(2008) 10 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Sat Pal Ved Parkash and Others APPELLANT

Vs

R.K. Kuchhal, ITO and Another RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:
Income Tax Act, 1961 — Section 276C, 276D

Citation : (2008) 10 P&H CK 0041

Hon'ble Judges : K.C. Puri, J

Bench : Single Bench

Judgement

K.C. Puri, J.—The accused/petitioners were tried and convicted under Sections 276C, 276D, 277 of the Income Tax Act and 193, IPC, by Shri Satish Ahlawat, the then Chief Judicial Magistrate, Kalthal, vide judgment dated 18-3-1998. Vide separate order dated 20-3-1998, they were sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 100 each u/s 276C of the Income Tax Act and in default of payment of fine, to further undergo rigorous imprisonment for a period of seven days; to undergo simple imprisonment for a period of one year and a fine of Rs. 1,500 each u/s 276D of the Income Tax Act and in default of payment of fine, to further undergo simple imprisonment for one month; to further undergo further rigorous imprisonment for a period of one year and to pay a fine of Rs. 100 each u/s 277 of the Income Tax Act and in default of payment of fine, to undergo further simple imprisonment for seven days and to undergo rigorous imprisonment for one year and also to pay a fine of Rs. 300 u/s 193, IPC. In default of payment of fine, they were ordered to undergo simple imprisonment for 15 days. The firm was also sentenced to pay a fine of Rs. 250 u/s 276C, Rs. 1,500 u/s 276D and Rs. 250 u/s 277 of the Income Tax Act. All the sentences were ordered to run concurrently.

2. Smt. Vidya Devi wife of Shri Munna Lal was also arrayed as an accused by the complainant as she was also a partner of the firm. Since she was a lady and not associated in active participation of the business of the firm, she was discharged by the learned Magistrate vide order dated 14-3-1997.

3. In short, the prosecution case is that complainant R.K. Kuchhal, Income Tax Officer, Kaithal, under authorization of Commissioner, Haryana, Rohtak, filed a criminal complaint on 25-2-1988, in the court of Chief Judicial Magistrate, Kaithal, against the present petitioners and Smt. Vidya Devi for the offences under Sections 276C, 276D and 277 of the Income Tax Act as well as 193, IPC.

4. The allegations in the complaint were that M/s Sat Pal Ved Parkash was a registered partnership firm consisting of four partners namely Sat Pal, Dharam Pal, Ved Parkash and Smt. Vidya Devi. The said firm dealt in Kiryana goods on retail as well as wholesale basis. The firm through its partner filed original return of income on 21-7-1979, declaring an income of Rs. 20,110 which was duly signed and verified by Sat Pal, petitioner, being one of the partners on 26-6-1979, at Kaithal. The firm again filed a revised return on 24-7-1980, declaring an income of Rs. 26,830 which was signed and verified by Sat Pal, petitioner on 21-7-1980. The firm had shown net profit by applying rate of 3 per cent on estimated sale of Rs. 8,94,269, but in the original return these were shown to the extent of Rs. 6,68,384.

5. The complainant further alleged that a raid was conducted by ST department headed by Shri Yudhvir Singh, R.T.O, Kurukshetra, on 22-5-1980, at the premises of the said firm. The raiding party took into possession the books of accounts as well as other documents. The actual sales as per these documents were Rs. 8,94,269 whereas the firm had accounted for sales aggregating to Rs. 6,68,384 only. The sales outside the books were determined at Rs. 2,25,885 by E.T.O and a penalty of Rs. 20,000 was also levied by him. Due intimation was sent to the Income Tax department. The revised return was filed after this raid.

6. On the basis of revised return, the assessment was completed at Rs. 57,230 by making an addition of Rs. 14,118 representing the profit of unaccounted sale of Rs. 2,25,885. Further, addition of Rs. 22,590 was made on account of investment needed for effecting the aforesaid sales. This order was passed by Income Tax Officer against which petitioners filed an appeal before Appellate Assistant Commissioner of Ambala Range which was dismissed on 28-12-1986. The Income Tax Officer had also imposed penalty of Rs. 16,400 u/s 271C of the Income Tax Act vide a separate order. It was alleged that the firm had filed the revised return after the raid had been conducted by the Excise and Taxation Department, when the fraud was detected. The firm was requested many times to produce books of accounts but without any result. The petitioners had wilfully attempted to evade tax chargeable/imposable under the Income Tax Act, 1961, and thus, rendered liable to be prosecuted u/s 276C of the Act. The firm, through its partner, also made wrong statement in the verification which was false which the partners knew or believed to be false or did not believe to be true and thus further rendered themselves liable for prosecution u/s 277 of the Act. Further, the partners fabricated account books for which they are liable to be punished u/s 193 Indian Penal Code. The accused /petitioners also did not produce the books of accounts in spite of repeated opportunities given to them. So, they were also

liable for the offence u/s 276D of the Income Tax Act.

7. In pre-charge evidence, complainant R.K. Kuchhal appeared as CW-1 and LP. Sobti, Income Tax Officer, as CW-2.

8. After considering the pre-charge evidence, the then Chief Judicial Magistrate, Kaithal, vide order dated 14-3-1997, charge-sheeted the petitioners to which they pleaded not guilty and claimed trial.

9. After the close of the evidence of the complainant, the statements of the accused were recorded u/s 313, Criminal Procedure Code. They denied the material allegations levelled against them and pleaded innocence.

10. In defence, the accused examined DW-1 Raj Kumar and DW-2 Ram Gopal.

11. The accused were convicted and sentenced, as already noticed above.

12. The accused filed an appeal. Vide judgment dated 10-1-2001, passed by Shri R.C. Bansal, the then Additional Sessions Judge, Kaithal, they were acquitted of the offence punishable u/s 276D of the Income Tax Act but they were convicted under Sections 276C and 277 of the Income Tax Act and Section 193, Indian Penal Code, and their sentence was reduced to rigorous imprisonment for six months instead of rigorous imprisonment for one year.

13. Feeling dissatisfied, the petitioners have filed the instant Criminal Revision.

14. The learned Counsel for the petitioners has not challenged the conviction of the petitioners. Therefore, the conviction of the petitioners is confirmed, having been based on cogent, reliable and convincing evidence.

15. It is important to note that the offence is alleged to have been committed in the year 1980. The instant complaint was filed in the year 1988. The petitioners are facing the agony of criminal prosecution for the last about 28 years.

16. In totality of the facts and circumstances of this case, this Court is of the view that ends of justice would be met if the sentence imposed upon the petitioners is reduced to the one already undergone by them. So ordered.

17. However, the amount of fine is enhanced to Rs. 5,000 in respect of each petitioner. In default of payment of fine, each petitioner will undergo rigorous imprisonment for three months.

18. This Criminal Revision is disposed of in the manner indicated above.

19. A copy of this judgment be sent to the learned trial court for strict compliance.