
(2009) 07 DEL CK 0094

In the Delhi High Court

Case No : Criminal M.C. 3138 of 2001

Prem Nath Diesels Pvt. Ltd. and Another

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 482

Income Tax Act, 1961 — Section 148, 256(1), 271, 276CC, 278E

Citation : (2009) 07 DEL CK 0094

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : Mohit Mathur, for the Appellant; Santosh Kohli, APP, for the Respondent

Judgement

Mool Chand Garg, J.—The petitioners have filed the present petition u/s 482 Cr.P.C. read with Article 227 of the Constitution of India for quashing of the proceedings in Criminal Complaint Case bearing No. 18/1 of 82 titled as "Shri Hari Narain v. Prem Nath Diesels and Anr." u/s 276CC of the Income Tax Act pending before the Court of Mr. J.P.S. Malik, ACMM, Delhi.

2. Briefly stating, the facts of this case are that on or about 20.03.1982, respondent No. 2 filed a complaint against the petitioners alleging commission of an offence u/s 276CC of the Income Tax Act. It was alleged by the complainant that petitioner No. 2 and others were required to file the Income Tax return of petitioner No. 1 for the Assessment Year 1980-81 on 30.6.1980. However, the petitioners allegedly failed to file the said return on or before the due date. It is further the case of the complainant that an extension of time was allowed on 30.11.1980 but the petitioners did not file the Income Tax return even upto the end of the Assessment Year 1981 i.e. upto 31.03.1981. It is further alleged in the complaint that on 13.05.1981, a notice u/s 148 of the Income Tax Act was issued, requiring the petitioners to file the Income Tax return, within one month from the date of receipt of the said Notice. It is pertinent to mention here that

the company received the said Notice on 21.05.1981 and the petitioners filed the Income Tax return only on 19.06.1981 i.e. two days prior to the expiry of the stipulated period. It is further the case of the complainant that the petitioners willfully failed to furnish the Income Tax return for the Assessment Year of 1980-81 within the stipulated period and, therefore, committed an offence u/s 276CC of the Income Tax Act.

3. The complaint was filed only on 20.03.1982 alleging commission of an offence u/s 276CC of the Income Tax Act and the learned ACMM after perusal of the said complaint issued summons against the petitioners on 26.03.1982. In compliance of the aforesaid order, the petitioners appeared before the trial court, who after recording the pre-charge evidence, directed the framing of charges against the petitioners vide its order dated 15.05.1987 and the charges were formally framed against the petitioners on 21.05.1987. Feeling aggrieved of the aforesaid orders, the petitioners approached this Court under its revisional jurisdiction vide Criminal Revision No. 177/1987, however, the said revision petition was dismissed by a learned Judge of this Court vide order dated 12.02.2001.

4. During the pendency of the proceedings, the Income Tax Officer had initiated penalty proceedings against the petitioners u/s 271(i)(a) of the Income Tax Act, for the delay in filing of the aforesaid Income Tax return. Against the aforesaid finding, the petitioners herein filed an appeal before the Commissioner of Income Tax (Appeals), who vide order dated 21.01.1988 held that in the facts of the case there was reasonable cause for delay in filing the Income Tax return and as such the penalty order was quashed. The Income Tax Department being aggrieved of this order filed an appeal before the Income Tax Appellate Tribunal, who is the final fact finding authority under the Income Tax Act. The Tribunal vide order its order dated 31.1.1991 confirmed the order of the Commissioner of Income Tax (Appeals) and dismissed the appeal of the Income Tax Department. Thereafter, against the order of the Income Tax Tribunal the Income Tax Department filed an application u/s 256(1) of the Income Tax Act, to refer the matter to the High Court. The said application was also rejected by the Income Tax Appellate Tribunal vide its order dated 6.11.1991.

5. The petitioners herein have also moved an application before the learned trial court seeking dropping the proceedings against them. However, the learned trial court dismissed the application of the petitioners vide its order dated 12.07.2001. In these circumstances, the petitioners seek the leave of this Court to invoke its inherent jurisdiction as contained u/s 482 Cr.P.C. read with Article 227 of the Constitution of India.

6. It is the contention of the petitioners that once the order of the Income Tax Officer imposing penalty against them u/s 271(i)(a) of the Income Tax Act for delay in the filing of the Income tax return was set aside by the Commissioner of Income Tax (Appeals) vide order dated 21.1.1988 which was upheld by the Income Tax Appellate Tribunal vide its order dated 31.1.1991 and that once the Income Tax Department has exonerated the petitioners with respect to the order

imposing penalty upon them in having filed the income tax return belatedly, the question of prosecuting the petitioners by the present complaint tantamount to an abuse of process of court. It has been submitted that the Apex Court in the judgments delivered in the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, and in the case of G.L. Didwania and Another Vs. Income Tax Officer and Another, has been pleased to hold that once the departmental proceedings exonerates the petitioner with respect to the same cause of action for which complaints are being filed, the continuation of the complaint proceedings should not be permitted as there is no reason to prosecute the accused for the same offence for which he stands exonerated by the department in the departmental proceedings.

7. Reference has also been made to a case decided by the Apex Court titled as Bandhu Machinery Pvt. Ltd. and Ors. v. Assistant Commissioner of Income Tax, New Delhi, SLP (Criminal) 3945/02, wherein it has been observed by the Apex Court,

The question raised in this case for consideration is when penalty levied u/s 271(1)(c) of the Income Tax Act, for concealment of income has been cancelled by the Appellate Authority whether a prosecution can be continued u/s 276C of the Act.

8. Reference has also been placed upon a judgment delivered by this Court in the case of Sunil Gulati v. R.K.Vohra and Ors. 2007 1 JCC 220, wherein it has been held,

On the same violation alleged against a person, if adjudication proceedings as well as criminal proceedings are permissible, both can be initiated simultaneously. For initiating criminal proceedings, one does not have to wait for the outcome of the proceedings are independent in nature.

The findings in the departmental proceedings would not, amount to re-judicata and initiation of criminal proceedings in these circumstances can be treated as double jeopardy as they are not in the nature of "prosecution".

In case adjudication proceedings are decided against a person who is facing prosecution as well and the Tribunal has also upheld the findings of the adjudicators/assessing authority, that would have no bearing on the criminal proceedings and the criminal proceedings are to be determined on its own merits in accordance with law, uninhibited by the findings of the Tribunal. It is because of the reason that insofar as criminal action is concerned, it has to be proved as per the strict standards fixed for criminal case before the criminal court by producing necessary evidence.

In case of converse situation namely where the accused persons are exonerated by the competent authorities/Tribunal in adjudication proceedings, one will have to see the reasons for such exoneration to determine whether these criminal proceedings could still continue. If the exoneration in department adjudication is

on technical ground or by giving benefit of doubt and not on merits or the adjudication proceedings were on different facts, it would have no bearing on criminal proceedings. If, on the other hand, the exoneration in the adjudication proceedings is on merits and it is found that allegations are not substantiated at all and the concerned person(s) is/are innocent, and the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution cannot be allowed to continue.

The reason is obvious criminal complaint is filed by the departmental authorities alleging violation/contravention of the provision of the Act on the part of the accused persons. However, if the departmental authorities, themselves, in adjudication proceedings, record a categorical and unambiguous finding that there is no such contravention of the provisions of the Act, it would be unjust for such department authorities to continue with the criminal complaint and say that there is sufficient evidence to foist the accused persons with criminal liability when it is stated in the departmental proceedings that *ex facie* there is no such violation. The yardstick would, therefore, be to see as to whether charges in the departmental proceedings as well as criminal complaint are identical and the exoneration of the concerned persons in the departmental proceedings is on merits holding that there is no contravention of the provisions of the any Act.

9. Reference has also been made to a judgment delivered by this Court in the case of *The Printer House Pvt. Ltd. v. Nishi Singh* 2009(2) JCC 1279, wherein it has been held,

In view of the aforesaid once a departmental adjudication exonerates the petitioners on merits and there is a finding that there was no evasion of tax the question of culpable state of mind cannot be presumed and for that reason even the complaint filed by the petitioner which is based upon their original assumption would not survive.

10. It may also be appropriate to take note of the peculiar facts of this case to find out as whether non-filing of return was willful or deliberate which is the basis of filing of a criminal complaint. In this regard, it may be observed that in accordance with the petitioners in the instant case there was no delay in filing the said return, as the notice u/s 148 of the Income Tax Act was sent on 13.05.1981 and was received only on 21.05.1981 and the return was in fact filed on 19.06.1981 i.e. prior to the expiry of the stipulated period. Further, even if the respondent's version is to be believed to be true, then also there was only a delay of four days in filing the return, which could not be a case of tax evasion and which was successfully shown to be due to reasonable cause, as is evidenced by the finding of the Income Tax Appellate Tribunal vide its order dated 31.01.1991.

11. The respondents approached the petitioner by relying upon the provisions of Section 278E of the Income Tax Act, 1961, which reads as under:

278E (1) In any prosecution for any offence under this Act which requires a

culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charges as an offence in that prosecution.

Explanation.-In this Sub-section, "culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

12. However, it is a matter of record that the said provision was inserted in the Income Tax Act by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986 with effect from 10.9.1986 and as such is not applicable to the present case because the return which was required to be filed in this case pertains to the Assessment Year 1981 and has been filed before the lodging of the complaint and before insertion of the amended provisions in the Income Tax Act. In these circumstances, I find strength in the arguments addressed on behalf of the petitioners that in the present case no fruitful purpose will be served in allowing continuation of the proceedings which are based upon non-filing of the return within time but it has been filed subsequently and the penalty proceedings initiated against the petitioners stands exonerated by the Commissioner of Income Tax (Appeals) and confirmed by the Income Tax Appellate Tribunal, which is the highest body in this regard.

13. Moreover, the continuation of the criminal proceedings in the facts of this case would tantamount to abuse of process of this Court and would require interference of this Court u/s 482 Cr.P.C. to stop that abuse. Accordingly, I allow the petition filed by the petitioners. Consequently, the Criminal Complaint case bearing No. 18/1 of 82 titled as "Shri Hari Narain v. Prem Nath Diesels and Anr." pending before the court of ACMM, Delhi is quashed. The bail bonds, if any, of the petitioners also stand discharged. Trial court record along with a copy of this judgment be sent back forthwith to the ACMM for intimation.

Crl. M. Nos. 3948/2001 and 2165/2003

In view of the orders passed above, nothing further survives in these applications and the same are accordingly disposed of. Interim orders, if any, stands vacated.