

(1994) 02 MAD CK 0040

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 16522 of 1989

S. Vasudeva Rao

APPELLANT

Vs

P.S.J. Sigamany

RESPONDENT

Date of Decision : 25-02-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Income Tax Act, 1961 — Section 132, 271

Penal Code, 1860 (IPC) — Section 193, 196, 420

Citation : (1995) 125 CTR 93 : (1995) 217 ITR 284 : (1995) 211 ITR 284

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : S. Kadarkarai, for the Appellant; Ramaswamy, for the Respondent

Judgement

Pratap Singh, J.—The accused in C.C. No. 930 of 1989 on the file of the Chief Judicial Magistrate, Coimbatore, has filed this petition u/s

482, Criminal Procedure Code, praying to call for the records in the above case and quash the same.

2. The short facts are : The respondent has filed the complaint under sections 193, 196, 420 and 511 of Indian Penal Code, read with sections

276C and 277 of the Income Tax Act, 1961. The allegations in it are briefly as follows :

The accused is assessed to Income Tax. He is doing business as a jeweller in Coimbatore. There was a search operation u/s 132 of the Income

Tax Act, 1961, in the business premises of the accused on June 9, 1980, and substantial unaccounted stock representing corals and pearls were

seized and the same was estimated at Rs. 2,50,000. The accused filed a return of the income for the assessment year 1981-82 on October 27,

1982, admitting a total income of Rs. 1,89,720, which included only Rs. 1,00,000 representing the value of unaccounted stock seized. In the meantime, the Departmental probe was in progress and a revised return of income was filed on August 3, 1983, fearing Departmental action, declaring a total income of Rs. 3,29,750 in which the accused admitted the value of corals and pearls at Rs. 2,50,000. The assessment was finally completed on a total income of Rs. 3,29,750 accepting the revised return. By filing an incorrect return of income, on the basis of false statements of income, the accused has committed an offence u/s 193, Indian Penal Code. By corruptly making the aforesaid false statements as genuine statements and filing a return of income knowing it to be false in the proceedings before the Income Tax Officer, the accused has committed an offence punishable u/s 196, Indian Penal Code. The accused made use of the false statements of income and return and attempted to deceive the Income Tax Officer and obtained valuable security in the form of an assessment order on a lesser income than that on which he is rightly assessable and has thereby committed an offence punishable u/s 420 read with section 511, Indian Penal Code.

3. In the course of filing the original return, the accused failed to disclose the unaccounted stock representing corals and pearls and attempted to evade tax, penalty and interest payable under the Income Tax Act and caused circumstances to exist that would have had the effect of evading tax, interest and penalty and has thereby committed an offence punishable u/s 276C(1) of the Income Tax Act, 1961. By filing statements and return of income and verification, which the accused knew or believed to be false and did not believe it to be true, the accused has committed an offence punishable u/s 277 of the Income Tax Act. Hence the complaint.

4. Mr. Kadarkarai, learned counsel appearing for the petitioner, would submit that the Income Tax Appellate Tribunal, Madras, had set aside the penalty imposed u/s 271(1)(c) of the Income Tax Act on the premises that it is not possible to consider that the assessee had been deemed to have concealed the income under Explanation 5 and for other reasons and so the entire basis of prosecution is set aside by the order of the said Tribunal and hence the prosecution is liable to be quashed. He would further submit that in view of the acceptance of the revised return, it has to be

construed that there was no concealment of any income and so the complaint is liable to be quashed. Per contra, Mr. Ramasamy, learned standing counsel for the respondent, would submit that the setting aside of the order of penalty by the Income Tax Appellate Tribunal is not germane to the prosecution of the criminal complaint and only if the penalty is set aside u/s 273A of the Income Tax Act, would it be relevant so far as the criminal complaint is concerned and that has been clearly set out in section 279(1A) of the Act. He would further submit that the revised return itself would show that there was concealment of income in the first return and hence simply because a revised return was filed and accepted, that would not mean that the offences are not committed.

5. I have carefully considered the submissions made by learned counsel. In *Ajanta Biscuit Co. v. Asst. Collector of Central Excise* [1993] L. W.

(Cri.) 575, I had occasion to consider a similar contention with regard to a proceeding under the Central Excises and Salt Act, 1944. In it, the

accused relied upon the finding of the Appellate Collector. I have held that the finding of the Appellate Collector is not a bar to the launching of the

complaint and on that score, it cannot be quashed. The findings given in the departmental proceedings are not binding on the criminal court. It was

held that they are parallel proceedings and so, the findings of the Collector would not affect the maintainability of the complaint. The ratio of this

ruling is applicable to this case.

6. Section 279(1A) of the Income Tax Act reads as follows :

279. Prosecution to be at the instance of the Commissioner. -

(1A) A person shall not be proceeded against for an offence u/s 276C or section 277 in relation to the assessment for an assessment year in

respect of which the penalty imposed or imposable on him under clause (iii) of sub-section (1) of section 271 has been reduced or waived by an

order u/s 273A.

7. Section 273A of the said Act relates to the power to reduce or waive penalty, etc., in certain cases. In this case, there was no reduction or

waiver of the penalty in pursuance of section 273A of the Act.

8. Furthermore, the Income Tax Appellate Tribunal had stated in its order in paragraph 5 as follows :

Reliance on Explanation 5 to section 271(1)(c) by the Revenue is of no assistance in deciding this case. For one thing, the section came into force only from October 1, 1984, whereas we are concerned with the assessment year 1981-82 and the concealment alleged in respect of a return filed on October 27, 1982. Explanation 5 provides for the assessee to be deemed to have concealed the income if he had not made amends as provided in that Explanation. That Explanation itself allows the assessee to record the undisclosed income in the books before filing the return after accepting that such income had not been disclosed earlier. In other words, the Explanation gives an opportunity to the assessee to make amends for avoiding the penalty and such an opportunity can obviously be availed of only in the proceedings after the enactment of the Explanation. Consequently, it has no application in the proceedings taken prior to that date. Therefore, it is not possible to consider that the assessee had been deemed to conceal the income under Explanation 5 either. It follows that the penalty imposed u/s 271(1)(c) was not sustainable either on facts or in law. It is accordingly cancelled.

9. So penalty was cancelled for the reasons stated by the Tribunal. It does not say that there was no concealment of income at all. On this ground also, I am unable to accept the submission made by Mr. Kadarkarai that because of the order of the Tribunal, the criminal proceedings are liable to be quashed.

10. Regarding the second submission of Mr. Kadarkarai that because the revised return was accepted, it must be held that there was no suppression of income. In paragraph 5 of the complaint, it is stated that on October 27, 1982, the accused filed a return of income only for Rs. 1,89,720 which included only Rs. 1 lakh representing the value of unaccounted stock. It is further alleged that fearing departmental action, on August 31, 1983, the accused filed a revised return and admitted the value of corals and pearls, etc., at Rs. 2,50,000. So simply because the revised return was accepted on August 31, 1983, it would not amount to an admission that there was no concealment of income. It is specifically stated that originally the value was shown only as Rs. 1 lakh and fearing departmental action, the revised return was submitted, putting the value of Rs. 2,50,000. In the circumstances, I am unable to accept either the second

submission made by Mr. Kadarkarai.

11. Since none of the submissions made by Mr. Kadarkarai finds acceptance with me, the petition fails and shall stand dismissed. The learned

Magistrate shall decide the case uninfluenced by the observations made in the course of this order.