

(2006) 04 JH CK 0045

In the Jharkhand High Court

Case No : Criminal M.P. No. 2487 of 2001

Novelty Dresses and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 250, 276, 277

Citation : (2006) 3 JCR 288

Hon'ble Judges : D.K. Sinha, J

Bench : Single Bench

Advocate : Prabhash Kumar, for the Appellant; APP and K.K. Jhunjhunwala, for Opposite party No. 4, for the Respondent

Judgement

D.K. Sinha, J.—The petitioners have preferred this petition u/s 482 of the Code of Criminal Procedure for quashing entire criminal proceedings in Complaint Case No. 176 of 1992, corresponding to Trial No. 2729 of 1992 including the order impugned dated 24.3.1992, passed by Special Court for Economic Offences, Dhanbad whereby and whereunder cognizance of the offence was taken under Sections 276(c) and 277 of the Income Tax Act, 1961 against the petitioners.

2. The informant opposite party No. 4, Income Tax Officer, Ward-II, Hazaribagh filed a complaint case being No. 176 of 1992 before the special Court stating therein that the petitioner No. 1 was the registered firm M/s. Novelty Dresses and the other petitioners were the partners of the said firm having equal share in profit and loss account, who derived income from business in ready made dresses and hosiery. The petitioners had filed return of income on 27.8.1990 showing total income of Rs. 48,240/- for the assessment year 1990-91. The assessment was completed on a total income of Rs. 1,38,950/-. The stock of the business premises of the petitioners was verified by the officials of "income Tax Department which was valued at Rs. 8,95, 934/-. But according to Books of account the stock position on that was at Rs. 3, 82, 483/-. No explanation was

given by the petitioners about the difference of Rs. 5,13,496/-. However, after considering the explanation, the Assessing Officer found that a sum of Rs. 88,500/- still remained unexplained and, therefore the Assessing Officer added the same to the Income of petitioners. In that manner it was alleged that the accused petitioners had willfully attempted to evade tax consciously and that they concealed the true particulars of income and, therefore, the petitioner had committed an offence as alleged punishable under Sections 276(c) and 277 of the Income Tax Act, 1961. The sanction of the Commissioner of Income Tax, Ranchi was obtained.

3. Notices were issued to the opposite parties 2 to 4 and the office reported the same as valid service,

4. Learned Counsel for the petitioners submitted that an appeal was preferred before the Commissioner of Income Tax (Ranchi), vide I.T.A. No. 101/RAN of 1991-92 against the aforesaid order dated 27.3.1991 whereby a sum of Rs. 88,500/- was added in the return in which total income was shown at Rs. 48,240/-. It was finally heard and order u/s 250 of the said Act was passed on 20.7.1992 allowing the said appeal in part by giving a relief of Rs. 48,500/- and Rs. 1188/- as contained in Annexure-5. Against such partial relief the petitioners preferred 2nd Appeal before the Income Tax Appellate Tribunal, Patna, vide I.T.A. No. 938/Pat/1992 and after hearing the parties Income Tax Appellate Tribunal, Patna, vide order dated 20.7.1995 Allowed the appeal in full and dismissed the appeal preferred by the Income Tax Department as contained in Annexure-6, The Tribunal observed and held that "adequate materials have not been brought on record to show that the actual stock in assessee's possession exceeded the stock as per books. The addition of Rs. 40,000/- sustained by the CIT (A) is, therefore, deleted. In the result, the assessee's appeal is allowed and the Departmental appeal is dismissed."

5. The order passed by the Income Tax Appellate Tribunal was communicated by the Income Tax Officer, Ward II, Hazaribagh to the Assistant Director of Income Tax (Inventory) Dhanbad mentioning that the assessee's appeal was fully allowed whereas the appeal filed by the Revenue was dismissed. Consequently, revised total income on allowing effect to the I.T.A.'s order was restored to the total income as shown in the return by the assessee as contained in Annexure 7. By Annexure 7/1 the Income tax Officer, Ward No. II, Hazaribagh has communicated the Commissioner of Income Tax, Dhanbad that in view of the order passed by the I.T.A.T. his predecessor in office had requested the Assistant Director, Income Tax (Inventory) in the matter for dropping the criminal prosecution against the petitioners and requested to take appropriate action in the matter.

6. Reliance has been placed upon the decision reported in Md. Moinul Haque and Others Vs. State of Bihar and Another held as under:

so from a perusal of Annexures 1 and 2 it can be said that the entire allegation of

the complainant regarding concealment of income and imposition of penalty is now no more in existence in view of the decision of the appellate authority, that is, the Commissioner of Income Tax, and so the basis of the prosecution is now no more in existence. In that view of the matter, in view of the decision of our own High Court in Banwarilal Satyanarain and Others Vs. State of Bihar and Another, , the prosecution is liable to be quashed.

7. Similarly, a Bench of Patna High Court in Shyam Kumar Arora and Anr. v. Government of India and Anr. reported in (1998) 234 ITR 757 held as under:

A perusal of Annexure-5 goes to show that against the assessment order on the basis of which the criminal complaint has been filed against the petitioners, the petitioners preferred an appeal which was allowed by the commissioner of Income Tax and the assessment order was set aside and the matter has been remanded for fresh assessment according to law. As the assessment order which formed the very basis of the prosecutions. No longer in existence, the petitioners cannot be prosecuted on the strength thereof.

8. Considering the facts and circumstances of the case, this Court finds that the petitioners had filed a return for assessment year 1990-91 showing total income of Rs. 48,240/- and after verification and inventory stock a sum of Rs. 88,500/- was added in the total income earlier shown against which the petitioners preferred the appeal before the Commissioner of Income tax (Appeal) but unexplained amount to the tune of Rs. 88,500/- was reduced to Rs. 40,000/- in the said appeal, vide Annexure-5 and in the meantime, criminal prosecution was launched against the petitioners. The Court further finds that against the order passed by the CIT (appeal) the petitioners preferred 2nd appeal before the Income Tax Appellate Tribunal, where the petitioners got total relief and, therefore, in this manner the amount to the tune of Rs. 88,500/- which was added being the sum unexplained was ordered to be deleted in toto and, therefore, there was no additional liability upon the petitioners for the assessment year 1990-91 except what the return was filed by the petitioners showing total income of Rs. 48,240/-.

9. This Court finds substance in the argument advanced on behalf of the petitioners that Hon"ble Court in various decisions have consistently held that criminal prosecution under Sections 276(c) and 277 of the Income Tax Act, 1961 and under such circumstances as relevant in the present case is not maintainable and there was no additional tax liability on the enhanced income as held in 2nd appeal by the Tribunal.

10. Keeping in view of the fact stated above and the propositions of law, this Court finds that the criminal prosecution against the petitioners under Sections 276(c) and 277 of the Income Tax Act, pending in the Special Court for Economic Offences, Dhanbad in Complaint Case No. 176 of 1992, corresponding to Trial No. 2729 of 1992, Union of India v. Novelty Dresses and Ors., including the order impugned dated 24.3.1992 is not maintainable and, therefore, it is quashed with

consequential effect.