(1997) 11 AHC CK 0086

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 7221 of 1997

Rajendra Prasad Tyagi APPELLANT

Vs

State of U.P.& Ors. RESPONDENT

Date of Decision : 07-11-1997

Acts Referred:

Constitution of India, 1950 — Article 20
Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 2, 76(e)
Prevention of Corruption Act, 1947 — Section 13(1)(e), 13(2)

Citation : (1997) 11 AHC CK 0086

Hon'ble Judges : J.C.Mishra, J

Final Decision : Dismissed

Judgement

J.C. Mishra, J.—This application has been filed by accused Rajendra Prasad Tyagi, an I.A.S. Officer, for quashing the FIR relating to Crime No. 497 of 1997 under Section 13 (1) (E) read with Section 13 (2) of Prevention of Corruption Act, 1988 (hereinafter called ''the Act'' for convenience), P.S. Civil Lines, Meerut.

2. The prosecution case is that an income tax raid was conducted by the Income Tax Officers on 21197 and found the assets disproportionate to the income of the applicant. At that time he was posted as Special Secretary, Minority Welfare Cell at Lucknow. The Income Tax Department started making enquiry regarding undisclosed money, jewellery, bullion etc. found at the house. Simultaneously, the U.P. Government ordered an investigation to be conducted by U.P. Vigilance Establishment at Dehradun Sector Dehradun. The investigation disclosed that while serving the State on various responsible posts the applicant had collected money amounting to Rs. 14,00,000/ besides cash, bullion, ornaments etc. found during the raid by Income Tax Officers, it was found that the accused had several houses in the name of his wife, sons and other persons besides cars, computer, mobile phones, washing machine, fridge, portable stereo, compact system (sic) F.T. 377, air conditioners, Maruti Van etc.

3. The Inspector U.P. Vigilance establishment lodged a report at P.S. Civil Lines, District Meerut on 25th October, 1997 which was registered under Section 13 (1) (E) read with Section 13 (2) of the Act.

4. The applicant feeling aggrieved by the registration of the case and apprehending his arrest has filed this application for quashing the FIR on the ground that ornaments, cash, bullion etc. found by the Income Tax Officers during the raid did not belong to him but to the Securi Tech India Pvt. Ltd. and other persons. He filed copy of the applications moved by the aforesaid concerns and other persons before the Assistant Director of Income Tax, Ghaziabad, Deputy Commissioner Income Tax, Special Range, Ghaziabad, Commissioner, Income tax, Meerut and Chairman Central Board of Direct Taxes, Delhi (annexures 2 to 5 to the application) which indicates that the aforesaid concern had claimed the cash and other valuables etc.

5. It has also been contended that the sons, wife and other relations of the applicant were well placed and the house, car and other articles were purchased from their own legal income.

6. I have heard Sri Rajendra Kumar, learned counsel for the applicant and learned Additional Govenment Advocate.

7. The learned counsel for the applicant contended that the applicant is well placed and belongs to a reputed family and this report has been lodged only to humiliate him. It has. also been contended that the applicant has no concern with the cash, bullion, ornaments and other assets, which were found by the Income Tax Authorities from the house, which belongs to him.

8. The learned Additional Government Advocate contended that under its inherent powers this Court cannot quash the prosecution as on the allegations contained in the FIR prima facie offence punishable under Section 13 (2) read with Section 13 (I) (E) of the Act has been made out. He also contended that this Court has no jurisdiction to enter into the controversy whether the defence version of the applicant can be considered. He referred to a decision of the Supreme Court in Radhey Shyam Khemka and another v. State of Bihar, 1993 JIC 603 (SC), wherein the Magistrate had taken cognizance of offence under Section 409, IPC against Managing Director and Directors of a public limited company on the basis of chargesheet submitted by CBI and other material, which prima facie disclosed dishonest misappropriation of share and debenture moneys collected from public. The Supreme Court held that if offence prima facie falls under the Penal Code, launching of prosecution cannot be thwarted by High Court under Section 482, Cr.P.C. merely because penal action open under any other statute.

9. He also referred to a decision of the Supreme Court in State of Haryanaand others v. Ch. Bhajan Lal and others, 1990(2) JIC 927 (SC), wherein it was held that where the complaint alleges commission of offence under Section 5(1) of Prevention of Corruption Act and the matter relating to serious disputed facts yet

to be investigated, the investigation cannot be quashed on the basis of denial of statement of party against whom commission of offence is alleged. It was further observed that the investigation of the cognizable offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned.

10. It was further observed that the power under Section 482, Cr.P.C. should be exercised sparingly and that too in the rarest of rare cases. The Supreme Court also enumerated the guidelines empowering the High Court to interfere in the proceedings relating to cognizable offences to prevent the abuse of process of any court or otherwise to secure the ends of justice.

11. Similar view was taken in Union of India and others v. B.R. Bajaj and others, 1994 JIC 238 (SC).

12. In view of the aforesaid decisions this Court cannot perform the job of the investigation to hold that the applicant has valid defence. It is for the investigating agency to collect the material and draw its own conclusions.

13. Another ground on which the quashing or the prosecution has been claimed is contemplated proceedings under Income Tax Act. The learned counsel referred to the provisions of Sections 276 (e) and 271 of the Act and contended that the Income Tax Authorities can impose penalty if they find that the applicant had evaded income tax or committed default in payment of income tax and in case they find that the applicant had wilfully attempted in any manner to evade income tax, penalty or interest chargeable he may be punished rigorous imprisonment upto a period of 6 months. The learned counsel contended that if both the proceedings are simultaneously taken the applicant may be punished for the same offence more than once. He also contended that in view of the provisions of Article 20 of the Constitution of India the double jeopardy has been prohibited.

14. In the case before us the Income Tax Authorities have not launched any prosecution and, therefore, there is no reason to presume at this stage that the accused would be being tried twice for the same offence. The applicant may take this plea if any prosecution is started by the Income Tax Authorities in accordance with the provisions of the Income Tax Act. Furthermore, the offences punishable under Section 276 (e) of Income Tax Act and under Section 13 (2) read with Section 3 (1) (E) of the Prevention of Corruption Act are distinct offences. Under the Income Tax Act an assessee is punished for evading tax, penalty or interest whereas under the Prevention of Corruption Act the accused is punished for being in possession of assets which a public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Therefore, it cannot be said that the applicant will or is

likely to be punished twice for the same offence. In my opinion Article 20 of the Constitution of India does not prohibit trial and conviction under the aforesaid two distinct offences. In similar circumstances the Supreme Court refused to quash the prosecution in Radhey Shyam Khemka''s case (supra), on the ground that it was open to the applicants for to take recourse to the provisions of Companies Act.

15. The learned counsel for the applicant referred to order dated 4th October, 1997 passed by a Bench of this Court. He contended that under the similar circumstances this Court has stayed the arrest of the accused. He also contended that under similar circumstances some orders were passed.

16. In my opinion, the interim orders cannot be treated as ratio decidendi. It is well known that the interim orders are passed on the circumstances of the particular case and cannot be applied to the facts of other case.

In view of the aforesaid facts and circumstances I find that the application has no force and it is rejected at the admission stage.

