(2001) 10 DEL CK 0090

In the Delhi High Court

Case No : Criminal M. (M.) No. 2823 of 2001

S.C. Gupta — APPELLANT

Vs

State and Another — RESPONDENT

Date of Decision : 15-10-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 276CC, 278B, 278B1

Citation : (2002) 112 CompCas 121 : (2002) 257 ITR 272 : (2002) 123 TAXMAN 691

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : Vijay Bahuguna and Alok Aggarwal, for the Appellant; B.D. Jolly and Ajay Jha, for the Respondent

Judgement

K.S. Gupta, J.—In this petition filed u/s 482 of the Code of Criminal Procedure, 1973, the prayers made are as under :

"(a) Pass ad interim ex parte orders staying the operation of the orders passed by Sh. J.P.S. Malik, ACMM, Tis Hazari, in Complaint No. 429 of 1990 bearing title--Amit Jain, Asstt. CIT v. Ocean Electronics Pvt. Ltd--issuing non-bailable warrants against the petitioner as well as proceedings under sections 82 and 83 of the Code of Criminal Procedure, vide orders dated January 17, 2001, May 1, 2001 and July 11, 2001, and stay the arrest of the petitioner till the final disposal of this petition.

(b) Recall the orders dated August 22, 2000, issuing non-bailable warrants and orders dated January 17, 2001, May 1, 2001 and July 11, 2001, issuing process under sections 82 and 83 of the Code of Criminal Procedure.

(c) Quash the complaint and proceedings against the petitioner of Complaint No. 429 of 1990 bearing title--Amit Jain, Asstt. CIT v. Ocean Electronics Pvt. Ltd, -Pending before Sh. J. P. S. Malik, ACMM, Delhi."

2. In the course of arguments the prayers as at (a) and (b) were not pressed by Sh. Vijay Bahuguna, senior advocate, appearing for the petitioner.

3. In regard to prayer at (c), the submission advanced on behalf of the petitioner was that Ocean Electronics Pvt. Ltd. (for short "OEPL") had 11 directors at the relevant time but in the complaint filed for the offence u/s 276CC read with section 278B of the Income Tax Act (for short, the "Act"), the concerned Asstt. Commissioner of Income Tax, the complainant, had chosen to implead only the petitioner as accused No. 3 and Vijay Mehta as accused No. 2 in addition to OEPL as accused No. 1. Criminal liability for late submission of Income Tax return by OEPL for the assessment year 1988-89 cannot be fastened against the petitioner as he was not involved in the management of affairs of the company and had also resigned as director on March 25, 1993. It was pointed out that neither the Income Tax return nor the balance-sheet filed along with the complaint are signed by the petitioner.

4. Para. No. 3 of the complaint EX.PW1/A which is material, is reproduced below :

"That as per the information available on the record, during the previous year, relevant to the assessment year 1988-89, accused Nos. 2 to 3 were the directors of accused No. 1. They were exercising all powers to control the day-to-day business of accused No. 1. They were also signing and filing documents on behalf of accused No. 1. They were, thus, in charge of and responsible to accused No. 1 for the conduct of its day-to-day business."

5. By way of pre-charge evidence, part statement of Amit Jain, Asstt. Commissioner of Income Tax, complainant was recorded by the ACMM on August 7,1992. It is in his deposition that accused Nos. 2 and 3 were the directors of the accused company for the assessment year 1988-89 and were exercising all the powers to control day-to-day business of the company.

6. Section 278B(1) of the Act which deals with the vicarious liability of directors, etc., says that where an offence under the Act is committed by a company, every person who, at the time of commission of offence, was in charge and responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and liable to be proceeded against. At this stage what is to be seen is whether the allegations made in the complaint and/or the statements of witnesses recorded in support thereof taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of the offence which is alleged against the accused (see Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, and State of Haryana and others Vs. Ch. Bhajan Lal and others,). Considering the allegations made in the aforesaid para. 3 and the statement of PW-1 this complaint qua the petitioner cannot be legally quashed u/s 482 of the Code of Criminal Procedure. The non-joining of remaining nine directors in the complaint as accused has no relevance whatsoever at this stage. The petition in regard to prayer (c), thus, deserves to be dismissed being without

any merit.

7. Consequently, the petition is dismissed.

