(1995) 09 KL CK 0024

In the High Court Of Kerala

Case No : Criminal Miscellaneous Case No''s. 1923, 2337 and 2338 of 1993

P.K. Narayanan APPELLANT

Vs

Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 29-09-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 482
Income Tax Act, 1961 — Section 271, 276C, 277

Citation : (1996) 219 ITR 33

Hon'ble Judges : P.V. Narayanan Nambiar, J;B.M. Thulasidas, J

Bench : Division Bench

Advocate : S. Anantha Krishnan, for the Appellant; P.K. Ravindranatha Menon and N.R.K. Nair, for the Respondent

Judgement

P.V. Narayanan nambiar , J. 1. These cases came before the Division Bench on the basis of a reference made by one of us (Thulasidas J.) doubting the correctness of the decision reported in Premier Breweries Ltd. and Others Vs. Deputy Commissioner of Income Tax and Another, and for an authoritative pronouncement on the subject.

2. These applications are filed u/s 482 of the Code of Criminal Procedure for quashing the criminal complaints filed by the second respondent alleging that the common petitioner has committed an offence punishable under Sections 276C(1)(i) and 277(1) of the Income Tax Act, 1961. Copy of the complaint is produced as annexure "A" to these petitions.

3. The complaint is filed by the second respondent alleging that the accused, who is the petitioner herein, filed the Income Tax returns without disclosing his correct income. In other words, there is suppression of the income of the petitioner and the returns filed do not show his real income. According to the prosecution, the income from various sources has been " suppressed by the petitioner which will attract an offence punishable under Sections 271(1)(c) and 277 of the Income Tax Act.

4. Various grounds are taken up in the criminal miscellaneous cases. The main contention raised in the applications and pressed before us is that the basis for the prosecution is lost as the proceedings initiated by the Income Tax Department imposing penalty on the petitioner/accused for failure to disclose the correct income in the returns filed by him was set aside by the Commissioner of Income Tax (Appeals), Cochin, who is the appellate authority. Annexure "B" in Criminal Miscellaneous Cases Nos. 2357 and 2338 of 1993 are the order of the appellate authority and annexure "C" in Criminal Miscellaneous Case No. 1923 of 1993 is the order of the appellate authority relating to the complaint in that case.

5. Reliance was placed on a few decisions of this court in Madras Spinners Ltd. and Others Vs. Deputy Commissioner of Income Tax (Assessment), ; V. Rajasekharan Nair Vs. Commissioner of Income Tax and Others, ; Premier Breweries Ltd. and Others Vs. Deputy Commissioner of Income Tax and Another, and VANAJA TEXTILES LTD. AND OTHERS Vs. INSPECTING ASSISTANT COMMISSIONER OF Income Tax., for canvassing the position that when the appellate authority has set aside the penalty proceedings initiated by the Income Tax Department, a prosecution on the very same set of facts will not be maintainable and it has to be quashed. The decision of the Supreme Court in Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, also is pressed into service by the petitioner. Basing on Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, , counsel for the petitioner argued that the prosecution pending against the petitioner is a mere abuse of the process of the court and judicial time should not allowed to be wasted on meaningless litigation. The basis of the prosecution is totally nullified in view of the appellate orders, contends counsel.

6. In these proceedings, we are not inclined to consider the effect of the various decisions cited before us. We also do not propose to express our opinion regarding the contentions raised by the petitioner in these proceedings.

7. The complaints are pending before the court of the Additional Chief Judicial Magistrate (Economic Offences), Ernakulam. This is not the appropriate stage to consider the acceptability or otherwise of the contentions of the petitioner. The petitioner is at liberty to raise all his contentions before the trial court. He may even file an application before the trial court inviting a decision on the points raised by him. The decision reported in K.M. Mathew Vs. State of Kerala and another, can be pressed into service by the petitioner, if he wants a consideration on the points before the closure of the trial.

8. With these observations, the criminal miscellaneous cases are disposed of.

