

(1994) 01 MP CK 0026

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 2329 of 1991

R.G. Agarwal and Co. and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 19-01-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 276, 276C, 277

Citation : (1994) 119 CTR 361 : (1994) 210 ITR 617 : (1994) 77 TAXMAN 566

Hon'ble Judges : R.D. Shukla, J

Bench : Single Bench

Advocate : A.S. Garg, for the Appellant; P.K. Saxena, for the Respondent

Judgement

R.D. Shukla, J.—The petitioners challenge their prosecution u/s 276C of the Income Tax Act, 1961.

2. The brief history of the case is that petitioner No. 1, which is a firm, with petitioners Nos. 2, 3 and 4 as partners, submitted a return of income for the year 1981-82 and disclosed a loss of Rs. 22,198. They have also shown the payment of interest to the firm, Murlidhar Kishangopal, to the tune of Rs. 34,721 and further disclosed that they have received a loan from B. K. Lunia to the tune of Rs. 21,000.

3. The Income Tax Officer did not accept this contention. Thereafter, the petitioners filed an appeal before the Commissioner of Income Tax, who accepted the appeal.

4. Thereafter, an appeal was filed before the Tribunal by the Department. The Tribunal accepted the appeal and found that the loss shown as above and the loan from Shri B. K. Lunia are not correct.

5. The petitioner thereafter made a prayer before the Tribunal for reference of the case to the High Court, which refused to do so. As such they filed a petition in the High Court which has been registered as M.C. C. No. 147 of 1989 and has

been admitted for hearing.

6. During the pendency of these proceedings, the Income Tax Officer filed a criminal case against the petitioners under Sections 276, 277 and 278 of the Income Tax Act. The court recorded the evidence and framed charges. The petitioners filed a revision against the framing of charges which has been dismissed by the Fifth Additional Sessions Judge, vide order dated August 13, 1991. Now, therefore, the petitioners have filed this petition u/s 482, Criminal Procedure Code, for quashing the proceedings.

7. The contention of learned counsel for the petitioner is that the continuance of two separate proceedings against the petitioner would be unjust and they will be put to double jeopardy. It has also been contended that the petitioners hope to succeed in the High Court and, therefore, the whole exercise in the criminal court would not only be useless, but will amount to harassment of the accused-petitioners.

8. As against this learned counsel for the respondent, Union of India, has submitted that both are independent proceedings. Merely because the petitioners are contesting the assessment order or appellate order, it cannot be said that the prosecution is wholly baseless. It has also been submitted by learned counsel for the respondent that the burden of proof would definitely lie on the respondent (prosecution) to prove the case like a criminal case and the decision in the assessment proceedings may have a bearing on the basis of evidence adduced before that court.

9. It is an established principle that preponderance of probabilities is the rule of civil law while proof beyond reasonable doubt is the rule of criminal law. Of course, while assessing the evidence certain presumptions if provided in any special Act will also have to be taken into consideration by the criminal court.

10. The civil court decision or a decision of the civil proceedings is relevant in a criminal prosecution, but criminal courts are required to reach independent findings and conclusions.

11. There is no provision in law which provides that prosecution for the offences in question cannot be launched until the reassessment proceedings initiated against the assessee are completed. It is not the law that no proceedings can be initiated at all u/s 276C and Section 277 as long as some proceeding under the Act, in which there is a chance of success of the assessee, is pending. A mere expectation of success in some proceedings in appeal or reference under the Act cannot come in the way of the institution of criminal proceedings u/s 276C and Section 277 of the Act. In the criminal case all the ingredients of the offence in question have to be established in order to secure the conviction of the accused. The criminal court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and in an appropriate case it may drop the proceedings in the light of an order passed under the Act. It does not, however, mean that the result of a proceeding under

the Act would be binding on the criminal courts. (See P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin,

12. In view of the opinion expressed by the apex court of this country, it cannot be said that merely because a proceeding under the Income Tax Act is pending the prosecution under Sections 276 and 277 cannot be started or that the proceedings in any way deserve to be quashed. Since the two proceedings are different and the standard of proof in both the proceedings is also different, it would not be proper to quash the criminal prosecution, merely because proceedings under the Income Tax Act in appeal or reference are pending.

13. In view of the discussions above, the petition is dismissed. The petitioners are directed to appear before the trial court on February 1, 1994. No further notice would be required.