 28.7.83 and delivered false account which he knew or believed to be false.

3. The contention of the applicants is that the Commissioner, Income Tax, Agra came to Farrukhabad on camp ten days after the raid. Applicant No. 2 met him and the Commissioner, Income Tax asked him for agreed assessment on the lines of other assessees.

3. The applicant No. 2 moved an application on 1.12.83 stating that he was agreeable for agreed assessment on mutual settlement basis. Another application was moved on 2.12.83 agreeing that a sum of Rs. 80,000/- be added in the income over and above the income disclosed in the return relating to the assessment year 1983-84. A revised return was filed on 24.2.84 for the assessment year 1983-84. The proceedings for imposing penalty concluded on 20.7.84. An application for reduction or waiver of penalty imposed was also made by applicant No. 1 which was rejected by the order dated 10.1.86. The present complaint was instituted prior to the dismissal of the application moved for reduction or waiver of penalty. The order of refusal of reduction or waiver of penalty was challenged by applicant No. 1 in the writ petition No. 432 of 1986 which is pending disposal.

4. The prosecution of the applicants during the pendency of writ petition was abuse of process of the Court. According to the applicants the Income Tax return was filed by the firm applicant No. 1 and was verified by applicant No. 2. There are no allegations against the applicants No. 3 and 4 for constituting the offence u/s 277 of the Act.

5. Heard Sri V.K. Goyal, learned Counsel for the applicants, Sri Dhananjay Awasthi, the learned Counsel appearing on behalf of Opposite Parties No. 1 and 2, learned A.G.A. and have perused the record.

6. The learned Counsel for the applicants submitted that applicants No. 3 and 4 having not verified the return, their prosecution is sheer misuse of the process of the Court. It was argued that there are no allegations of abetment or knowledge about submission of false return against applicants No. 3 and 4. The statement of account having been verified by applicant No. 2 he is liable. The learned Counsel urged that u/s 278 of the Act a person In charge of and responsible to the Company for the conduct of the business of the Company as well as the Company is liable to be proceeded against. According to the learned Counsel applicant No. 2 was liable for the affairs of the Company.

7. The learned Counsel for the opposite parties No. 1 and 2 submitted that a person abetting or inducing another person to make and deliver an account or a statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe to be true is liable.

8. The applicants No. 3 and 4 having abetted and induced the applicant No. 2 to submit a false return they are equally liable for prosecution. It was argued that the Magistrate is empowered to examine which of the applicant is to be exonerated from the prosecution. The applicants No. 3 and 4 being partners of the firm are responsible for its affairs.

9. Admittedly the return for the assessment year 1983-84 was submitted by applicant No. 2 Suraj Prasad on behalf of the firm applicant No. 1. In para 3 of the complaint it is stated that the return of the firm for the assessment year 1983-84 was filed on 28.7.83 showing income of Rs. 30,780/ and the return was verified by applicant No. 2 Suraj Prasad. In para 2 of the complaint it is stated that applicants No. 2 to 4 are partners of the firm having profit and loss share at the rate of 60% 25% and 15% respectively. The allegations contained in para 3 to 8 of the complaint are against applicant No. 2 Suraj Prasad. There are no allegations against applicants No. 3 and 4 about abetment and knowledge about the filing of false return.

10. Section 277 of the Act which is relevant for the adjudication of the question in controversy is reproduced as below:

["False statement in verification, etc.

277. If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable;-

(i) in case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.]

[Falsification of books of account or document, etc.

277A. If any person (hereafter in this section referred to as the first person) wilfully and with intent to enable any other person (hereafter in this section referred to as the second person) to evade any tax or interest or penalty chargeable and imposable under this Act, makes or causes to be made any entry or statement which is false and which the first person either knows to be false or does not believe to be true, in any books of account or other document relevant to or useful in any proceedings against the first person or the second person, under this Act, the first person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

Explanation-For the purposes of establishing the charge under this section, it

shall not be necessary to prove that the second person has actually evaded any tax, penalty or interest chargeable or imposable under this Act).

11. Section 277 of the Act provides for the prosecution of a person making a false statement in any verification, delivering a false account or statement which he either knows or believes to be false. Section 278 of the Act provides for prosecution of a person abetting or inducing in any manner another person to make and deliver a false account or statement or declaration relating to any income chargeable to tax. In the present case the complaint has been instituted for the offence u/s 277 of the Act. There are no allegations that applicants No. 3 and 4 abetted and induced the applicant No. 2 to make and deliver a false account or statement or declaration relating to income of the firm for the assessment year 1983-84. Section 277 of the Act makes a person submitting false statement in verification liable for prosecution. The return for the assessment year 1983-84 having been verified by applicant No. 2, he is liable for prosecution. In the case of R.S. Raghunath Vs. State of Karnataka and another, the Apex Court has held as under:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the First Information Report do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the First Information Report or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the First Information Report do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the First Information Report or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafides and/or

where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In *Madhavrao Jiwajirao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors.* (25) 1988 ACC 163 the Apex Court has held as under;

The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made *prima facie* establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

In *Irisuns Industry and Medical Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. and Ors.* (40) 2000 ACC 680 (SC) the Apex Court has held as below:

Exercise of jurisdiction under the inherent power as envisaged u/s 482 of Criminal Procedure Code to have the complaint or the charge sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. In the event, however, the court on perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law.

12. In the case in hand as already stated above no offence u/s 277 of the Act was made out against the applicants No. 3 and 4 as the return in question was verified by the applicant No. 2. In the complaint the only allegation against applicants No. 3 and 4 was that they were partners of the firm-applicant No. 1. Having regard to the facts stated the Magistrate committed gross error in issuing process against the applicants No. 3 and 4 for the offence u/s 277 of the Act. On the face of the material brought on record process could have been issued only against applicants No. 1 and 2 for the offence u/s 277 of the Act. The allegations made in the Complaint do not constitute an offence against the applicants No. 3 and 4, no useful purpose would be served by allowing the criminal prosecution to continue against them. The inherent power u/s 482 Cr.P.C. can be exercised for quashing the prosecution to prevent the abuse of the process of any Court or otherwise to secure the ends of justice.

13. Having regard to the facts and circumstances discussed above, partly allowing the application u/s 482 Cr.P.C. the prosecution and proceedings of

abovementioned complaint case against the applicants No. 3 and 4 being abuse of process of the Court are quashed. The proceedings of complaint case shall go on against the applicants No. 1 and 2.