(2006) 02 CAL CK 0014

In the Calcutta High Court

Case No : C.R.R. No''s. 73-76 of 1994

Rathi Bhusan Mazumdar APPELLANT

Vs

Anamika Housing Corporation and Others RESPONDENT

Date of Decision : 13-02-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245(2)
Income Tax Act, 1961 — Section 139(1), 276CC, 278B, 278B(1)

Citation : (2006) 2 CALLT 194 : (2006) 2 CHN 461

Hon'ble Judges : Arun Kumar Bhattacharya, J

Bench : Single Bench

Advocate : Ashim Kuamr Roy, for the Appellant;None, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Bhattacharya, J.—The quadruple revisional applications being C.R.R. Nos. 73/1994, 74/1994, 75/1994 and 76/1994 involving common questions of law and facts with the difference in respect of the assessment years only, are directed against the orders dated 17.03.93, 18.03.93, 18.03.93 and 10.03.93 respectively passed by the Id. Metropolitan Magistrate, 15th Court, Calcutta.

2. The present petitioner filed a complaint u/s 276CC(ii) read with Section 278B of the Income Tax Act, 1961 against the partnership firm-O.P. No. 1 M/s. Anamika Housing Corporation and its partners O.P. Nos. 2 to 6 for failure to furnish return of income in time for different assessment years viz. 1980-81 to 1983-84.

3. The O.Ps. assailed the above proceedings by filing petitions contending that it is bad in law since in the event of conviction the firm which has been made a party along with other persons cannot be sent to prison compulsorily, as provided in Sections 276CC and 278B of the Act. Upholding the above contention the Id. Magistrate by the impugned orders discharged the accused persons (barring accused Nos. 4 & 5 against whom the case was filed for the present) u/s 245(2)

Cr. PC.

4. Being aggrieved by, and dissatisfied with, the said orders, the petitioner has come up before this Court.

5. As none appeared for the O.Ps., the matter was heard ex parte.

6. All that now requires to be considered is whether the Id. Court below was justified in passing the above orders.

7. Mr. Roy, Id. Counsel for the petitioner, on referring the cases of M.V. Javali v. M. Borewell and Co. reported in 1998 Cr.LR (SC) 28 and Constitutional Bench decision in Standard Chartered Bank v. Directorate of Enforcement reported in 2005(2) Cr. LR (SC) 103 advanced argument contending that the mandatory sentence of imprisonment and fine is to be imposed where it can be imposed namely on persons coming under the categories (ii) & (iii) of Section 278B of the Income Tax Act but where it cannot be imposed, namely on a company, fine will be the only punishment and, as such the impugned orders discharging the accused persons are liable to be set aside.

8. Section 276CC of the Income Tax Act provides for compulsory sentence of imprisonment and fine in case of wilful failure on the part of a person to furnish in due time the return of income required to be furnished u/s 139(1) or other provisions. Section 278B(1) which deals with ''Offences by Companies'' provides that where an offence under the Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. As per Explanation to the said Section, "Company" means a body corporate and includes (i) a firm and (ii) an association of persons or a body of individuals whether incorporated or not, and "Director" in relation to a firm means a partner in the firm etc. After analyzing the matter from different aspects, it was held in the case of Javali (supra) that keeping in view the recommendation of the Law Commission and the principles of interpretaton of statutes the only harmonious construction that can be given to Section 276B is that the mandatory sentence of imprisonment and fine is to be imposed where it can be imposed namely on persons coming under the categories (ii) & (iii), but where it cannot be imposed, namely on a company, fine will be the only punishment. The above decision was approved by the majority view in the Constitutional Bench decision in the case of Standard Chartered Bank (supra) holding that as a company cannot be sentenced to imprisonment, the Court cannot impose that punishment, but when imprisonment and fine are the prescribed punishment the Court can impose the punishment of fine which could be enforced against the company. Such a discretion is to be read into the Section so far as the juristic person is concerned. Of course, the Court cannot exercise the same discretion as regards a natural person. As regards company, the Court can always impose a sentence of fine and

the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. There is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment prescribed is mandatory imprisonment (and fine), and accordingly the views expressed by the majority in Velliappa Textiles on this point was overruled.

9. In the light of the above discussion, the revisional applications being CRR Nos. 73/94 to 76/94 be allowed and the impugned orders being totally erroneous are set aside.

10. Let a copy of this order be sent down at once to the Id. Court below with a direction to dispose of the cases as expeditiously as possible preferably within a period of five months from the date of communication of the order.