(1992) 01 MAD CK 0042

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 14213 of 1989

S.A.R. Somasundaram APPELLANT

Vs

Assistant Commissioner of Income Tax RESPONDENT

Date of Decision : 20-01-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195(1), 482
Income Tax Act, 1961 — Section 276(C), 277
Penal Code, 1860 (IPC) — Section 193, 196, 420, 511

Citation : (1992) 197 ITR 26

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : K. A. Panchapagesan, for the Appellant; Ramasamy K., for the Respondent

Judgement

Arunachalam, J.—In this petition preferred u/s 482, Criminal Procedure Code, 1973, the prayer is to call for the records and to quash the

pending prosecution in C. C. No. 555 of 1989, on the file of the Judicial Magistrate, Tiruchengode, initiated on a private complaint by the

respondent, alleging commission of offences by the petitioner punishable u/s 193, 196, 420 read with section 511 of the Indian Penal Code, 1860,

and sections 276C and 277 of the Income Tax Act, 1961.

2. The allegations in the complaint show that, in pursuance of a raid in the house of the petitioner, concealment of income to the tune of Rs.

17,00,000 was discovered. On that basis, this prosecution was initiated.

3. Mr. K. A. Panchapagesan, learned counsel representing the petitioner, contended that the petitioner had filed his return, which is stated to

contain false particulars, before the Income Tax Officer, Circle (I)(1), Salem, and if that be so, to prosecute the petitioner under sections 193 and

196 of the Indian Penal Code, on a complaint filed by the Assistant Commissioner of Income Tax, Special Investigation Circle, Salem, i.e., by the

present complainant which will not be competent, in view of the specific provisions of section 195(1)(b)(i) of the Code of Criminal Procedure, will

not be legally sustainable. As far as the offences under the Income Tax Act, 1961, are concerned, he contended that the penalty imposed has been

set aside in appeal, though subsequent to the filing of the prosecution. On these contentions, I have heard Mr. Ramaswamy K., learned counsel

representing the respondent.

4. It is not disputed by either counsel that both these contentions relate to appreciation of evidence by the trial magistrate and more so when certain

documentary evidence will have to be brought on record to scrutinise the validity of these submissions. It is fairly clear that both these contentions

relate to mixed questions of fact and law and it will, therefore, be more appropriate to urge these contentions during trial for, in the exercise of

inherent powers, it may not be brought on record. No ground has been made to quash the pending prosecution at this stage. The petitioner will be

entitled to urge the contentions raised herein before the trial magistrate at the appropriate time. This petition shall stand dismissed.

