(1994) 09 MAD CK 0053

In the Madras High Court

Case No : Criminal Original Petition No. 8930 of 1992

Panchu Arunachalam	APPELLANT
Vs	
Income Tax Officer	RESPONDENT

Date of Decision : 19-09-1994

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 276(C(1)), 276(C), 277

Citation : (1995) 214 ITR 733

Hon'ble Judges : Rangasamy, J

Bench : Single Bench

Advocate : M. Gunasekaran, for the Appellant; Ramasamy K., for the Respondent

Judgement

Rengasamy, J.—This petition u/s 482 of the Criminal Procedure Code is filed to quash the proceedings, namely, C.C. No. 30 of 1992,

pending on the file of the Second Additional Chief Metropolitan Magistrate Court, (E.O. II), Egmore, Madras.

2. The petitioner has been charged with the offences under sections 276C(1) and 277 of the Income Tax Act, 1961, and sections 193, 196 and

420 of the Indian Penal Code.

3. In the complaint, the Income Tax Officer has alleged that the petitioner herein has suppressed his real income and Rs. 3,00,000 being the royalty

amount which he received has been suppressed in the return filed by him and later on it was found that this income has not been shown in the return

and, therefore, he is liable to be punished for the offences under the sections mentioned above.

4. The petitioner has filed this petition to quash the proceedings on the ground that he has filed an appeal before the Appellate Tribunal against the

order of assessment made by the Commissioner of Income Tax and therefore, the proceedings against him before the Second Additional Chief

metropolitan Magistrate shall be quashed.

5. Learned counsel appearing for the petitioner argues that this complaint before the Second Additional Chief Metropolitan Magistrate has been

field on the basis of the observations made by the commissioner of Income Tax as though this petitioner has suppressed his real income and the

observation of the Commissioner cannot be a basis for filing this complaint. The second contention is that as he has preferred an appeal before the

Appellate Tribunal against the order of the Commissioner of Income Tax and as he has a good chance of success in the appeal, and if the appeal is

allowed then the question of prosecution will not arise, and, therefore, these proceedings have to be quashed.

6. With regard to the first contention on a perusal of the complaint, I find that in paragraphs 8 to 10, the complainant has specifically mentioned that

he was able to find out the suppression of the real income of the petitioner by his own probe and in paragraph 9, he has more specifically stated

that Rs. 3,00,000 of royalty has been omitted to be mentioned in the return filed by the petitioner and this will amount to an offence of fabricating

false evidence sustainable u/s 193 of the Indian Penal Code. In view of these specific averments in the complaint it cannot be taken that this

complaint was filed on the direction of the Commissioner of Income Tax in his order.

7. Then coming to the next contention regarding the pendency of the appeal before the Tribunal, the Supreme Court in P. Jayappan Vs. S.K.

Perumal, First Income Tax Officer, Tuticorin, has held that the pendency of the reassessment proceedings could not act as a bar to the institution of

criminal prosecution for the offences punishable u/s 276C or section 277 of the Income Tax Act, 1961. The Magistrate has to independently

assess the evidence to find out whether there is any fabrication of evidence suppressing the real income for the purpose of reducing the actual

income. Therefore, the proceeding before the magistrate is independent and the assessment proceedings are before the assessment authorities.

Hence, the pendency of the appeal before the Income Tax authorities will not be a bar to proceeding with the complaint. For these reasons the prayer of the petitioner to quash the proceedings cannot be conceded to.

8. In the result, the petition is dismissed.

