

(1981) 10 DEL CK 0028

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) No. 151 of 1981

Rajinder Nath

APPELLANT

Vs

M.L. Khosla, Income Tax Officer and Another

RESPONDENT

Date of Decision : 21-10-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 271, 277

Citation : (1982) 10 TAXMAN 217

Hon'ble Judges : J.D. Jain, J

Bench : Single Bench

Advocate : D.K. Jain, for the Appellant; D.P. Wadhwa and Atul Kumar, for the Respondent

Judgement

J.D. Jain, J.—This is an application u/s 482, Code of Criminal Procedure, for quashing the complaint and the proceedings filed by respondent No. 1 against the petitioner u/s 277 of the I.T. Act (hereinafter referred to as " the Act ") now pending in the Court of a Metropolitan Magistrate, Delhi.

2. The undisputed facts of the case are that the petitioner is a director of M/s. Tools and Equipment (P.) Ltd. (hereinafter referred to as the " the assessed "). The assessed submitted the return of income for the assessment year 1973-74 in August, 1973. During the course of examination of the accounts of the assessed, it was noticed that the assessed had purchased machine components worth Rs. 34,102 from its allied concern, M/s. Express Exports & Engineers P. Ltd. (for short, the "allied concern") on March 26, 1973. As the same did not find place in the list of raw materials lying with the assessed in the factory, it was asked to explain, (i) details of the components, (ii) date on which the same were given by the assessed. In response to the same the assessed-company's managing director, chartered accountant and the accountant put in appearance and confirmed that the said goods were covered in the list of raw materials lying in the factory of the assessed. Thereupon, they were required to furnish a copy of

the list of raw materials which was accordingly submitted by the assessed's accountant, Shri R. S. Wadhwa, on February 2, 1976, showing the total raw materials lying in the factory at Rs. 80,168. However, further scrutiny of the assessment records revealed that the assessed had already filed one such list of raw materials lying in the factory and the same contained entirely different particulars of the articles lying in the factory from the list subsequently submitted by the assessed. The details of these lists are as under :

List "A" Rs.

105 H.S. Sheet 37,521.00

6,475 Kg. E.N. Bright 22,008.53

3,960 Kg. E. N. Bars 20,638.53

80,168.06

List "B"

Lever clutch shaft 1,651 pcs. 9,906.00

E. No. 19 Bar 4,578 Kg. 15,521.55

Components of machines 34,102.00

EN. 10 Bright Bar 3,960 Kg. 20,638.73

80,168.28

3. On account of material discrepancies in these two lists, the ITO called upon the managing director, the chartered accountant and the accountant of the assessed to explain the same and examined them on solemn affirmation. All of them, however, confirmed the genuineness and correctness of list "A" but they could not say anything about the veracity of list " B " without examining in detail the records of the assessed. Shri Rajinder Nath, petitioner, too confirmed that list " A" was genuine but he could not explain as to how the accountant had prepared the list " B". However, he submitted that he had signed the said list in good faith. On further examination the petitioner explained that the components of the value of Rs. 34,102 purchased by the assessed on 26th March, 1973, from its allied concern were left out in the original list " A " because the same had been duly sold, vide invoices bearing Nos. S-289 onwards before the end of the financial year concerned. The assessed's accountant, Shri Wadhwa, too deposed on solemn affirmation that both lists " A" and " B" had been signed by the petitioner but explained that he had prepared list " B" on the basis of information collected by him because the previous accountant, Miss Usha, who had prepared the list " A", had left the service of the assessed on account of her marriage in 1974 and he could not lay his hands on any copy of list "A". According to him, he had compiled list "B" on the basis of raw material withdrawn from the bank in the month of March, the purchases made by the assessed in the said month and after adjusting the consumption figures on estimate basis.

4. The ITO was not satisfied with the Explanation furnished by the petitioner and the accountant of the assessed with regard to the circumstances under which list "B" was compiled. He felt that the action of the managing director of the assessed as also the, petitioner in filing an entirely new set of details with their approximate value as per statement marked " B " above as against the details furnished earlier was nothing but an attempt to show that the machine components purchased by the assessed from its allied concern on 26th March, 1973, existed in the closing stock even though the same had not been shown by them in the original statement marked " A ". Hence, he concluded that the assessed had concealed particulars of its income by not accounting for the components of machinery so purchased and he made a trading addition of Rs. 34,102 to the taxable income of the assessed on account of its being concealed income, vide order dated 10th March, 1976.

5. Feeling dissatisfied, the assessed went in appeal which was heard and disposed of by the AAC, vide his order dated 27th April, 1977. The AAC closely scrutinised both the lists marked " A " & " B " as well as the account books and other records of the assessed and arrived at the conclusion that the original list of raw materials submitted by the assessed was correct inasmuch as the machine components purchased by the assessed from its allied concern on 26th March, 1973, had been disposed of in the month of March, 1973, itself and none of those could be lying in the closing stock of the raw materials.

6. As a necessary corollary he found that the list " B " prepared by Shri Wadhwa showing these machine components in stock of raw materials could not be correct. So, he allowed the appeal and deleted the trading addition from assessment as being unwarranted.

7. Feeling aggrieved by the appellate order, the revenue went up in appeal to the I.T. Appellate Tribunal but met with no success. It was dismissed by the I.T. Appellate Tribunal, vide order dated 16th January, 1979 .

8. In the meanwhile, the ITO, under the authority of the Commissioner, instituted a complaint, against the petitioner u/s 277 of the Act. While adverting to the foregoing facts he contended that the Explanation furnished by the assessed and the petitioner that the first statement of raw materials was correct was obviously false under the facts and circumstances of the case and that the petitioner signed the verification in the return as well as both the statements of raw materials which were false and which he either knew or believed to be false and/or did not believe to be true and as such he was guilty of an offence punishable u/s 277 of the Act. It may be pertinent to add here that this complaint was filed on 29th March, 1976, i. e., even before the Appellate I.T. Commissioner had an occasion to hear the appeal.

9. The learned counsel for the petitioner has canvassed with considerable fervour that the stand of the assessed throughout has been that the machine components purchased by the assessed from its allied concern on 26th March,

1973, had been sold to M/s. M. C. Engineering Co. and M/s. Syntex Tube Works, vide various invoices produced before the I.T. authorities even before the year was out and, Therefore, the first statement filed by the assessed along with the return of income was correct and the second statement did not reflect the correct position as their accountant, Shri Wadhwa, who had prepared the same was not conversant with all the facts and he could not trace a copy of the earlier list filed along with the return. This stand of the assessed having been duly vindicated by orders of both the AAC and the I.T. Appellate Tribunal, the order of the ITO to the contrary merged therein, i. e., it is non est. Thus, the very cause of action/material accusation embodied in the complaint for prosecution of the petitioner u/s 277 of the Act having vanished the continuance of the criminal proceedings against him is just an abuse of the process of law. He has placed reliance on a recent unreported decision of the Supreme Court in Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, in support of his argument.

10. The contention raised on behalf of the respondents, however, is that the mere fact that the order of the ITO has been set aside by the AAC as well as the I.T. Appellate Tribunal does not debar the criminal court from proceeding with the trial of the petitioner on charge u/s 277 and coming to an independent finding on the basis of the evidence which may be adduced by the parties before it. In other words, the findings of the appellate authorities are not binding on the criminal court and as such no case for quashing the complaint or the proceedings pending before it is made out. In this context, he has adverted to a decision of the Allahabad High Court in Dr. D.N. Munshi Vs. N.B. Singh, . Incidentally this authority was followed by the Punjab and Haryana High Court in UTTAM CHAND AND OTHERS Vs. Income Tax OFFICER, CENTRAL CIRCLE (II) AMRITSAR., against which special leave was granted by the Supreme Court in Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, .

11. The facts in Uttam Chand succinctly are that the ITO had granted registration to a firm known as M/s. Handa and Chopra, Amritsar, for the assessment year 1960-61 onwards to 1969-70. The constitution of the firm, however, continued changing from time to time but Smt. Janak Rani was throughout shown as one of the partners. Later on, Smt. Janak Rani asserted before the ITO that the assessed-firm was not a genuine firm and that she was not a partner therein. She also denied her signatures on the partnership deeds dated 1st May, 1959, and 18th February, 1967. The ITO, vide his order dated 8th February, 1972, rejected the submissions of the firm and held that the firm was not a genuine one. He, Therefore, cancelled the registration. Feeling aggrieved, the assessed-firm went up in appeal. The AAC, vide his order dated 29th December, 1972, rejected the appeals for all the seven assessment years 1963-64 to 1969-70. Thereupon, the assessed-firm preferred a second appeal before the I.T. Appellate Tribunal, which, vide its order dated 30th November, 1974, allowed all the seven appeals and set aside the orders of the ITO and the AAC. In the meanwhile, the revenue had filed a complaint against the partners of the assessed-firm u/s 277 of the Act as also under Sections 193, 196, 467 & 471 read with Sections 109,

114, 34 & 37 of the IPC. On the strength of the findings of the I.T. Appellate Tribunal, it was contended on behalf of the accused persons that the proceedings pending before the Magistrate amounted to abuse of the process of law. However, this contention was repelled by the learned single judge of the Punjab and Haryana High Court with the observations that (p. 912):

" The proceedings before the Magistrate are entirely independent of the findings of the Income Tax Appellate Tribunal. The findings of the Income Tax Appellate Tribunal are not binding on the criminal courts. The criminal court is to independently go into the matter and if on evidence adduced by the revenue it comes to a conclusion that any offence is made out against the petitioners, then it will convict them and if it comes to a conclusion that no offence is made out, then it will acquit them."

12. The learned judge also alluded to the observations of Hari Swarup J. in Dr. D.N. Munshi Vs. N.B. Singh, to the following effect (p. 913):

" " The order of the Tribunal setting aside the penalty may be utilised as a piece of evidence to show that there was no offence committed by the accused but that by itself is not sufficient to direct the dismissal of the complaint of acquittal or discharge of the accused under the Criminal Procedure Code.""

13. The Supreme Court after granting special leave to appeal against the aforesaid order proceeded to dispose of Criminal Appeal No. 156 of 1979 forthwith Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, . Their Lordships observed that (p. 910):

" In view of the finding recorded by the Income Tax Appellate Tribunal that it was clear on the appraisal of the entire material on the record that Shrimati Janak Rani was a partner of the assessed-firm and that the firm was a genuine firm, we do not see how the assessed can be prosecuted for filing false returns. We, accordingly, allow this appeal and quash the prosecution."

14. In view of this authoritative pronouncement of the Supreme Court, the decisions of the Allahabad High Court Dr. D.N. Munshi Vs. N.B. Singh, and the Punjab & Haryana High Court UTTAM CHAND AND OTHERS Vs. Income Tax OFFICER, CENTRAL CIRCLE (II) AMRITSAR., must be deemed to be no longer good law. and I see no reason why the present petition too be not allowed and the complaint and the proceedings pending in the Court of the Magistrate be not quashed. It may be of some interest to note that Mr. A.S. Bains J. of the Punjab & Haryana High Court, who had decided UTTAM CHAND AND OTHERS Vs. Income Tax OFFICER, CENTRAL CIRCLE (II) AMRITSAR., himself later on took a contrary view in Parkash Chand Vs. Income Tax Officer, A-Ward, following the aforesaid Supreme Court judgment. It may be pertinent to add here that in its appellate order the AAC probed the whole matter thoroughly and dug deep into the accounts and records of the assessed in relation to the various items and stocks of raw materials shown in lists " A " & " B ". I reproduce below some excerpts from his order which are indeed noteworthy :

" It was a fortuitous circumstance that when the query was raised by the Income Tax Officer and the answer was demanded in a very limited time, the original list could not be immediately found. Shri Wadhwa, Therefore, made his own exercise to work out the figure of factory closing stock of raw material at Rs. 80,168. In doing so he mistakenly included the purchases made on March 26, 1973 from M/s. Express Exporters and Engg. (P.) Ltd."

15. Still later he observes that:

"Let us at this stage examine whether the machine components purchased from M/s. Express Exporters of Engg. (P.) Ltd. on March 26, 1973, were sold under the same invoices Nos. 289, 290, 300 to M/s. M. C. Engineering Co. and M/s. Syntex Tube Works, as maintained by the appellant. The components for these customers were prepared as per their own specifications and drawings against secured orders dated December 12, 1972, and January 17, 1973. There was a tight delivery schedule and as such the components had to be dispatched to them on the same date on which the order was executed by M/s. Express Exporters, i.e., on March 26, 1973. The correspondence in this regard and the copies of sales invoices form part of the appellate record. It may be emphasised that the components were of highly specialised type which could not have been of any use to any customer in the open market. It has, Therefore, to be inferred as a fact that the components worth Rs. 34,102 from M/s. Express Exporters were in fact sold in the month of March itself, and none of these could be lying in the closing stock of raw materials. Since the very same components have been shown in Wadhwa's list of raw materials, it must, following that, the same could not be a correct list as is also the stand taken by the appellant. Thus, the very prop on which the Income Tax Officer is trying to justify his addition of Rs. 34,102 falls to the ground. The addition to my mind was uncalled for and need, Therefore, be deleted from, the assessment."

16. The I.T. Appellate Tribunal on its own part again scrutinised the material on the record carefully before confirming the finding of the lower appellate court. It is well-settled law that if an appeal is provided against the order passed by a Tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the Tribunal it is obvious that it is the appellate decision that is effective and can be enforced. [See Commissioner of Income Tax, Bombay Vs. Amritlal Bhogilal and Co.,]. That, besides, I fully endorse the views expressed by the AAC and confirmed by the I.T. Appellate Tribunal that original statement of raw materials marked " A " correctly reflected the stock position and it was on account of sheer mistake on the part of the second accountant of the assessed that he compiled the second list wrongly on the basis of whatever material he could lay his hands upon in a hurry and the petitioner seems to have signed the same in good faith.

17. Section 277, as amended by the T.L. (Amend.) Act, 1975, with effect from 1st October, 1975, reads as under :

" If a person makes a statement in any verification under this Act or under any rule made there under, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable,--

(i) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine ;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine."

18. It is common ground that Section 277 as amended will govern the instant case inasmuch as the second list was furnished by the assessed on 2nd February, 1976, i.e., after coming into force of the amendment. Since the genuineness and veracity of the first list has been accepted by both the appellate authorities, who have further found that there was no concealment of income on the part of the assessed, no prosecution will lie with regard to the same under this section. It is not the case of the respondents that any further material has been found or is being pressed into service by way of additional evidence against the petitioner to substantiate their allegation that the said statement was false or incorrect. Indeed, as observed earlier, the ITO rushed to launch prosecution against the petitioner without even waiting for the decision of the AAC. Even during the course of arguments no attempt was made by the learned counsel for the respondents to urge that any additional evidence would be adduced or tendered by the prosecution against the petitioner. Hence, there can be no shadow of doubt that the above findings of the appellate authorities will be conclusive. Surely, it will be too much to expect that the Magistrate shall, on the basis of the evidence on the record, without more, be in a position to question the correctness of the findings of the appellate authorities. As for the second statement which was admittedly false and for which an Explanation has already been furnished by the petitioner as well as Shri Wadhwa, the second accountant of the assessed, suffice it to remark that the learned counsel for the respondents has not been able to show as to what amount of tax would have been evaded if the said statement of account had been accepted as true, this being an essential ingredient of the offence before punishment can be awarded to the petitioner under the newly added Clauses (i) & (ii) to Section 277 as it originally stood. Indeed, if the same were accepted to be correct, machine components would be still considered to be part of the raw materials in stock at the end of the financial year concerned and as such the question of concealment or evasion of income would not arise. Conversely if the original statement marked " A" were to be accepted and the machine components were taken as having been sold off there was no concealment of income as such. Thus, looked at from any angle, the continuance of the criminal trial against the petitioner will be nothing but an abuse of process of law and the same must be quashed.

19. An argument was also advanced by the learned counsel for the petitioner that it was open to the ITO to impose penalty on the assessed or, for that matter, the petitioner, under Clause (c) of Section 271(1) of the Act, but the Commissioner not having done so, it would be highly improper and unjust on the part of the respondents to insist on proceedings with the criminal complaint. However, I do not think that Section 271(1) or (4A) can be read to incorporate such a condition for prosecution u/s 277. As observed by Hari Swarup J. in Dr. D.N. Munshi Vs. N.B. Singh, :

"Sub-section (1A) of Section 279 contains a bar to the institution or continuance of the prosecution against an assessed u/s 277. The import of this provision is that in case the Commissioner himself waives the penalty under Sub-section (4A) of Section 271, the prosecution should not be initiated or continued. The Income Tax Appellate Tribunal when it allows an assessed's appeal really does not act on the basis of the law contemplated under Sub-section (4A) of Section 271, but does so on the basis of the existence of the conditions on which penalty may be imposable. If it finds that the penalty is not legally imposed, it sets aside the order. The order of the Tribunal is really the order of the assessing authority not imposing a penalty. That order is not contemplated by Sub-section (1A) of Section 279 as the order mentioned in that sub-section is the order which is passed under Sub-section (4A) of Section 271 and not the order not imposing the penalty. It contemplates waiver and not non-imposition of penalty. The order of the Tribunal setting aside the penalty may be utilised as a piece of evidence to show that there was no offence committed by the accused but that by itself is not sufficient to direct the dismissal of the complaint or acquittal or discharge of the accused under the Criminal Procedure Code."

20. So, I do not think that there is any co-relation between the penalty proceedings u/s 271 and criminal prosecution u/s 277 of the Act and initiation of penalty proceedings is not a condition precedent to the institution of a complaint u/s 277. All the same having regard to my finding with regard to the expediency/necessity for continuation of the criminal trial, I refrain from expressing any definite opinion on this aspect of the matter.

21. The learned counsel for the respondents also raised an objection of a preliminary nature, in that the order of the Magistrate framing a charge could be revised by the sessions court or this court u/s 397 of the Cr. PC but no revision petition having been moved by the petitioner under the said section within time, this court will not be justified in invoking its inherent jurisdiction to grant the relief which could be given in exercise of its revisional powers. Reliance in this context has been placed on Madhu Limaye Vs. The State of Maharashtra, , in which it was held thus [p. 50(2)]:

".....the exercise of the inherent power of the High Court.....is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party."

22. It may, however, be noticed that in the same authority the Supreme Court observed that the inherent power of the High Court should be exercised, although very sparingly, to prevent the abuse of process of any court or otherwise to secure the ends of justice. Still later, in *Raj Kapoor and Others Vs. State and Others*, , the Supreme Court had an occasion to consider a case where the High Court had declined to entertain a petition u/s 482 of the Cr. PC on the ground that a revision u/s 397 of the Code lies against an order summoning the accused persons. The petitioners therein had filed only the original summons issued by the trial court on the basis of the summary enquiry held u/s 202 of the Code but they did not file any copy of the impugned order. Taking note of these facts, the Supreme Court held (headnote):

" The inherent power of the High Court u/s 482 does not stand repelled when the revisional power u/s 397 overlaps. Nothing in the Code, not even Section 397, can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, when a specific provision is made, easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. There is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a tertium quid, as for example, where it is more than a purely interlocutory order and less than a final disposal. In such a case, the inherent power can be exercised.

Having regard to the avoidable hardship and harassment which may flow from continuance of the criminal trial against the petitioner and which may amount to an abuse of the process of law, I am persuaded to invoke the inherent power of this court to quash the complaint and the proceedings pending against the petitioner u/s 277 of the Act. Order accordingly.