(1987) 11 P&H CK 0078

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1104 of 1986

Pran Nath	APPELLANT
Vs	
Chief Judicial Magistrate and Others	RESPONDENT

Date of Decision : 02-11-1987

Acts Referred:
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 204
Income Tax Act, 1961 — Section 279

Citation : (1991) 192 ITR 70

Hon'ble Judges : Ujagar Singh, J

Bench : Single Bench

Advocate : V.K. Jindal, for the Appellant; A.K. Mittal, for the Respondent

Judgement

Ujagar Singh, J.

1.This petition arises out of facts similar to those involved in Criminal Writ Petition No. 454 of 1986, decided separately. Order of summoning is also exactly the same. Almost all the points relate to the facts to be gone into by the trial court, except the challenge to authorisation, annexure ''A'', attached with the complaint, serving of prior notices and summoning order having been passed in routine fashion without application of mind.

2. So far as authorisation of the complaint, vide annexure ''A'' to the complaint, the original order of the said Commissioner of Income Tax (Central), Ludhiana, is concerned, I have held that prima facie annexure ''A'' is sufficient to authorise the filing of the complaint and in case anything is found to be deficient by the complainant at the time of trial, it can be proved by leading evidence to show that all the papers were put up before respondent No. 3 before passing the order dated August 16, 1985, annexure ''A'' and it will be for the trial court to see whether this authorisation is legal or not.

3. The point with regard to service of prior notice has been held to be dependent

upon the evidence to be led at the time of trial, Provisions of Section 200 of the Code of Criminal Procedure (hereinafter called the "Code") provided that the trial court has to examine upon oath the complainant and the witnesses but a proviso added thereto gives discretion to the court not to examine the complainant and the witnesses, if a public servant, acting or purporting to act in the discharge of official duties or a court, made a complaint. In this case, the Income tax Officer (complainant) has filed this complaint acting as a public servant, in the discharge of his official duties and, therefore, the requirement of examining the complainant and his witnesses is inapplicable. The complaint is, undoubtedly, at the instance of the Commissioner as required by the provisions of Section 279 of the Income Tax Act, 1961.

4. The trial court has, no doubt, passed a cryptic order saying "Complaint presented today. It be registered and accused be summoned". This order of the trial court does not satisfy the provisions of Section 204 of the Code as held in my order in the said writ petition.

5. In view of my detailed order in the said writ petition, the order summoning the petitioner is bad and is not sustainable. This petition is, therefore, accepted and the summoning order is quashed. The trial court is directed to pass an order in accordance with law.