

(2000) 02 KL CK 0034

In the High Court Of Kerala

Case No : Criminal R.P. No. 1036 of 1999-B

R. Bharathan

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 09-02-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245, 245(1), 276C(1), 277
Income Tax Act, 1961 — Section 276, 277

Citation : (2000) 164 CTR 23 : (2000) 246 ITR 538

Hon'ble Judges : K.A. Mohamed Shafi, J

Bench : Single Bench

Advocate : C. Kochuni Nair, Arun Raj S. and P. Kurien, for the Appellant; P.K.R. Menon and George K. George, for the Respondent

Judgement

K.A. Mohamed Shafi, J.—This revision petition is filed by the accused in C. C. No. 34 of 1987 on the file of the Additional Chief Judicial Magistrate's Court (Economic Offences), Ernakulam, challenging the order dated September 15, 1999, disallowing the contention of the accused that he is entitled to be discharged u/s 245(1) of the Criminal Procedure Code, 1973, and directing to frame charge against him.

2. The petitioner was prosecuted for the offences punishable under Sections 276C(1) and 277 of the Income Tax Act, 1961, on the basis of a complaint filed by the Income Tax Officer alleging that he filed false Income Tax return and deliberately suppressed the real turnover of his business and the profits made by him during the year 1981-82 and wilfully attempted to evade Income Tax payable by him.

3. It is alleged that the revision petitioner was a contractor in respect of arrack shops in Kazhakkootam Excise Range during the financial year 1981-82 (assessment year 1982-83). He filed a return of income for the assessment year 1982-83 on September 21, 1982, with the verification signed by him showing a net loss of Rs. 2,02,702 from his arrack business and a net profit of Rs. 3,28,639

from his toddy business, resulting in a net gain of Rs. 1,18,800. Subsequently, when he produced the certificate obtained from the Excise Inspector, Kazhakkottam Range, as directed by the respondent, it was revealed that he received 58,950 litres of arrack for arrack shops Nos. 26 to 35 in Kazhakkottam Range during the financial year 1981-82 and he had sold a total quantity of 59,995.192 litres of arrack. A search was conducted at the depot of the petitioner on March 5, 1985, and the daily stock register and other documents were seized. The daily stock register revealed that the petitioner had received 66,220 litres of arrack from Thiruvalla and 54,183 litres of arrack from Panthalam which shows that the petitioner had received 1,20,403 litres of arrack from these two centres as against 58,950 litres of arrack shown in the certificate issued by the Excise Inspector. It is also alleged in the complaint that purchase bills of arrack supplied to the other contractors were also seized during the search which revealed that the petitioner purchased arrack from other contractors. The daily stock register also showed that the petitioner had received 10,394 litres of arrack from Vilavancode Taluk in Kanyakumari District. These facts revealed that the petitioner had deliberately suppressed the trading account and other statements in the returns filed by him. Subsequently, the petitioner filed a cash flow statement for the financial year 1981-82 wherein he admitted receipt of arrack from other contractors over and above the monthly quota issued to him by the Government as per the certificate issued by the Excise Inspector. He also admitted that he had made a profit of Rs. 1,40,000 by sale of arrack received from other contractors. Therefore, according to the respondent, the above facts reveal that the petitioner wilfully filed a false return of income u/s 139 of the Income Tax Act for the assessment year 1982-83, deliberately suppressed real turnover and income and wilfully attempted to evade Income Tax payable by him and as such committed offences punishable under Sections 276C(1) and 277 of the Income Tax Act.

4. After the complainant's PW 1 and PW 2 were examined, the respondent contended that the petitioner should be discharged u/s 245(1) of the Criminal Procedure Code, since no prima facie case is made out against him. The learned Additional Chief Judicial Magistrate considered the said contention and passed the impugned order negating the same.

5. The vehement contention raised by the petitioner is that the allegations made by the complainant are found to be no more available in view of the decision of the Appellate Tribunal regarding" the same matter, a copy of which order was marked as exhibit P-15 before the lower court and, therefore, he is entitled to be discharged in the case. As already noted, the allegation made by the respondent against the petitioner is that he wilfully filed a false return of income u/s 139 of the Income Tax Act, deliberately suppressed the real turnover and income and wilfully attempted to evade the Income Tax payable by him and as such he is guilty of the offences punishable under Sections 276C(1) and 277 of the Income Tax Act.

6. The allegation in the complaint is that the petitioner has suppressed his income from the business. The Appellate Tribunal as per exhibit P-15 order found that the excess income over and above the return submitted by the revision petitioner should be considered as income from other sources and not as income from business, as alleged in the complaint. The fact that the petitioner had filed an Income Tax return u/s 139 of the Income Tax Act stating that he had incurred a net loss of Rs. 2,02,702 and, subsequently, it was revealed from the documents, which were not disputed by the petitioner, that he received a large quantity of arrack, much in excess of the quantity mentioned in the certificate obtained by him from the Excise Inspector and placed before the respondent is admitted by him. He also admitted that he had purchased arrack from other contractors. Further, he filed a cash flow statement stating that he made a profit of Rs. 1,40,000 by sale of arrack received by him from other contractors.

7. These allegations made by the complainant will stand even though the Appellate Tribunal had found that the excess income derived by the petitioner cannot be construed as income from business, but should be construed as income from other sources. Though the criminal court should consider the orders passed by the Appellate Tribunal and other authorities while considering the criminality of the assessee alleged in the complaint, if the revision petitioner had been absolved from the entire liability to pay Income Tax on the undisclosed or concealed income, then the contention of the petitioner that the above complaint filed against him will not stand has much force and should be accepted. In this case, the only finding of the Appellate Tribunal is that the undisclosed or concealed income from the Income Tax return has to be construed as income from other sources and not as income from business, as alleged by the respondent. Therefore, the contention of the petitioner that the very allegation made in the complaint being the basis of prosecution lodged against him has disappeared by the order passed by the Appellate Tribunal and, therefore, the respondent cannot prosecute him by making an entirely different allegation which is not stated in the complaint, is not at all sustainable. The entire allegations made by the complainant that the petitioner has wilfully filed a false return and wilfully attempted to evade the Income Tax payable by him for the assessment year 1982-83 will stand. Under the circumstances, the learned Additional Chief Judicial Magistrate was perfectly justified in negating the contention of the petitioner that he is entitled to be discharged u/s 245(1) of the Criminal Procedure Code, and I find absolutely no scope to challenge that finding.

8. Hence, the criminal revision petition is dismissed in limine.