(2000) 02 MAD CK 0060

In the Madras High Court

Case No : Criminal Revision Case No. 648 of 1996

P. Soundarya APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 03-02-2000

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 39
Income Tax Act, 1961 — Section 119(2), 132, 132(4), 136, 215
Penal Code, 1860 (IPC) — Section 120B, 139, 193, 195, 196

Citation : (2001) 249 ITR 77

Hon'ble Judges : P. Thangavel, J

Bench : Single Bench

Advocate : Mohan Parasaran, for the Appellant; T. Sivanandan, for the Respondent

Judgement

P. Thangavel, J.—This criminal revision petition has been filed against the judgment, dated August 19, 1996, in Criminal A. No. 248 of 1989, on the file of the learned Principal Sessions Judge, Madras, confirming the judgment, dated November 6, 1989, of the learned Additional Chief Metropolitan Magistrate, E. O. I., Egmore, Madras, in E. O. C. C. No. 136 of 1984.

2. The revision petitioner, Mrs. P. Soundarya, is the sister of Kumari R. Jayapratha, a well known film actress in Telugu and Tamil movies, and is residing with her at door No. 1, Hindi Prachara Sabha Road, T. Nagar, Madras-17. In the course of the search made in pursuance of the action taken u/s 132 of the Income Tax Act (hereinafter referred to as "the Act") on February 17, 1983, a statement was recorded from the revision petitioner with regard to the purchase of the house bearing door No. 20, First Cross Street, Lake Area, Nungambakkam, Madras, on November 22, 1982, from one V. Seshamma. The revision petitioner had stated that the said house was purchased for Rs. 2,40,000 by selling a part of her jewels and the jewels of her mother, Neelaveni, and grand-mother, Rajamma. The revision petitioner could not disclose the details of such jewels and the sale thereof. On the same day, i.e., on February 17, 1983, the office

premises of Hariharan and Co., chartered accountants, who were attending to the Income Tax, matters of Kumari Jayapratha, was also searched u/s 132 of the Income Tax Act and, inter alia, a receipt, dated August 31, 1982, signed by Smt. V. Seshamma, acknowledging the receipt of advance amount towards a sale of the house bearing door No. 20, First Cross Street, Lake Area, Nungambakkam, Madras, to the revision petitioner and her mother, Smt. P. Neelaveni, for a sale consideration of Rs. 5,70,000 was seized. The house of V. Dhinakar Reddy, the husband of V. Seshamma, was also searched on February 23, 1983, and the statement of Smt. V. Seshamma, was recorded u/s 132(4) of the Income Tax Act, wherein she had stated to have sold the abovesaid house to the revision petitioner for a sum of Rs. 2,40,000. Smt. V. Seshamma had represented to the Department on March 30, 1983, that she had really sold her house for Rs. 5,70,000 to the revision petitioner though the sale consideration was mentioned in the sale deed as Rs. 2,40,000 at the request of the revision petitioner. She had also disclosed that the sum of Rs. 3,30,000 was not mentioned in the sale deed. A letter signed by Smt. V. Seshamma on March 30, 1983, confirming the sale consideration at Rs. 5,70,000 was also handed over to the Assistant Director of Inspection, Income Tax Department. Later, a sworn statement was also made by her to the abovesaid effect.

3. The revision petitioner filed an application u/s 230A(1) of the Income Tax Act, on May 12, 1983, for issue of a certificate in her favour for settling the abovesaid property in the name of her minor son, retaining her life interest in the said property, declaring the sale consideration of the said property at Rs. 2.40,000. The declaration made by the revision petitioner is patently false and the same has been made by the revision petitioner to use the same as genuine evidence in the proceeding before the Income Tax authority, which is a judicial proceeding as per the Income Tax Act. Issue of a certificate as required by the revision petitioner would entitle her to register the settlement deed as if the property therein was acquired for Rs. 2,40,000 as against the real value of Rs. 5,70,000 and there will be evasion of Income Tax on the balance sale consideration of Rs. 3,30,000. It is under the said circumstances, the complainant has filed the complaint against the revision petitioner, stating that she has committed offences punishable u/s 193, Indian Penal Code, read with Section 136 of the Income Tax Act, 1961, Section 420, Indian Penal Code, read with Section 511, Indian Penal Code, and Sections 276C(1) and 277 of the Income Tax Act, 1961.

4. The complainant has examined P. Ws. 1 to 6 and filed exhibits P-1 to P-42. The revision petitioner has examined D. W. 1 and filed exhibits D-1 and D-2, in support of her case. Of the seven charges framed against the revision petitioner, the learned trial judge found the accused not guilty under charges Nos. 3 and 6, but found her guilty under charges Nos. 1, 2, 4, 5 and 7 and sentenced her to undergo rigorous imprisonment for three months and also to pay a fine of Rs. 3,000, in default, to undergo rigorous imprisonment for four months for the offence u/s 420 read with Section 511, Indian Penal Code ; to undergo rigorous imprisonment for three months and also to pay a fine of Rs. 3,000, in default, to

undergo rigorous imprisonment for four months for the offence u/s 193, Indian Penal Code, read with Section 136 of the Income Tax Act, 1961 ; to undergo rigorous imprisonment for six months and also to pay a fine of Rs. 500, in default, to undergo rigorous imprisonment for six weeks for the offence u/s 276C(1) of the Income Tax Act and to undergo rigorous imprisonment for six months and also to pay a fine of Rs. 500, in default, to undergo rigorous imprisonment for six weeks, for the offence u/s 277 of the Income Tax Act, 1961 (two counts), for each count, and the sentences of imprisonment were ordered to run concurrently. Aggrieved by the judgment of the trial court in E. O. C. C. No. 136 of 1984, dated November 6, 1989, the accused, as appellant, filed C. A No. 248 of 1989, on the file of the Principal Sessions Judge, City Civil Court, Madras. After considering the material evidence available on record and after hearing the submissions made by both sides, the learned appellate judge confirmed the judgment of the trial court and dismissed the appeal. Aggrieved by the judgment dated August 19, 1996, in C. A. No. 248 of 1989, on the file of the appellate court, the appellant, as revision petitioner, has come forward with the criminal revision petition on the file of this court.

5. P. W. 1 Thiru N. Srinivasan, P. W. 2 Thiru Chellappan, P. W. 5 Thiru D. Subramaniam and P. W. 6 Thiru Nagarajan, who are working in the Income Tax Department, were examined along with P. W. 3 Tmt. Ses-hamma and her husband P. W. 4 Thiru V. Dhinakar Reddy, to prove the case of the complainant. Admittedly, the revision petitioner is the sister of Kumari Jayapratha, a well known film actress in Telugu and Tamil movies and was living in door No. 1, Hindi Prachara Sabha Road, T. Nagar, Madras-17. On February 17, 1983, when a search was conducted in the aforesaid address, u/s 132 of the Act, in connection with the Income Tax assessment of Kumari Jayapratha, a statement u/s 132(4) of the Act was recorded from the revision petitioner, by the Income Tax authorities, with regard to the purchase of a house situate at door No. 20, First Cross Street, Lake Area, Nungambakkam, Madras, from P. W. 3 Tmt. V. Seshamma, who is the wife of P. W. 4 Thiru V. Dhinakar Reddy. Exhibit P-2 is the statement given by the revision petitioner to P. W. 1, on February 17, 1983. In the said statement, the revision petitioner has claimed to have purchased the said property from P. W. 3, for a sum of Rs. 2,40,000. Admittedly, P. W. 3 Seshamma was examined by P. W. 1, and P. W. 5 had also given a statement that the abovesaid house owned by her was sold to the revision petitioner for a sum of Rs. 2,40,000 as seen in exhibit P-4, dated March 23, 1983. It is equally not in dispute that the office premises of Hariharan and Co., chartered accountants of Kumari Jaya-pratha, was also searched u/s 132 of the Act and some documents were seized, as shown in the mahazar exhibit P-15. Exhibit P-16 is the list of certain letters shown in the mahazar exhibit P-15. Item No. 9 in exhibit P-16 relates to the files of Kumari Jayapratha. In that file exhibit P-18, a receipt dated March 31, 1983, issued by P. W. 3 Seshamma, in connection with the receipt of advance amount and the sale consideration, is found. A perusal of exhibit P-18 would disclose that P. W. 3 had given the stamped receipt, stating that the

properly belonging to her, situate at No. 20, First Cross Street, Lake Area, Nungambakkam, Madras, was agreed to be sold for a sum of Rs. 5,70,000 and an advance was also received in D. D. No. OL-019092 from the revision petitioner and her mother, Smt. Neelaveni. P. W. 3 gave a statement, subsequent to the seizure of exhibit P-18, to P.W. 1, as seen in exhibit P-12, dated March 30, 1983, and also sent a letter dated March 30, 1983, as seen in exhibit P-9, to the Department of Income Tax. P. W. 4 Dhinakar Reddy gave a statement as seen in exhibit P-8, dated March 5, 1983, to P. W. 1 and also attested the statement of P. W. 3, exhibit P-12, as seen in exhibit P-15. In all the statements referred to above, and also in the atiestation made by P. W. 4, it was admitted by P. Ws. 3 and 4 ''that the property referred to above was sold for a sum of Rs. 5,70,000 by P.W. 3 to the revision petitioner, but the sale consideration was mentioned in the original of exhibit P-41, the sale deed as Rs. 2,40,000, at the request of the revision petitioner. The documents recovered in the search made in the house of P. Ws. 3 and 4 and the documents produced by the abovesaid witnesses as seen in exhibits P-22 to P-36 would lend support in the light of exhibit P-18, the receipt issued by P. W. 3 to the revision petitioner, to come to the conclusion that the demised property should have been sold by P. W. 3 Seshamma to the revision petitioner for a sum of Rs. 5,70,000 and not for Rs. 2,40,000 as claimed by P. W. 3 at the initial stage as seen in exhibit P-4 and also by the revision petitioner as seen in exhibit P-2. The evidence of P. Ws. 3 and 4 before the trial court in support of the documents referred to above cannot be disbelieved as rightly concluded by the trial court as well as by the appellate court. In view of the abovesaid position, the conclusion arrived at by the trial court, which was confirmed by the appellate court that P. W. 3 had sold the demised property to the revision petitioner for a sum of Rs. 5,70,000 and executed the original of exhibit P-41, dated November 22, 1982, for a sale consideration of Rs. 5,70,000 in favour of the revision petitioner has to be accepted.

6. The fact remains that the revision petitioner filed a petition u/s 230A(1) of the Act for issuance of a certificate as seen in exhibit P-38, dated May 12, 1983, before the Income Tax authorities along with Form No. 37 and a copy of the sale deed exhibit P-41, declaring the sale consideration of the demised property as Rs. 2,40,000. It is not in dispute that the abovesaid certificate was sought for by the revision petitioner from the Income Tax authorities u/s 230A(1) of the Act for the purpose of executing a settlement deed with regard to the demised property in favour of her son as absolute owner thereof, but by retaining life interest to her in the said property. According to the prosecution, the revision petitioner has attempted to cheat the Income Tax Department by giving false declaration with regard to the sale price to obtain certificate, intentionally using documents containing false declaration and had also wilfully attempted to evade payment of tax, penalty or interest, chargeable or imposable under the Act by making verified statement, knowing full well that it is a false statement and not a true statement, to avoid payment of tax.

7. Exhibit D-1, dated March 31, 1983, is the assessment made by the Income

Tax Officer, for the assessment year 1983-84, with regard to the revision petitioner in her individual capacity. Exhibit D-1 would disclose that the total income of the revision petitioner was determined under a protective basis at Rs. 6,75,000 without prejudice to the stand to be taken by Kumari Jayapratha, with regard to the demised property under consideration. A perusal of exhibit D-1 would disclose that the agreement made in connection with the income of the revision petitioner was only a protective basis assessment and not actual assessment. Exhibit D-2 is the assessment order of Kumari Jayapratha for the assessment year 1983-84, on November 17, 1986. A perusal of exhibit D-2 would disclose that the Income Tax authority had come to the conclusion in the said assessment order that Kumari Jayapratha had a total expenditure of Rs. 6,75,000 from out of her income towards purchase of the demised property, including the sale consideration of Rs. 5,70,000, apart from the registration and stamp paper expenditure. It is also mentioned in the said assessment order that a protective assessment was made in the name of the revision petitioner herein for the assessment year 1983-84, inclusive of the sum of Rs. 6,75,000 as her income, without prejudice to the stand to be taken in the case of Kumari Jayapratha, as real owner of the demised property. Accordingly, it was mentioned in the said assessment order exhibit D-2 that Kumari Jayapratha is the real owner of the property. Based on the abovesaid contents in the assessment order, learned counsel for the revision petitioner contends that the sale consideration of Rs. 5,70,000 was paid only by Kumari Jayapratha ; that the revision petitioner is only a name lender and that therefore the entire sale transaction is a benami transaction.

8. Learned counsel for the respondent contends contra, by relying on the decision reported in Kanakarathanammal Vs. V.S. Loganatha Mudaliar and Another, . In the said decision, the apex court has held as follows :

"Even though sale consideration for the sale transaction was given by the husband for purchase of the property in the name of his wife and even if the husband is in possession and management of the property by -collecting rents, the title to the said property will vest only with the wife and not with the husband."

9. In this case, Kumari Jayapratha is not exercising any right over the demised property as the owner thereof. On the other hand, the revision petitioner is claiming absolute right over the said property and has also come forward with an application u/s 230A(1) of the Act, for issuance of a certificate in order to execute a settlement deed with regard to the said property, in favour of her son, retaining life interest. The facts stated supra, in the light of the case law mentioned above, will lead to hold that the title of the demised property vests only with the revision petitioner and not with Kumari Jayapratha, as rightly contended by learned counsel for the respondent. Therefore, the contention raised on the side of the revision petitioner cannot be sustained to hold that Kumari Jayapratha is the owner of the demised property and not the revision

petitioner.

10. Learned counsel for the revision petitioner contends that the revision petitioner has not wilfully attempted to evade payment of tax or made any verified statement and delivered the same to the Income Tax authorities, knowing fully well that it contains false averments and it is not a true statement, with a view to evade any tax and that, therefore, the revision petitioner has not committed any offence punishable under Sections 276C(1) and 277 of the Act. Learned counsel appearing for the respondent contends contra, stating that the verified false statement filed u/s 230A(1) of the Act will constitute an offence punishable under Sections 276C(1) and 277 of the Act and that, therefore, the submission made on the side of the revision petitioner should not be accepted. As already pointed out, the assessment made against the revision petitioner for the assessment year 1983-84 was a protective assessment and not without prejudice to the stand to be taken in the case of Kumari Jayapratha as the real owner of the property. The very same stand had been taken by the Department in the assessment of Kumari Jayapratha for the assessment year 1983-84 also.

11. As already stated supra, Kumari Jayapratha cannot be the real owner of the demised property and the revision petitioner should alone be the real owner of the property. It is also the settled legal position that there can be a protective assessment, but penalties can be levied only after assessment orders are passed and not before assessment order, that is, there can be no levy of protective penalty. The prosecution has been launched against the revision petitioner while protective assessment was made by the Income Tax Department for the assessment year 1983-84. While protective penalty cannot be levied under protective assessment, it is doubtful whether prosecution can be launched against the assessee for the abovesaid purposes under the Act. This court asked learned counsel appearing for the revision petitioner as well as for the Department to bring to the notice of this court the present legal position on this point. Both learned counsel submit that there is no settled law on this point as on date. This court, at this stage, wanted to know about the developments in the protective assessment made against the revision petitioner for the assessment year 1983-84 and also about the stand taken by Kumari Jayapratha, with regard to the ownership of the demised property. For this, learned counsel appearing for the respondent-Department submitted that the assessee, Kumari Jayapratha, submitted a petition u/s 119(2)(b) of the Act to the Government of India, Central Board of Direct Taxes, New Delhi, with regard to the dispute in the assessment and the said Central Board of Direct Taxes, New Delhi, passed an order, dated September 13, 1994, directing the Income Tax authorities to assess Kumari Jayapratha on all incomes that are the subject-matter of assessment proceedings from all sources and in determination of such income, the incomes relating to the personal exertions of her near relatives, viz., brothers, sisters and mother, would be given a set off. It is also directed in the said order, according to learned counsel for the respondent-Department, that the income of those individuals will be assessable in their hands and interest under Sections 215 and 217 would be

waived for and up to the assessment year 1988-89 for the period beyond one year from the date of filing of the returns. It was also submitted that the Central Board of Direct Taxes, New Delhi, directed to compound all technical offences under the new scheme by initiating suitable steps in this regard. In pursuance of the said direction, according to learned counsel appearing for the Department, an assessment order, dated March 24, 1997, for the assessment year 1983-84 was passed in connection with Kumari Jayapratha, wherein the purchase of the property at No. 2, First Cross Street, Lake Area, Nungambakkam, Madras, for Rs. 6,75,000 was also taken into consideration and a sum of Rs. 1,56,000 was taken as emanating from the revision petitioner while the balance investment of Rs. 5,19,000 was from Kumari Jayapratha in connection with the said transaction. The records in connection with the abovesaid direction were produced before the court for verification and return and a copy of the said proceeding was also submitted to the court by learned counsel appearing for the respondent-Department. Learned counsel appearing for the revision petitioner accepts the submission made by learned counsel for the respondent-Department as a subsequent development and is not disputing the said position.

12. Normally, courts will not act on documents, which are not filed before the court. But, in this case, both sides concede about the development referred to above in the assessment for the assessment year 1983-84, in connection with the assessment of the revision petitioner as well as her sister, Kumari Jayapratha, and both sides are not averse to considering the abovesaid development. This court also feels that remanding the matter back to the trial court for giving opportunity to both sides to produce documents with regard to the subsequent development will only lead to further harassment of the parties and protracted legal proceedings between them. In view of the said position and in the interest of justice, this court is inclined to take into consideration the subsequent developments referred to above by learned counsel for the respondent-Department and acceptance given by learned counsel for the revision petitioner. If the said developments are taken into consideration, it is evident that the revision petitioner had invested only Rs. 1,56,000 in the purchase of the demised property and the investment of Kumari Jayapratha in the said transaction was Rs. 5,19,000. Kumari Jayapratha was subject to levy of Income Tax in the said assessment for the said sum of Rs. 5,19,000 while the admitted taxable income of Rs. 1,56,000 of the revision petitioner has also been taken into consideration by the authorities concerned. If the said subsequent development with regard to the investment made on the demised property by both the sisters are taken into consideration, the revision petitioner is liable to pay tax only on the admitted taxable income of Rs. 1,56,000 for the assessment year 1983-84 and Kumari Jayapratha has to pay Income Tax for the balance amount of Rs. 5,19,000 during the said assessment year.

13. A perusal of the application filed u/s 230A(1) of the Act, by the revision petitioner, would disclose that the property was shown to have been purchased by her from P. W. 3 for a sum of Rs. 2,40,000. The tax payable by the revision

petitioner in connection with the abovesaid sale transaction was for Rs. 1,56,000, even according to the Income Tax Department. If that be so, the question of wilful evasion of tax for penalty or interest chargeable or imposable under the Act in connection with the abovesaid transaction on the part of the revision petitioner will not arise, as rightly contended by learned counsel for the revision petitioner. Therefore, this court is of the opinion that the conclusion arrived at by the trial court and the confirmation made by the appellate court for the offence u/s 276C of the Act for evasion of Income Tax against the revision petitioner cannot be sustained.

14. As already pointed out by this court, the assessment made was a protective assessment for the assessment year 1983-84 against the revision petitioner and even protective penalty cannot be levied before finally settling the assessment. If personal liberties are curtailed by prosecuting an assessee even before settling the assessment of such assessee finally, it will lead to untold miseries and hardships to the assessee in the event of the assessee being found not liable to answer the claim made by the Income Tax Department.

15. In Income Tax Officer Vs. Gadamsetty Nagamaiah Chetty and Others, , the High Court of Andhra Pradesh has held as follows (headnote):

"The punishment under Sub-sections (i) and (ii) of Section 277 of the Income Tax Act, 1961, arises only if there is any evasion of tax, otherwise the question of imposing punishment does not arise."

16. As already pointed out, the revision petitioner was assessed under a protective basis and not finally for the assessment year 1983-84, without prejudice to the stand to be taken by Kumari Jayapratha as the real owner of the demised property under consideration at the time of initiating action by filing this complaint. In the subsequent development, Kumari Jayapratha was taxed for a sum of Rs. 5,19,000 out of the sale consideration referred to above. While the taxable income of the revision petitioner was accepted by the Income Tax Department at Rs. 1,56,000 for the assessment year 1983-84, payment of Income Tax for the entire sale consideration by the revision petitioner will not arise and if the said circumstance is taken into consideration, in the light of the decision referred to above, this court is of the opinion that the revision petitioner cannot be punished for the offence u/s 277 of the Act also. In view of the said position, this court holds that the assessee/revision petitioner cannot he prosecuted while protective assessment is under consideration. Accordingly, the conviction made by the trial court and confirmed by the first appellate court under Sections 276C(1) and 277 (two counts), of the Act cannot be sustained and the same is accordingly set aside.

17. The fact remains that the demised property was purchased by the revision petitioner from P. W. 3 V. Seshamma on November 22, 1982, under the original of exhibit P-41, for a sum of Rs. 5,70,000 and not Rs. 2,40,000, as mentioned in the application filed u/s 230A(1) of the Act, as seen in exhibit P-38, along with

the verified statement in the form annexed to it, as seen in exhibit P-39, letter exhibit P-40 and a copy of the sale deed exhibit P-41, etc. The attempt made on the side of the revision petitioner that the revision petitioner had no knowledge about the sale transaction and passing of consideration of Rs. 5,70,000 was not accepted by the Income Tax Department in view of the seizure of documents during the course of the search conducted at various places. The evidence available before this court also confirms that the revision petitioner should have known that the demised property was purchased for a sum of Rs. 5,70,000 and not for Rs. 2,40,000 as mentioned in the sale deed executed by P. W. 3 in favour of the revision petitioner. The revision petitioner, after having known that the sale consideration for the demised property was Rs. 5,70,000, has produced the copy of the said sale deed before the Income Tax authorities by filing a petition u/s 230A(1) of the Act for issue of a certificate, along with a declaration and verification in the relevant form, mentioning the sale consideration as Rs. 2,40,000. In Ishwarlal Girdharlal Parekh Vs. State of Maharashtra and Others, , it has been held that the order of assessment does create a right in the assessec in the sense that he has a right to pay tax only on the total amount assessed therein and his liability to pay tax is also restricted to that extent. It is also held that an order of assessment is also a valuable security u/s 420, Indian Penal Code. If the abovesaid facts, coupled with the decisions referred to above, are taken into consideration, it is clear that the revision petitioner has committed an offence punishable u/s 420 read with Section 511 of the Indian Penal Code.

18. A perusal of Section 193, Indian Penal Code, would disclose that "whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine". It is also evident from the abovesaid section that "whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine". A perusal of Section 136 of the Act would also disclose that "any proceeding under this Act before an Income Tax authority shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code and every Income Tax authority shall be deemed to be a civil court for the purposes of Section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973". Therefore, it is evident that any proceeding before the Income Tax authority is deemed to be a judicial proceeding. In this case, the revision petitioner had filed a copy of the sale deed, mentioning the sale consideration of Rs. 2,40,000, along with verified statements in relevant forms as mentioned above for obtaining a certificate u/s 230A(1) of the Act. A deceptive method was adopted by the revision petitioner for obtaining a certificate mentioned above. This will certainly amount to commission of an offence punishable u/s 193, Indian Penal Code, read with Section 136 of the Act. Therefore, this court concurs with the concurrent

findings of the trial court as well as the appellate court that the revision petitioner has committed offences u/s 420, Indian Penal Code, read with Section 511, Indian Penal Code, read with Section 136 of the Income Tax Act, 1961.

19. Learned counsel for the revision petitioner contends that no opportunity was given by the respondent-Department to the revision petitioner and, therefore, launching of prosecution against the revision petitioner is bad. Learned counsel appearing for the respondent-Department contends contra relying on the decision reported in Union of India and Another Vs. Banwari Lal Agarwal, , wherein it has been held as follows (head-note) :

"Sub-section (2) of Section 279 of the Act is a provision which enables the Chief Commissioner or the Director-General to compound any offence either before or after the institution of the proceeding. There is no warrant in interpreting this sub-section to mean that before any prosecution is launched, either a show-cause notice should be given or an opportunity afforded to compound the matter. The enabling provision cannot give a right to a party to insist on the Chief Commissioner or the Director General to make an offer of compounding before the prosecution is launched."

20. In the light of the decision referred to above, the submission made on the side of the revision petitioner that the prosecution is bad for want of giving opportunity to the revision petitioner cannot be sustained.

21. The last and final submission made in this case by learned counsel for the revision petitioner, relying on K.T.M.S. Mohd. and another Vs. Union of India, is that the application u/s 230A(1) of the Act was filed before the Income Tax Officer, Special Survey Circle, Madras-6, but the prosecution was launched by the Income Tax Officer, Special Investigation Circle-III, Madras-34, and, therefore, the complaint filed by the complainant against the revision petitioner is not sustainable. A perusal of the proceedings of the Commissioner of Income Tax (Investigation), Madras-34, would disclose that the abovesaid Commissioner of Income Tax, after considering the material evidence placed before him, has come to the conclusion that the revision petitioner should be prosecuted for the offences under Sections 276C(1) and 277 of the Income Tax Act, as seen in exhibit P-37 and directed the complainant herein to file the complaint before the competent court. Under the said direction of the Commissioner of Income Tax (Investigation), Madras-34, the complainant has lodged the complaint. Therefore, it cannot be said that filing of the complaint was without jurisdiction. In the decision referred to above by learned counsel for the revision petitioner a statement was recorded u/s 39 of the Foreign Exchange Regulation Act, 1973, by the Enforcement Officers only in exercise of the powers conferred under the abovesaid section of the Act from one K and J with regard to payment of some money received and paid as per the direction of another person. The said receipt of money and disbursement was accepted by K and J in the statement, who subse-quently retracted the said admission in writing, by sending a communication to the Deputy Director of Enforcement Directorate stating that

the statement was not voluntary but obtained under threat and force. After coming to know about the raid and recording of the statement by the Enforcement Wing Officer in a raid, the Income Tax Officer of Karaikudi issued summons to K and J and obtained statements from them. The statements made by K and) were similar to the retracted statements made by both persons subsequently. It is based on the statements and retracted statements made subsequently by K and J along with A who received some payments from K, that a complaint was filed against all the three u/s 120B read with Section 193 of the Indian Penal Code and u/s 277 of the Income Tax Act, 1961, read with Section 193 of the Indian Penal Code. The statements of K and J were claimed to have been made u/s 39 of the Foreign Exchange Regulation Act, and the same was not rebutted by the Income Tax Department. It is under the said circumstance that the apex court was pleased to hold that the Foreign Exchange Regulation Act and the Income Tax Act were two separate and independent special Acts operating in two different fields, that the ambit, scope and intendment of the two Acts were entirely different and dissimilar and that, therefore, the significance of a statement recorded under the provisions of the Foreign Exchange Regulation Act during the investigation or proceedings under that Act so as to bring them within the meaning of judicial proceeding must be examined only qua the provisions of that Act and not with reference to the provisions of any other alien Act or Acts such as the Income Tax Act. It has also been held, under the said circumstances, by the apex court that the authorities under the Income Tax Act could not legally launch a prosecution for perjury on the basis of a statement recorded by the Enforcement Officer. This decision rendered by the apex court in the circumstances of that case can have no application to the circumstances of this case and, therefore, the said decision will not in any way help learned counsel for the revision petitioner to establish that the complaint as laid down by the complainant cannot be maintained. In view of the foregoing reasons, the conviction and sentence imposed for the offences proved against the revision petitioner u/s 420 read with Section 511 of the Indian Penal Code and Section 193 of the Indian Penal Code, read with Section 136 of the Income Tax Act, 1961, cannot be interfered with.

22. In fine, the conviction and sentence imposed on the revision petitioner u/s 420 read with Section 511 of the Indian Penal Code and Section 139 of the Indian Penal Code read with Section 136 of the Income Tax Act, 1961, are confirmed and the criminal revision petition filed by the revision petitioner against the said conviction and sentence is dismissed. The conviction and sentence imposed against the revision petitioner for the offences u/s 276C(1) and Section 277 (two counts) of the Income Tax Act, 1961, are set aside and the accused shall stand acquitted of the abovesaid offences under the Income Tax Act, 1961. The revision petition is allowed to that extent in part. The trial court is hereby directed to take appropriate steps to apprehend the revision petitioner to undergo the unspent portion of the period of sentence.