(2000) 02 MAD CK 0015

In the Madras High Court

Case No : Criminal Reference Case No. 648 of 1996 3 February 2000 A.Y. 1983-84

P. SOUNDARYA APPELLANT

Vs

INCOME TAX OFFICER RESPONDENT

Date of Decision : 03-02-2000

Acts Referred:

Income Tax Act, 1961 — Section 132
Penal Code, 1860 (IPC) — Section 193

Citation : (2001) 168 CTR 447 : (2001) 113 TAXMAN 534

Hon'ble Judges : P. Thangavel, J

Bench : Division Bench

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

Judgement

This criminal revision petition has been filed against the judgment, dated 19-8-1996, in Crl. A. No. 248 of 1989 on the file of the learned Principal

Sessions Judge, Madras, confirming the judgment, dated 6-11 -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, 1961 (hereinafter referred to as ''the Act''), on 17-2-1983, a statement was recorded from the revision

petitioner with regard to the purchase of the house bearing Door No. 20, I Cross Street, Lake Area, Nungambakkam, Madras, on 22-11-1982, 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 the 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 17-2-1983, the office premises of Hariharan & Co., Chartered Accountants, who were attending to the

Income Tax matters of Kumari Jayapratha, was also searched u/s 132 and inter alia, a receipt, dated 31-8-1982, signed by Smt. V. Seshamma,

acknowledging the receipt of advance amount towards sale of the house bearing Door No. 20, I 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 23-2-1983 and the statement of Smt. V. Sesharnma, was recorded u/s

132(4), 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 30-3-1983 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 30-3-1983 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 Act, on 12-5-1983 for issue of a certificate in her favour for setting 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 Act. Issue of 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 that the complainant has filed the complaint against the revision petitioner, stating that she has committed offences punishable u/s

193 of the Indian Penal Code, 1860, read with section 136 of the Income Tax Act, section 420 IPC, read with section 511 IPC and sections

276C(i) and 277 of the Income Tax Act.

4. The complainant has examined P.Ws. 1 to 6 and filed Exs.P-1 to P-42. The revision petitioner has examined D.W. 1 and filed Exs. D-1 and D-

2, in support of her case. Of the 7 charges framed against the revision petitioner, the learned Trial Judge found the accused not guilty under charge

Nos. 3 and 6, but found her guilty under charges 1, 2,4,5 and 7 and sentenced her to undergo R.I. for three months and also to pay a fine of Rs.

3,000, in default, to undergo R.I. for 4 months for the offence u/s 420, read with section 511 IPC; to undergo R.I. for 3 months and also to pay a

fine of Rs. 3,000 in default, to undergo R.I. for 4 months for the offence u/s 193 IPC, read with section 136 of the Income Tax Act; to undergo

R.I. for 6 months and also to pay a fine of Rs. 500, in default, to undergo R.I. for 6 weeks for the offence u/s 276C(1) of the Income tax Act and

to undergo R.I. for 6 months and also to pay a fine of Rs. 500, in default, to undergo R.I. for 6 weeks, for the offence u/s 277 of the Income Tax

Act (2 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 6-11-1989, 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 19-8-1996 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. Smt. Seshamma 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 Telegu and Tamil movies and

were living in Door No. 1, Hindi Prachara Sabha Road, T. Nagar, Madras 17. On 17-2-1983, when a search was conducted at the aforesaid

address, u/s 132 in connection with the Income Tax assessment of Kumari Jayapratha, a statement u/s 132(4) was recorded from the revision

petitioner, by the Income Tax authorities, with regard to the purchase of a house situate at Door No. 20, I Cross Street, Lake Area,

Nungambakkam, Madras, from P.W.3 Smt. V. Seshamma, who is the wife of P.W-4 Thiru V. Dhinakar Reddy. Ex.P-2 is the statement given by

the revision petitioner to P.W1, on 17-2-1983. In the said statement, the revision petitioner has claimed to have purchased the said property from

P.W3, for a sum of Rs. 2,40,000. Admittedly, P.W.3 Seshamma was examined by P.W. 1 and P.W.3 had also given a statement that the above-

said house owned by her was sold to the revision petitioner for a sum of Rs. 2,40,000 as seen in Ex.P-4, dated 23-3-1983. It is equally not in

dispute that the office premises of Hariharan & Co., Chartered Accountants of Kumari Jayapratha, was also searched u/s 132 and some

documents were seized, as shown in the mahazar Ex.P- 15. Ex.P- 16 in the list of certain letters shown in the mahazar Ex.P-15. Item No. 9 in

Ex.P-16 relates to the files of Kumari Jayapratha. In that file Ex.P- 18, a receipt dated 31-3-1983, issued by P.W.3 Seshamma, in connection

with the receipt of advance amount and the sale consideration, is found. A perusal of Ex.P/18 would disclose that P.W.3 had given the stamped

receipt, stating that the property belonging to her, situate at No. 20,I 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 vide 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 Ex.P-18 to P.W.1, as seen in Ex.P- 12, dated 30-3-1983 and also sent a letter

dated 30-3-1983 as seen in Ex.P-9, to the Income Tax department. P.W-4 Dhinakar Reddy gave a statement as seen in Ex.P-8, dated 5-3-1983

to P.W1 and also attested the statement of P.W.3, Ex.P-12, as seen in Ex.P-13. In all the statements referred to above, and also in the attestation 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 sale deed Ex.P- 11, in Ex.P-4, 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 Ex.P-22 to P-36 would lend support in the light of the Ex.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 Ex.P-4 and also by the revision petitioner as seen in Ex.P-2. The

admitted 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 Ex.P-41, dated 22-11-1982, 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) for issuance of a certificate as seen in Ex.P-38, dated 12-5-1983 before

the Income Tax authorities along with Form No. 37 and copy of sale deed Ex.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) 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 for herself 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 used 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. Ex.D-1, dated 31-3-1983 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. Ex.D-1 would disclose that the total income of the revision petitioner was determined under 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 ef Ex.D- 1 would disclose that the assessment made in connection with the income of the revision petitioner was only a protective basis

assessment and not actual assessment. Ex.D-2 is the assessment order of Kumari Jayapratha for the assessment year 1983-84, on 17-11-1986. A

perusal of Ex.D-2 would disclose that the Income Tax authority had come to the conclusion in the said assessment order that Kumari Jayapratha

had incurred 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 also mentioned in the said assessment order Ex.D-2 that Kumari Jayapratha is the real owner of the property. Based on the

abovesaid contents in the assessment order, the 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. The leaned counsel for the respondent contends contra, by relying on the decision 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.

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), 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 the 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.

9. The learned counsel for the revision petitioner contends that the revision petitioner has not wilfully attempted to evade payment of tax or made

any false statement and delivered the same to the Income Tax authorities, knowing full 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 office punishable under sections 276C(1)

and 277. The learned counsel appearing for the respondent contends contra, stating that the verified false statement filed u/s 230A(1) will

constitute an offence punishable under sections 276C(1) and 277 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

protective assessment and without prejudice to the stand to be taken in the case of Kumari Jayapratha as 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.

10. 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 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, against the revision petitioner. 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 the 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 the learned counsels 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, the 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 13-9-1994, 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 the 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 the learned

counsel appearing for the department, an assessment order, dated 24-3-1997 for the assessment year 1983-84, was passed in connection with

Kumari Jayapratha, wherein the purchase of the property at No. 2, I Cross Street, Lake Area, Nungampakkam, 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 the learned counsel

appearing for the respondent-department. The learned counsel appearing for the revision petitioner accepts the submission made by the learned

counsel for the respondent-department as subsequent development and is not disputing the said position.

11. Normally the 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 consider 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 the learned counsel for the respondent-department

and acceptance given by the 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 so, 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 developments 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.

12. A perusal of the application filed u/s 230A(1) by the revision petitioner would disclose that the property was shown to have been purchased

by her from PW.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

the 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 for evasion of Income Tax against the revision petitioner cannot be sustained.

13. As already pointed out by this court, the assessment made was 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.

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

The punishment under clauses (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.

As already pointed out, the revision petitioner was assessed under 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 opinion that the revision petitioner cannot be

punished for the offence u/s 277 also. In view of the said position, this court holds that the assessee/revision petitioner cannot be prosecuted while protective assessment is under consideration. Accordingly, the conviction made by the trial court and confirmed by the appellate court under

sections 276C(1) and 277 (two counts), of the Act cannot be sustained and the same is, accordingly, set aside.

15. The fact remains that the demised property was purchased by the revision petitioner from P.W.3 V. Seshamma on 22-11-1982 under the

original of Ex.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), as seen in Ex.P38, along

with the verified statement in the form annexed to it, as seen in Ex.P-39, letter Ex.P-40 and copy of the sale deed Ex.P-41, etc. The attempt made

on the side of the revision petitioner before the Income Tax authorities to contend 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 a copy of the said sale deed before the Income Tax authorities by filing a petition u/s 230A(1) 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 not create a right in the assessee 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. 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 IPC.

16. A perusal of section 193, IPC, 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 purpose 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 form as mentioned above for obtaining a certificate u/s 230A(1). 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 of the IPC, read with section 136 of the Income Tax 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 read with section 511 of the IPC and

section 193 of the IPC, read with section 136 of the Income Tax Act.

17. The 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. The learned counsel appearing for the respondent-department

contends contra relying on the decision in Union of India and Another Vs. Banwari Lal Agarwal, , wherein it has been held as follows:

. . . sub-section (2) of section 279 (of the Income Tax Act) is a provision which enables the Chief Commissioner or the Director-General to

compound any offence either before or after the institution of 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 aright to a party to insist on the Chief Commissioner or the Director General to make an offer of compounding before the

prosecution is launched.

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.

18. The last and final submission made in this case by the 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) 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 (Investigation), Madras-34, would disclose that

the abovesaid Commissioner, 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, as seen in Ex.P-37 and directed the complainant herein to file the

complaint before the competent court. Under the said direction of the Commissioner (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 the 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

subsequently 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 statements 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 J were similar to the retracted statements made by both the 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; a complaint was filed against all the three,

u/s 120B, read with section 193 of the IPC and u/s 277 of the Income Tax Act, read with section 193 of the IPC. 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, 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 provision 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 only qua the provisions of that

Act and not with reference to the provisions of any other alien Act or Acts such as the 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 the 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 sections 511 and 193 of the IPC, read with section 136, of the Income Tax Act,

cannot be interfered with.

19. In fine, the conviction and sentence imposed on the revision petitioner u/s 420, read with section 511 and section 193 of the IPC, read with

section 136 of the Income Tax Act, 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 (2 counts)

of the Income Tax Act, are set aside and the accused shall stand acquitted of the abovesaid offences under the Income Tax Act. 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.

