
(1996) 10 PAT CK 0025

In the Patna High Court

Case No : Criminal Miscellaneous No. 13039 of 1991

Raghunath Pandey

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 01-10-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Income Tax Act, 1961 — Section 139(1), 139(8), 271(1), 276CC, 278E

Citation : (1998) 150 CTR 145 : (1998) 232 ITR 908 : (1998) 99 TAXMAN 371

Hon'ble Judges : Naresh Kumar Sinha, J

Bench : Single Bench

Advocate : Pawan Kumar Rajgarhiya and Chiranjiv Rangan, for the Appellant;
S.K. Saran, for the Respondent

Judgement

Naresh Kumar Sinha, J.—The question that calls for answer in this application u/s 482 of the Code of Criminal Procedure, 1973 (for short the Code), is whether the criminal prosecution of the petitioner in Complaint Case No. 418 of 1991, including the order dated September 30, 1991, of the learned Special Court (Economic Offences) taking cognizance u/s 276CC of the Income Tax Act, 1961, (hereinafter referred to as the Act), should be quashed in the exercise of inherent powers of this court ?

2. The complaint (annexure-1) filed by the Income Tax Officer alleged that the petitioner-Hindu undivided family is an assessee under the Income Tax Act and through its karta, the petitioner. The petitioner filed the return of income for the assessment year 1988-89 on March 26, 1990, although the due date for filing the return was July 31, 1988. The return disclosed a total income of Rs. 60,000 but the assessment was completed u/s 143(3) of the Act on a total income of Rs. 1,00,000 (one lakh). The tax payable on assessed income was Rs. 37,800 out of which Rs. 16,800 had been paid as advance tax. Since the tax payable on regular assessment exceeded Rs. 5,000 and the petitioner had wilfully failed to furnish the return of income in due time as required under Sub-section (1) of Section

139 of the Act, the petitioner had committed an offence punishable u/s 276CC of the Act. The complainant claimed to be a Government servant, and to have filed the complaint at the instance of the Commissioner of Income Tax as required u/s 279 of the Act. The original sanction order was attached with the complaint petition.

3. The case of the petitioner is that the filing of the prosecution against him is illegal and wholly without any basis. The necessary ingredient of an offence u/s 276CC of the Act is that the person must have wilfully failed to furnish the return of income and in the instant case, no statement has been made that the delay in filing the return is wilful. Moreover, since no order has been passed by the Income Tax Officer imposing any penalty u/s 271(1) of the Act, it cannot be said that the delay in filing the return was not on account of a reasonable cause. It is also stated that since the Income Tax Officer has not imposed any interest while passing the order of assessment, it is presumed that he had come to a finding that the delay in filing the return was not wilful. Another ground urged for quashing the prosecution is that the constitution of a special court at one place, that is, Muzaffarpur, for trial of economic offences committed throughout the State, was itself illegal being beyond the legislative competence of the State.

4. Shri Pawan Kumar Rajgarhiya, learned counsel for the petitioner, was fair enough to submit at the very outset that he would not be pressing the ground of illegal constitution of the special court for quashing the criminal prosecution. It is conceded that the position has since changed after the filing of the application in the year 1991 and the said ground is no more available to the petitioner. Shri Rajgarhiya, however, pressed the application mainly on two grounds. First, that the mere failure to file the return by the due date, does not constitute any offence u/s 276CC unless such failure is wilful and that there is no such allegation in the complaint. The second ground is that as no penalty has been imposed by the Income Tax Officer u/s 271(1) of the Act, it was not open to the authorities to deny that the delay in filing the return was not on account of reasonable cause and hence the prosecution was incompetent. Shri S. K. Saran, learned counsel appearing for the Revenue, contended that neither of the two grounds was available to the petitioner for the quashing of the criminal prosecution. Section 276CC of the Act provides for punishment if a person wilfully fails to furnish in due time the return of income which he is required to furnish under Sub-section (1) of Section 139, etc., of the Act. On the allegation made in the complaint, the due date for filing of the return of income for the assessment year 1988-89 was July 31, 1988, whereas the petitioner had filed the return of income on March 26, 1990. However, as rightly contended by Shri Rajgarhiya, mere failure to furnish the return of income in due time, would not invite the mischief of Section 276CC of the Act and the failure to furnish the return of income by a person must be wilful. Shri Rajgarhiya reiterated what had already been stated in para. 9 of the application that the prosecution has not stated or has not at all whispered about the deliberate default in furnishing the return in time. In the supplementary affidavit filed on behalf of the petitioner, the

petitioner admitted having received a show-cause notice by the Income Tax Officer dated March 6, 1991, asking him as to why prosecution should not be filed u/s 276CC of the Act for delay in filing the return. The petitioner in his reply to the show-cause notice, denied any wilful failure on his part and stated that he being a public servant and a member of the Bihar Legislative Assembly, had engagements in the public field and on account of which there was delay in filing the return. A copy of the said reply is annexure-6 to the supplementary affidavit. It has again been stated in the supplementary affidavit that no allegation had been made about the wilful default on the part of the petitioner in not filing the return in time and that the prosecution on the face of it was, therefore, erroneous. Shri Saran, learned counsel for the Revenue, referred to para. 5 of the complaint (annexure-11) which specifically mentioned that on the facts and circumstances stated above, it is obviously clear that the accused has wilfully failed to furnish in time the return of income which he was required to furnish under Sub-section (1) of Section 139 of the Act. Thus, there is no substance in the contention put forward on behalf of the petitioner that the complaint petition made no allegation of wilful failure on the part of the petitioner which constitutes an essential ingredient of the offence. In this connection, it is also relevant to notice the provisions of Section 278E of the Act introduced with effect from September 10, 1986, which provides for presumption as to culpable mental state. In Sub-section (1) it provides that 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 to the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. The Explanation to Sub-section (1) provides that culpable mental state includes intention, motive or knowledge of fact, or belief in, or reason to believe, a fact. In the ordinary dictionary meaning of the expression "wilful" is something done intentionally. It is thus a culpable mental state and the necessary presumption of the existence of such mental state can be drawn against the accused u/s 278E which presumption is, however, rebuttable. In other words, it shall be a defence to the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. This being the position in law with respect to existence of culpable mental state on the part of the accused with effect from September 10, 1986, the criminal prosecution of the petitioner at the very threshold cannot be quashed on the ground that he had no such mental state specially when the complainant had specifically alleged that the petitioner had wilfully failed to furnish the return of income. It is of no help to the petitioner that contrary to what the complaint petition alleged that he had not filed any explanation to the show-cause notice issued to him as to why prosecution u/s 276CC of the Act should not be launched against him, he actually filed such an explanation copy of which is annexure-6 to the supplementary affidavit before the launching of the prosecution.

5. So far as the second ground for quashing the criminal prosecution is

concerned, all that is stated is that no order has been passed by the Income Tax Officer imposing any penalty u/s 271(1)(a) of the Act and hence it would follow as a matter of course that the delay in filing the return was not wilful and that such delay was on account of reasonable cause. Section 271(1)(a) of the Act, as it stood prior to its being omitted by the Direct Tax Laws (Amendment) Act, 1989, with effect from April 1, 1989, provided that if the Assessing Officer is satisfied that any person has failed to furnish the return of total income which he was required to furnish under Sub-section (1) of Section 139 of the Act, he may direct payment of penalty by such person. In support of his contention, Shri Rajgarhiya relied on Gopalji Shaw Vs. Income Tax Officer, "D" Ward and Others, , wherein it was held that where penalty and prosecution proceedings were initiated for delay in filing the return but no penalty was imposed which showed that the Department did not consider it necessary to impose any penalty after realisation of interest u/s 139(8), it was held that the prosecution proceedings were also liable to be quashed as the Assessing Officer could not say that there was wilful default on the part of the assessee in filing the return within the time allowed. The aforesaid decision is of no help to the petitioner for there is nothing on the record to indicate that any penalty proceeding was initiated for delay in filing the return by the Income Tax Officer against the petitioner. All that the application states is that no order had been passed by the Income Tax Officer imposing any penalty which is not equivalent to the statement that a proceeding for imposing penalty had been drawn up against the petitioner and in which the Income Tax Officer had chosen not to impose any such penalty. The statement at the Bar made on behalf of the petitioner that a show cause had been filed by the petitioner against imposition of any such penalty and no order had been passed by the Income Tax Officer and that no such order can be passed now as it is barred by limitation, cannot be made the basis for drawing any conclusion that the Income Tax Officer had accepted the stand of the petitioner that the delay in filing the return of income was on account of reasonable cause.

6. There is also nothing on the record to indicate that the Income Tax Officer had decided not to realise any interest on the amount of tax payable by the petitioner on the total income or had decided to waive it under Sub-section (8) of Section 139 of the Act on the ground that the delay in filing the return was not wilful and was on account of reasons beyond the control of the petitioner. In view of all this, the decision of a learned single judge of this court in Banwarilal Satya Narain v. State of Bihar [1990] PLJR 107, relied upon by learned counsel for the petitioner, has no relevance to the facts of the present case. Thus, the second ground relied upon by the petitioner for quashing of the criminal prosecution is also not available to him.

7. Thus, the allegations made in the complaint taken at their face value and accepted in their entirety, prima facie, constitute an offence u/s 276CC of the Act and, hence, the criminal prosecution of the petitioner including the order taking cognizance cannot be quashed in the exercise of the inherent powers of this court. The question posed is, thus, answered in the negative and the application

is dismissed as without merit. However, any observations made in the course of the judgment were for the limited purpose of disposal of the application and shall not be construed as an expression of opinion on the merits of the case.