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In the Madras High Court

Case No : Criminal Original Petitions No''s. 9116, 9118, 9120 and 9122 of 1988

R.N. Bajaj APPELLANT

Vs

K. Govindan, Income Tax Officer RESPONDENT

Date of Decision : 21-01-1992

Acts Referred:
Income Tax Act, 1961 — Section 132, 136, 143(3), 148, 271(1)

Citation : (1993) CriLJ 2317 : (1992) 198 ITR 447

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : V. Ramachandran, for the Appellant; Ramasami K., Special Public Prosecutor, for the Respondent

Judgement

Pratap Singh, J.—Accused No. 3 in E.O.C.C. Nos. 659 to 662 of 1988 on the file of the Additional Chief Metropolitan Magistrate

(Economic Offences No. I), Egmore, Madras, has filed these petitions u/s 482, Criminal Procedure Code, praying to call for the records in the

aforesaid cases quash the same.

2. In E.O.C.C. No. 659 of 1988, the respondent has filed the complaint against the petitioner and four others u/s 120B, 34, 193, 196 and 420 of

the Indian Penal Code and section 276C, 277 and 278B of the Income Tax Act, 1961. The allegations in it are briefly as follows :

The complainant is a public servant and he is authorised to file the complaint. It is also filed at the instance of the Commissioner of Income Tax,

within the meaning of section 279 of the Income Tax Act, 1961 (which I shall hereafter refer to as ""the Act""). This complaint is in respect of the

assessment year 1976-77, the accounting year being the year ending March 31, 1976. The first accused is a partnership firm carrying on business in surgical goods. Accused Nos. 2 to 5 are partners of the first accused firm who were in charge of, and were responsible to, the first accused firm

for the conduct of the business of the first accused during the relevant time. They are assessees. The return of income of the first accused for 1976-

77 showing an income of Rs. 1,02,470 was filed on August 4, 1976. It was signed and verified by the second accused on August 2, 1976. Along

with the return, the connected statements were also delivered. A statement showing details of sundry debtors and creditors was also delivered on

August 24, 1976. Net profit was shown as Rs. 1,13,139. Total income for Income Tax purposes was shown as Rs. 1,02,470. The Income Tax

Officer completed the assessment on November 18, 1976, u/s 143(3) of the Act on a total income of Rs. 1,52,190.

3. Search were conducted at the premises of the first accused firm and its allied firms and the residences of the partners and connected places in

June, 1980, under the provisions of section 132 of the Act. During the course of the search, a large number of accounts books and documents

were seized and they were examined and detailed investigation was made which disclosed large scale suppression of income by deliberate inflation

of purchases and falsification of accounts by introduction of fictitious credits. During the course of assessment proceedings subsequent to the

search, unable to explain the deliberate inflation of purchases, etc., the accused came forward with a proposal for settlement. They agreed to the

suppression of the income of the first accused firm and allied firms being considered in the hands of the first accused firm and the concealed income

for the assessment years 1975-76 to 1979-80 being fixed at about Rs. 41 lakhs. The first accused filed a return of income in response to a notice

issued u/s 148, dated October 16, 1980, and the Income Tax return for the assessment year 1976-77 on February 6, 1982, admitting an income

of Rs. 12,13,640 as against an income of Rs. 1,02,470 admitted in the original return. Assessment was completed on December 31, 1982, and

penalty proceedings u/s 271(1)(c) were initiated for suppression of income and penalty of Rs. 2,93,348 equal to the tax sought to be evaded was

levied by order dated February 25, 1985. The petition of the accused for waiver u/s 273A was rejected.

4. With a view to wilfully evade tax and to defraud the exchequer and to deceive the Income Tax Officer, acting in concert and furtherance of

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common intention, all the accused conspired to fabricate false evidence in the shape of books of accounts with a view to using them as genuine

evidence in the Income Tax assessment proceedings, to deliver a false return of income of the first accused for 1976-77 with false supporting

statements based on fabricated books of accounts to dishonestly induce the Income Tax Officer to deliver an assessment order, on such false

return and statements determining the total income of the first accused at an amount lower than the real amount and thus have committed offences

punishable u/s 120B of the Indian Penal Code read with section 34, 193, 196 and 420 thereof and section 276C, 277 and 278B of the Income

Tax Act, 1961, in one series of acts which are connected and form the same transaction. In pursuance of the aforesaid conspiracy and for the

aforesaid purpose and in the course of the same transaction, all the accused have for the purpose and in the course of the same transaction, all the

accused have for the purpose of using as genuine evidence in the Income Tax assessment before the Income Tax Officer for 1976-77, intentionally

fabricated false books of accounts of the first accused and thus committed offences punishable u/s 193, Indian Penal Code, read with section 136

of the Income Tax Act, 1961, and all the accused have corruptly used the aforesaid false account books as genuine evidence in the course of the

assessment proceedings for 1976-77 and thus committed an offence punishable u/s 196, Indian Penal Code, read with section 136 of the Income

Tax Act and all the accused have deceived the Income Tax Officer and induced him to deliver the assessment order for 1976-77 on the false

account books, returns and statements and have committed offences punishable u/s 420, Indian Penal Code, and all the accused wilfully attempted

to evade tax, penalty or interest impossible under the Act on the firs accused by making false entries in the account books of the first accused and

by being in possession of such books of account and have thus committed an offences u/s 276C of the Income Tax Act read with section 278B

thereof and all the accused delivered to the Income Tax Officer on or about August 4, 1976, a last return of income of the first 1976-77 and a

false trial balance, profit and loss accounts, statement of total income and statement of sundry creditors and thus committed offences punishable u/s

277 read with section 278B of the Act and that the second accused made a false verification in the return of income for 1976-77 and thus has

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committed offences punishable u/s 277 of the Income Tax Act, 1961.

5. On similar allegations for assessment years 1977-78, 1978-79 and 1979-80, the respondent has filed complaints in E.O.C.C. Nos. 660 of

1988, 661 of 1988 and 662 of 1988 before the same court u/s 120B, 34, 193, 196 and 420 of the Indian Penal Code and section 276C, 277

and 278B of the Income Tax Act, 1961, for the aforesaid assessment years also. In these complaints, it is alleged that original returns were filed on

August 5, 1977, August 28, 1978, and August 9, 1979 and in respect of them, assessment were completed on September 26, 1977, October 19,

1978 and September 12, 1979, respectively, and the search was conducted on June 7, 1980, and the revised returns for assessment years 1977-

78, 1978-79 and 1979-80 were filed on October 16, 1980, and the total concealed income for all the four assessment years was Rs. 41 lakhs.

6. Mr. V. Ramachandran, learned senior counsel appearing for the petitioner, would first submit that the first accused is a registered partnership

firm, that accused Nos. 2 to 5 were partners thereof and that the partners were made liable only by virtue of section 278B of the Act which was

newly added and which came into force on October 1, 1975, and only from that date, can the partners of a firm be made liable for the offences,

provided the other requirements of section 278B are shown to exist. He would add that, regarding the offences alleged, there must be specific

allegation in the complaint itself the partners, that there are no allegations in the complaint as against accused Nos. 3 to 5 and a mechanical

reproduction of the words in section 278B that the partner were in charge of and were responsible to the firm for the conduct of the firm during the

relevant time is not sufficient to make out the offences as against them. Regarding this first contention, Mr. K. Ramaswami, learned counsel

appearing for the respondent, would submit that the offences complained of in these had arisen subsequent to October 1, 1975, inasmuch as the

assessment years were 1976-77 to 1979-80, the relevant accounting years being the years ending on March 31, 1976, to March 31, 1979. He

would further submit that specific allegations are made in the complaint all the partners with regard to the offences alleged.

7. In these complaints, in paragraph 4, it is alleged as follows :

The second to fifth accused are partners of the first accused firm who were in

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charge of and were responsible to the first accused firm for the conduct of business of the first accused during the relevant time.

8. Then, in paragraph 7 of the complaint, allegation regarding the filing of the original return, signed and verified by the second accused and filed on August 4, 1976, August 5, 1977, August 28, 1978, and August 9, 1979, for the aforesaid assessment years respectively and the completion of the assessment proceedings on November 18, 1976, September 26, 1977, October 19, 1978, and September 12, 1979, respectively, has been stated. Then the search made in June, 1980, in the premises of the first accused concern and sister concerns and investigation thereon has been referred to.

9. Thereafter, the filing of the revised returns on October 16, 1980, fixing the total amount of concealed income for all the four years at Rs. 41 lakhs has been stated. After narrating all these facts, it is alleged as follows :

Therefore, with a view to wilfully evade tax and to defraud the exchequer of its legitimate revenue and to deceive the Income Tax Officer acting in concert and in furtherance of common intention, all the accused conspired to fabricate false evidence in the shape of books of account with a view to using them as genuine evidence in the Income Tax assessment proceedings of the first accused for the assessment year 1976-77, to deliver a false return of income of the first accused firm for the assessment year 1976-77, with supporting statements based on the fabricated books of account, to make a false verification in the aforesaid return of income, to dishonestly induce the Income Tax Act Officer to deliver an assessment order under the Income Tax Act based on such false return and statements determining the total income of the first accused for the assessment year 1976-77 at an amount lower than the real amount on which it is legitimately assessable and thus committed offences punishable u/s 120B of the Indian Penal Code read with sections 34, 193, 196 and 420 thereof and sections 276C and 278B of the Income Tax Act, 1961, in one series of acts which are connected and form the same transaction.

10. Then again it is alleged that, in pursuance of the aforesaid conspiracy and for the aforesaid purpose and in the course of the same transactions, all the accused have done the acts which constitute the various offences. I have referred to them in the summarisation of the complaint in E.O.C.C.

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No. 659 of 1988 supra. The above would show that the respondent has made specific allegations against accused Nos. 2 to 5, namely, all the

partners of the first accused firm, with regard to each of the offences, apart from the allegations made in paragraph 4 of the complaint, which I have

extracted above. In view of the above, the contention put forth by learned senior counsel that the complaint as against the petitioner who is arrayed

as accused No. 3 should be quashed for want of necessary allegations in the complaint cannot stand. In Shital N. Shah and others Vs. Income Tax

Officer, , Justice Arunachalam has laid down as follows (at page 380) :

Under section 278B of the Act, the basic requirement which the prosecution must prove will be that the petitioners were in charge of, and were

responsible to, the firm for the conduct of the business of the firm, and it is only then that they can be vicariously prosecuted along with the

company.

11. In BASAL TOOL CO. AND OTHERS Vs. Income Tax OFFICER, DISTRICT-II(I), PATIALA, ; Jasbir Singh and Others Vs. Income Tax

Officer, ; Puran Devi v. Z. S. Klar, ITO [1988] 169 ITR 608; Murari Lal and Others Vs. Income Tax Officer ""A"" Ward, ; Jai Gopal Mehra and

Smt. Suman Mehra Vs. Income Tax Officer, ; Parameet Singh Sawney Vs. Dinesh Verma and Another, and S. VAIDYANATHAN, Income Tax

OFFICER Vs. DR. B. MATHURAM AND SONS AND OTHERS., , similar view was taken.

12. Mr. V. Ramachandran would submit that, regarding accused Nos. 3 to 5, no allegations were made in these complaints. I am unable to agree

with the contention in view of the allegations made in paragraph 12 of the complaint which I have extracted in paragraph 6 supra wherein it is

specifically stated that all the accused conspired to fabricate false evidence and other offences regarding which necessary allegations are made.

13. Mr. K. Ramaswami, Special Public Prosecutor for Income Tax cases, relied upon rulings which I shall refer to hereunder. In Voltas Ltd. v.

Hiralal Agarwalla [1991] 71 Comp Cas 273, the relevant averments made in the complaint were as follows (at page 278) :

That all the accused were and are in charge of and were and are responsible for the day-to-day conduct of the business of accused No. 1, the

company having its Calcutta office at Gillander House, N. S. Road, (P. S. Hare

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Street), Calcutta-1, within the jurisdiction of the learned court.

14. The Calcutta High Court has held that these averments are sufficient for summoning the accused to court. In Naresh Kumar v. State of Bihar

[1991] 70 Comp Cas 358, the Patna High Court has held that since there was a specific allegation in the complaint that the petitioner was

responsible for the day-to-day working of the company and was in charge of it during the relevant time, the proceedings on that complaint against

the petitioner cannot be quashed. In Hari Charan Singh Dugal v. State of Bihar [1989] 66 Comp Cas 449, the Patna High Court had held that,

where an offence was committed by a company under the Minimum Wages Act, 1948, its directors became vicariously liable for the offence and

they can be prosecuted along with the company and it is not necessary to pinpoint in the complaint the specific part played by each of the directors

or to mention the individual responsibility of each. In the instant case before me, specific allegations were made against the partners, viz., accused

Nos. 2 to 5 and there is the allegation that accused Nos. 2 to 5 are partners of first accused firm and that they were in charge of and were

responsible to the first accused firm for the conduct of the business during the relevant time. In view of the facts and circumstances of the case and

pronouncements of various High Courts on this point, I do not accept the first contention put forth by learned senior counsel, Mr. V.

Ramachandran.

15. Mr. V. Ramachandran would next submit that a settlement was arrived at between the accused and the Income Tax Department in pursuance

of which a revised return was submitted and that one of the terms of the settlement was that no criminal proceedings should be launched against the

accused and, in view of the above, the criminal proceedings a reliable to be quashed. Per contra, Mr. K. Ramaswami would submit that there was

no settlement as claimed by the petitioner and that the revised return was submitted only after the original return was finalised and a search was

made which voluminous incriminating documents were seized and while so, these proceedings cannot be quashed. He would add that, in a

proceeding u/s 482, Criminal Procedure Code, only the allegations in the complaint are to be taken into account to examine whether the allegations

are there to make out the offences or not and other extraneous matters cannot

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be looked into.

16. In Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , the apex court laid as follows (at page 70) :

It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the

papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are,

without adding or subtracting anything if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its

powers u/s 482 of the present Code.

17. I am clear that the complaint cannot be quashed at the threshold unless it comes within the purview of the above lacuna. All that the complaint

is required to allege is the basic foundation on which the prosecution rests and complete details of evidence need not be stated therein, for the latter

part of it can be brought on record through witnesses to be examined and the documents to be produced in the court. If the allegations in the

complaint taken at their face value show the commission of the offence alleged, at least prima facie, these matters of detail regarding the alleged

settlement between the accused and the Department which is contentious cannot be gone into in the exercise of inherent powers to halt the pending

prosecution. In these complaints before me, in paragraph 11, it is alleged as follows :

During the course of the assessment proceedings subsequent to the search, unable to explain the deliberate inflation of purchases, etc., resorted to

by it to suppress its income, the accused came forward with a proposal for settlement. They agreed to the suppressed income of the first accused

firm and also the allied firms referred to in paragraph 8 supra being considered in the hands of the first accused firm and the concealed income for

the assessment years 1975-76 to 1979-80 being fixed at about Rs. 41 lakhs.

18. The above would prima facie point out that the accused came forward with a proposal for settlement with regard to the quantum of concealed

income and nothing more than that. Whether there was anything more in the terms of the settlement can be gone into only at the time of trial and if

there was any, the accused can take advantage of the same, if it is advantageous to them. That stage can come only at the time of trial. From the

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above extracted portion, I am unable to infer that there was a further term in the settlement that no prosecution would be launched. Hence, I do not

accept the contention of Mr. V. Ramachandran that there was a settlement and in view of it these criminal prosecutions are liable to be quashed.

19. To examine the further contention that, because of the filing of the revised return, these prosecutions would not stand, certain dates are

relevant. Original returns for 1976-77 to 1979-80 were filed on August 4, 1976, August 5, 1977, August 28, 1978 and August 9, 1979,

respectively. Assessments in respect of those original returns were completed on November 18, 1976, September 26, 1977, October 19, 1978

and September 12, 1979, respectively. The search was conduct on June 7, 1980. More than four months thereafter, the revised returns were filed

on October 16, 1980.

20. In S.R. Arulprakasam Vs. Prema Malini Vasan, Income Tax Officer, Central Circle-XV, Madras, ; this court has held on the facts of that case

that as the filing of a revised return will not expatiate the contumacious conduct on the part of an assessee in not having disclosed the true income in

the original return itself and will not be a bar to the initiation of penalty proceedings, it will not likewise be a bar to the launching of criminal

prosecution. In Hakam Singh and Others Vs. Commissioner of Income Tax, , the Allahabad High Court has held that the action of an assessee in

filing a return after the books of account had been seized at a raid would be impelled by the compelling circumstances that the assessee was likely

to be dealt with under the penal provisions of the Income Tax Act and the action of an assessee in filing a return under such a constraint cannot be

said to be voluntary. In view of the above facts and pronouncements of this court and the Allahabad High Court, these criminal prosecutions

cannot be quashed because revised returns were filed on October 16, 1980, after the search which was conducted on June 7, 1980, by which

time the assessments on the original returns were completed.

21. It was also contended on behalf of the petitioner that the firm has filed appeals before the Income Tax Tribunal against orders of penalty and

with the view to coerce the petitioner to accept the levy of penalty which is contrary to the assurances given by the Department, prosecution

proceedings have been launched by the respondent. The pendency of appeal

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before the Income Tax Appellate Tribunal is no bar to the launching

of the prosecution proceedings. While so, this contention cannot be countenanced.

22. Mr. V. Ramachandran would further submit that the date of birth of the petitioner is December 19, 1919, and hence he is aged about 72 years

now and that the Government of India has issued a circular, as per the existing guidelines of the Central Board of Direct Taxes, pursuant to which

no criminal proceedings shall be initiated against an assessee if he is aged 70 years and above. Mr. K. Ramaswami rightly repelled this contention

by pointing out that these criminal proceedings were launched in 1988 and on that date, the petitioner was not 70 years old. Hence, this contention

is not open to the petitioner. Hence, I do not propose to further consider whether such circular is binding on the court or not.

23. None of the grounds urged by Mr. V. Ramachandran find acceptance with me. I do not find any legal infirmity in the complaint so as to render

it liable to be quashed. Hence, these petitions which do not

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