

(1995) 01 OHC CK 0023

In the Orissa High Court

Case No : Criminal Revision No. 545 of 1993

Sabari Art Printers and Another

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 13-01-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Income Tax Act, 1961 — Section 276C, 277, 278B, 278E

Citation : (1995) 1 OLR 271

Hon'ble Judges : R.K. Patra, J

Bench : Single Bench

Advocate : S.K. Das, S.B. Jena and J. Sengupta, for the Appellant; S. Roy, for A.K. Ray, for the Respondent

Judgement

R.K. Patra, J.—Petitioner No. 2, Baidyanath Panda, was the managing partner of petitioner No. 1, Messrs. Sabari Art Printers, which was a registered firm. They were prosecuted for the offences punishable under Sections 276C and 277 read with Section 278B of the Income Tax Act, 1961. The trying magistrate has found the petitioners guilty under the aforesaid provisions and convicted them thereunder sentencing petitioner No. 2 to undergo rigorous imprisonment for three months and to pay a fine of Rs. 100 with a defaulting sentence on each count. Petitioner No. 1 represented by petitioner No. 2 has been sentenced to pay a fine of Rs. 500 with a defaulting sentence on each count. The sentences are to run consecutively. The aforesaid conviction and sentence was challenged by the petitioners in appeal which was without any success. Hence, this revision.

2. The prosecution case was that petitioner No. 1 represented by its managing partner--petitioner No. 2--was a registered firm which was engaged in the business of printing and in that capacity was an assessee under the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Petitioner No. 2, as the managing partner, was directly responsible for the management of the firm. It is the allegation of the prosecution that petitioner No. 2 on behalf of petitioner No.

1 filed a return on September 16, 1980, for the assessment year 1980-81 along with some annexures and its verification was signed by him. The closing stock was shown at Rs. 25,232.12 only. For the subsequent assessment year 1981-82, petitioner No. 2 on behalf of petitioner No. 1 filed a return on October 6, 1981, along with annexures, the verification of which was also signed by him. The opening stock was shown at Rs. 42,181.13 only. When the inflation between the closing stock of the assessment year 1980-81 and the opening stock for the assessment year 1981-82 to the tune of Rs. 16,949.01 was detected by the Income Tax Officer, notice was issued to the petitioners to show cause as to why the aforesaid difference should not be treated as "concealed income" and added to the income returned. Petitioner No. 2 in a written memo submitted to the Income Tax Officer that it was all due to a typographical mistake and the opening stock should be taken at Rs. 25,232 instead of Rs. 42,181. The said plea was not accepted and ultimately the assessment order for 1981-82 was finally passed on December 23, 1983. The order of assessment became final as it was not appealed against. On July 22, 1985, the Income Tax Officer took the statement of petitioner No. 2 in which the latter stated that the books of account were not available as they were all destroyed and the business of the firm stood closed. On the aforesaid basis, a prosecution report was filed under Sections 276C and 277 read with Section 278B of the Act alleging that the petitioners made false statements in the verification of the returns for 1980-81 and 1981-82 and delivered accounts which were false which they knew and/ or believed them to be false. This led to the trial and conviction of the petitioners as indicated.

3. The plea of the defence is one of complete denial. It is the stand of the petitioners that petitioner No. 2 simply signed the returns as prepared by his tax practitioner, C.R.K. Patnaik, and the discrepancy noticed in the returns was only a typographical mistake and that he had not submitted any false returns knowingly and had not tried to evade Income Tax by filing any such false returns.

4. The prosecution examined two witnesses on its behalf. P. W. 1 was the complainant and P. W.-2 was the Income Tax Officer at Jeypore during the period 1983 to 1986. The petitioners examined their manager as D. W. 1 in support of their defence.

5. Shri Das, learned counsel for the petitioners, contended that the prosecution having failed to establish that petitioner No. 2 filed the returns knowing them to be false or believing them to be not true, the conviction under Sections 276C, 277 and 278B of the Act cannot be sustained in law. In this connection, he placed reliance on the decisions in *Kuldip Rai Chopra, Income Tax Officer, "D" Ward Vs. Sohan Singh Dhiman*, ; *Bijayananda Patnaik Vs. Union of India (UOI)*, ; *D. Rahaman Vs. Bijaya Kishore Das*, and *B.T.X. Chemicals (P.) Ltd. and Others Vs. Suraj Bhan and Another*, and an unreported judgment of this court in Criminal Revision No. 694 of 1988 decided on December 22, 1992. He submitted that the trial judge as well as the appellate judge did not consider the evidence brought out in the cross-examination on account of which the findings recorded

against the petitioners are vitiated. Sri Ray, learned counsel appearing for the prosecution, on the other hand, submitted that the findings recorded against the petitioners are based on evidence and cannot be held to be wrong or illegal.

6. Section 276C of the Act provides that if a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under the Act, he shall be punishable with the sentences specified therein. Section 277 states that if a person makes a statement in any verification under the Act or under the rule made thereunder, 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 with the sentences specified therein. Section 278B deals with an offence under the Act committed by a company. A bare reading of the provisions of Sections 276C and-277 would show that the existence of mens rea is the sine qua non for prosecution. No doubt, Section 278E provides that in any prosecution for any offence under the Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state and it is for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. This provision has come into the statute book by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, with effect from September 10, 1986. The present case being a case prior to September 10, 1986, the presumption as to culpable mental state raised u/s 278E is not applicable.

7. A Division Bench of the Punjab and Haryana High Court in Kuldeep Rai Chopra, Income Tax Officer, "D" Ward Vs. Sohan Singh Dhiman, has held that the intention of the Legislature in incorporating the words "and which he either knows or believes to be false, or does not believe to be true" in. Section 277 is obvious and prosecution would not follow in every case where a wrong statement is made and it will have to be judged as to whether the assessee harboured the required mens rea or not. In that case the court found that the accused gave a satisfactory explanation of the discrepancy not only in his own statement recorded u/s 342, Criminal Procedure Code (old), but also by examining an employee of his factory who explained in detail the circumstances leading to the mention of wrong figures in the return.

8. This court in Bijayananda Patnaik Vs. Union of India (UOI), had occasion "to consider the scope of Section 277 of the Act and held as follows:

"Thus, it is very clear that the mere making of a statement in the return which is false does not ipso facto constitute an offence under the above section. Falsity of the statement is only one of the ingredients. The other main ingredient is that the false statement must be made knowing it to be false or believing it to be false or under the belief that it is not true. It follows, therefore, that the prosecution in order to make out an offence under the above section must prove both the ingredients. In other words, it must show that the statement made by the accused was false and that while making the statement the accused knew it

to be false or believed it to be false or believed that it was not true. ..."

9. The ratio of *Bijayananda Patnaik Vs. Union of India (UOI)*, was followed by this court in *D. Rahaman Vs. Bijaya Kishore Das*, . It was a case where the assessee, a partner in a firm and carrying on proprietary business, filed returns signed under his verification which were filled up by the accountants and the assessee was not present at the time of filing of the returns. The prosecution of the assessee for false verification in the returns was held to be unjustified because the prosecution failed to prove the mens rea or deliberate intention by the assessee to defraud revenue.

10. The Gujarat High Court in *B.T.X. Chemicals (P.) Ltd. and Others Vs. Suraj Bhan and Another*, held that an accused can be convicted u/s 276C of the Act if dishonest intention or mala fide intention is established. It was observed therein as follows (at page 426) :

" . . . bona fide mistakes made by an assessee while filling in the Income Tax return forms would not necessarily amount to an intention to commit a crime and if Section 276C were to be used for penalising every delinquent assessee on that score, it would wreak havoc. What is to be found by the court is as to whether the assessee wanted to defraud the, Revenue. ..."

11. This court in *Endupuri Sriram Murty v. ITO (Criminal Revision No. 694 of 1988 decided on December 22, 1992)*, held that prior to insertion of Section 278E, the onus squarely lay on the prosecution to establish both the parts of Section 277 and unless that onus is discharged, the charge cannot be held to have been brought home against the accused.

12. In view of the legal position aforesaid, counsel for the petitioners is, therefore, right in his submission that the prosecution is obliged to prove beyond reasonable doubt that petitioner No. 2 wilfully submitted the returns to evade payment of tax and the verification made in the statement was false which he either knew or believed to be false or did not believe to be true.

13. The courts below recorded the finding of guilt against the petitioners on the assumption that petitioner No. 2 being a qualified person would not be expected, without verifying the contents, to sign the verification. Accordingly, *meris rea* was attributed to petitioner No. 2. There is of course evidence that petitioner No. 2 read up to M. A. but in my considered opinion, this educational learning has nothing to do with the business of the firm of which he was the managing partner. The Income Tax Officer (P. W.-2) has stated in his cross-examination that he served as Income Tax Officer at Jeypore for three years, i.e., from July, 1983, to June, 1986, and he disposed of the assessment case of the petitioners for the assessment year 1981-82, whereas his predecessor one Shankar Sardar (not examined) completed, the assessment for the assessment year 1980-81. The witness has admitted by stating that the tax practitioner, C.R.K. Patnaik, and the manager of the firm represented the petitioners in the assessment proceedings and the assessment was completed on the representation of the petitioners"

Income Tax practitioner, C.R.K. Patnaik. The clear case of the petitioners, as revealed from the cross-examination of P. Ws. as well as the statement of petitioner No. 2 recorded u/s 313, Criminal Procedure Code, is that petitioner No. 2 simply signed the returns for the relevant assessment years prepared by his tax practitioner, C.R.K. Patnaik, and the discrepancy (difference) found out in the returns was only a typographical mistake and he had not knowingly submitted any false returns. The manager of the firm was examined as D.W.-1. He has testified that for the relevant assessment years their tax practitioner, C.R.K. Patnaik, filed the returns which were signed by petitioner No. 2 as per the instructions of the tax practitioner. D. W. 1 corroborates P. W. 2 by stating that the assessment proceeding was completed by the Income Tax Officer with the assistance of their tax practitioner. It has been brought out in the cross-examination of P. W. 2 that the accounts of a firm are compiled by the accountant which are placed before the Income Tax advocate for preparation of the Income Tax returns which are signed by the managing partner or proprietor of the firm. P. W. 2 has also candidly admitted that if a printing press owner files a return without any accounts, assessment can be done as per the returns and assessment can be done even without calling for the books of account. The prosecution did not examine the predecessor of P. W. 2, Shankar Sardar, who had completed the assessment for the assessment year 1980-81. Thus, the evidence of D. W. 1 which finds ample corroboration from the evidence of P. W. 2 remains unchallenged to the effect that in the assessment proceedings, the petitioners were represented by their tax practitioner, C. R. K. Patnaik, on whose submissions the assessments were completed. P. W. 2 has also stated in his cross-examination that gross profit is the difference between the sum total of sales and the closing stock minus the sum total of the opening stock plus purchases plus incidental expenses and purchase account and the closing stock are always interlinked. He has also frankly stated that there may be mistakes in the differential amount on account of addition of certain purchases to the opening stock. D. W. 1, the manager of the petitioners' firm, has deposed that he used to produce the accounts and relevant papers of the petitioners' firm before the Income Tax practitioner, C.R.K. Patnaik, and he prepared the returns for the relevant years on the basis of those records and accounts and petitioner No. 2 put his signatures in the returns. Exhibit 2/2 is a document in proof of payment of advance tax. In the circumstances stated above and in the absence of any other evidence on record, it is not possible to attribute mens rea to petitioner No. 2 in submitting the returns wherein discrepancy between the closing stock of the assessment year 1980-81 and the opening stock for the assessment year 1981-82 was noticed. Admittedly, the assessments were completed on the basis of the submissions made by the petitioners' tax practitioner, C.R.K. Patnaik, and petitioner No. 2 was not at all present at the time of completion of the assessment. D. W. 1 has stated that C.R.K. Patnaik was aged about 80 years at the time of trial of the case and was not in a position to move and has otherwise left his tax practice. As such, merely on the basis of his signature on the verification, no guilty intention can be attributed to petitioner

No. 2. He was also handicapped to explain the discrepancy when he was called upon to explain the same inasmuch as it is in evidence that the press was then closed on account of labour disturbances. Shri Das, learned counsel for the petitioners, also submitted that no appeal could be filed in the matter because a demand notice was not served on them. P. W. 2 has admitted in his cross-examination that he did not find a copy of the demand notice in the case records although, the assessment order, exhibit 6, is there. He (PW 2) admitted that he was not in a position to say whether the demand notice along with the assessment order was served on the petitioners as the office copies of the documents are not in the record. Rule 45 of the Income Tax Rules, 1962, provides that an appeal to the competent authority shall be made in Form No. 35 which prescribes, inter alia, to indicate the date of service of the relevant notice of demand. Whether the appeal would be competent without service of the notice of demand is not the subject-matter to be decided by me but the contention of learned counsel that the petitioners could not file an appeal due to non-service of notice of demand on them cannot be lightly brushed aside on the facts and circumstances of the case.

14. For the aforesaid reasons, I have no hesitation to hold that the prosecution has failed to establish the requisite mens rea which is the main ingredient to constitute an offence under Sections 276C, 277 and 278B of the Act. There is no evidence to hold that petitioner No. 2 made a false statement in the return knowing or believing it to be false or not believing it to be true. Accordingly, the conviction and sentence of the petitioners cannot be sustained in law which are hereby set aside.

15. In the result, the petitioners are acquitted of the offences. The criminal revision is accordingly allowed.