
(1984) 11 DEL CK 0002

In the Delhi High Court

Case No : Criminal Misc. (Main) No. 324 of 1984,

SEQUOIA CONSTRUCTION CO. P. LTD. AND OTHERS

APPELLANT

Vs

P. P. SURI, ITO, CENTRAL CIRCLE XX, NEW DELHI.

RESPONDENT

Date of Decision : 19-11-1984

Acts Referred:

Citation : (1986) 47 CTR 277 : (1986) 158 ITR 496

Hon'ble Judges : D. R. Khanna, J

Bench : Division Bench

Judgement

D. R. KHANNA J. - These three criminal petitions have been moved against similar orders dated February 28, 1984, of the Additional Chief Metropolitan Magistrate whereby the application of the petitioners in each of the three cases pending against them for quashing of prosecution proceedings was rejected.

Briefly stated, the allegations against the petitioners as per complaints filed against them by Mr. P. P. Suri, Income Tax Officer, Central Circle XX, New Delhi, are that petitioner No. 1, which is a private limited company, paid interest to eight parties who had effected deposits with the company or were its creditors. While doing so, Income Tax deductions were made by petitioner No. 1 from the amount of interest paid to them. In other words, Income Tax was deducted at source by this petitioner on interest payments effected. Under the law, the deductions so made should have been deposited with the Central Government within one week of the payments. However, this was not done and the deposits were effected much later. The position in this regard has been as under :

Sr. No.

Name of the party

Amount of tax deduction

Date of deduction of tax

Date of which tax should have

Date on which tax paid Govt.

Delay in full in months

1.

M/s. Delhi Auto mobiles

8,000.00

6-2-79

13-2-79

26-6-80

1 yr. 4 months

2.

M/s. Ansal Housing & Estate (P) Ltd.

13,417.00

31-3-79

7-4-79

19-10-79

6 months

3.

M/s. Ansal Housing & Estate (P) Ltd.

3,981.54

31-3-79

7-4-79

22-10-79

6 months.

4.

Smt. Manju Devi

254.00

2-4-79

9-4-79

26-6-80

2 months

5.

M/s. Delhi Automobiles.

7,889.00

14-6-79

21-6-79

26-6-80

1 year

6.

do.

9,132.00

29-9-79

6-10-79

26-6-80

8 months

7.

Dr. Amrita Salve

1,234.75

30-10-78

6-11-78

7-12-78

1 month

8.

M/s. Master Builders

6,860.00

10-11-78

17-11-78

7-12-78

less than one month.

Since there were defaults in the case of eight creditors, one complaint case was

filed with regard to three creditors, second with regard to the other three and the third qua the remaining two creditors. The complaint has been u/s 276B of the Income Tax Act, 1961, which read as under :

"If, a person, without reasonable cause or excuse, fails to deduct or after deducting, fails to pay the tax as required by or under the provisions of sub-section (9) of section 80E or Chapter XVII-B, he shall be punishable, -

(i) in a case where the amount of tax which he has failed to deduct or pay exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine."

Petitioners No. 2 to 4 were imp leaded as directors of petitioner No. 1 company and they are also sought to be made criminally liable.

The Income Tax Officer had as well commenced penalty proceedings under sections 201(1) and 221 of the Income Tax Act for the failure of petitioner No. 1 to deposit the said deductions of tax at source within the time prescribed. That section 201(1) read as under :

"If any such person and in the cases referred to in section 194, the principal officer and the company of which he is the principal officer does not deduct or after deducting fails to pay the tax as required by or under this Act, he or it shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessed in default in respect of the tax :

Provided that no penalty shall be charged u/s 221 from such person, principal officer or company unless the Income Tax Officer is satisfied that such person or principal officer or company, as the case may be, has without good and sufficient reasons failed to deduct and pay the tax."

A penalty of Rs. 20,000 was then levied by the Income Tax Officer under the provisions against petitioner No. 1. The latter, however, went in appeal before the Commissioner (Appeals) who by an order dated March 24, 1983, quashed that penalty. The relevant operative part of that order was as under :

"However, the contention of the learned representative that there had been goods and sufficient reason for non-payment of the tax on account of the financial stringency appears to be correct. The appellant company, in fact, did not pay the creditors but their accounts were only credited with the amounts reduced by the tax that would have been deductible in respect thereof. Moreover, the deduction of tax in these cases was notional only. Further, the Income Tax Officer has charged interest u/s 201(1A) in respect of the delay in payment of tax deducted at source. The appeal against the order u/s 201(1A) has been rejected by me in a separate order upholding the levy of the interest.

Considering the various facts and circumstances of the case and the fact that there had been sufficient and good cause, I hold that the Income Tax Officer was not justified in levying penalty u/s 201(1)/221 and, as such, the same is cancelled.

In the result, the penalty of Rs. 20,000 is cancelled and the appeal is allowed."

As a result of the cancellation of the penalty, the petitioners moved the trial court in the present criminal cases and sought that the prosecutions could no longer be sustained and they should be quashed. This, however, did not prevail with the learned trial court and it was noted that the appeal of the of the Department against the order of the Commissioner of Income Tax was pending before the Income Tax Appellate Tribunal and, Therefore, the order could not be treated as final. It was further observed that even. otherwise the findings of the Commissioner were not binding on the criminal court which was entitled to independently go into the matter. The fact that there were delays in the deposits of tax deducted at source, it was noticed, was there. Dealing with another plea of the petitioners that they had already been charged interest by the Department for the delays in the payment of those amounts to the Central Government, the learned trial court observed that the charging of such interest did not obliterate the prosecution and the Legislature has made separate provisions in this regard. It was noted that there were no clear findings that there were good and sufficient reasons for not deducting Income Tax at source. Feeling aggrieved, the petitioners have now moved the present petitions.

Before proceeding further, it may be mentioned that the Income Tax Appellate Tribunal as well has rejected the appeal of the Income Tax Officer against the deletion of that penalty. The order in this regard was made on July 10, 1984.

There is no gainsaying that the Income Tax Act makes separate provisions for levy of interest, penalty and criminal prosecution. The charging of interest has altogether a different purpose and that is for compensating the Revenue for depriving it of the user of the money during the period the payment was withheld. The learned trial court was, Therefore, right in ignoring the effect of the same on the present prosecutions. In fact, the Commissioner of Income Tax also rejected this contention of the assessed that the levy of interest should preclude imposition of penalty. It is, of course, another thing that when the Revenue has been adequately compensated with interest and the assessed had some cause for non-deposit or laboured under ignorance in good faith, relief by way of quantum of penalty or sentence may be allowed.

The provisions with regard to criminal prosecutions in cases of economic offences or violations of Income Tax law are of recent growth and their desirability and/or necessity was felt because of rampant attitude of defiance displayed by some affluent sections of the society. The pernicious effect on the economy of the country that evasions and violations were playing naturally called for sterner measures. These prosecutions have thus been made permissible in spite of the

already existing provisions with regard to levy of penalties by the Income Tax authorities. The Legislatures wisdom, Therefore, to open up prosecutions and dire consequences has a sound basis and cannot be doubted. There is no question of double jeopardy in such cases. The scope and purport of penalty proceedings and prosecutions are separate and independent. The existence of the one or the other is no bar to any of them. They are co-extensive. An assessed can be levied penalty as well as punished by prosecution.

However, the question arises in cases where penalties have be quashed on the same facts and circumstances and the gravamen of the criminal charge is the same which was under purview in penalty proceedings. an a finding given on those very facts by specialised bodies who have the technical expertise of the particular branch of law and a accustomed to administer the same everyday should be entirely ignored ? It is more in the context of the present cases, where the primary consideration is whether the petitioners had without reasonable cause failed effect the deposits of tax deducted at source with the Government. The corresponding provisions u/s 201(1) of the Income Tax Act are rather somewhat stringent when they speak of "without good and sufficient reasons". Section 276B, however, speaks of "without reasonable cause excuse". A cause may appear to be "reasonable", though still may not be good and sufficient". Sufficiency goes farther than mere reasonableness. The distinction is of course thin. The Legislature has rather, apart from sufficient cause, now enjoined that it should also be good cause for not depositing the money where defaults have occurred. The standard of proof and Explanation and the onus to be discharged by the assessed is much higher and heavy. In a criminal case, however, the dictates of law just demand the requirement of reasonable cause, i.e., what appears ex facie to reason, which is much more milder.

Moreover, penalty proceedings under the income tax law are primarily quasi-criminal in nature. During their course, the rigour of the criminal law that a prosecution case must entirely stand on its own legs and not on the weakness of the defense version does not essentially operate with the infallibility. However, the onus on the prosecution in criminal matters far rigorous and must be proved beyond reasonable doubt. The defense version to be satisfactory and plausible in criminal trial is much lighter and is just weighed in the realm of preponderance of probability. In case Therefore, in any penalty proceedings under the Income Tax law, an assessed has been able to establish "good and sufficient reason" for the default before the Commissioner. and then before the Tribunal, can it not be said that qua the criminal trial at least on the same facts and circumstances, "reasonable cause" should be treated to exist ? I am making these observations in the context of those provisions, where the provisions of law both under the penalty provisions and prosecution are similar.

The observations of the learned trial court in the present case that there was no clear finding by the Commissioner of Income tax that there was sufficient and good cause with the assessed not to effect deposits is plainly not borne out.

Rather, a perusal of that order brings out that he was satisfied that there existed sufficient and good cause with the assessed. The two reasons which prevailed with him were the financial stringency of the assessed and that the interest payments were not in cash but merely national by way of credit entries in their accounts.

From the side of the complainant in the present cases, it has been urged that the balance-sheet of the company showed that the current liabilities were reduced by about Rs. 3.6 lakhs as compared to the preceding year. From this circumstance, it was urged that the company was not lacking in funds and if it could eliminate part of those liabilities, it could have as well paid the dues of the Revenue. However, the reduction of those liabilities were at different stages in the year and do not essentially reflect the state of affairs at the time when deposits were to be effected with the Revenue. In any case, the entire conspectus of facts and circumstances were before the Commissioner and the Appellate Tribunal and if they have after consideration come to the view that good and sufficient reason existed with the assessed not to make deposits with the Revenue within time, that finding cannot be lightly ignored and even though strictly may not be res judicata, is a valuable piece of evidence and overwhelming circumstances and a consideration which must weigh with the criminal court while assessing the reasonable cause prevailing with the assessed.

Thus, in a recent decision of the Supreme Court in the case of P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , it was observed at page 700 as under :

"The criminal court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and in an appropriate case it may drop the proceedings in the light of an order passed under the Act. It does not, however, mean that the result of a proceeding under the Act would be binding on the criminal court. The criminal court has to judge the case independently on the evidence placed before it. Otherwise, there is a danger of a contention being advanced that whenever an assessed or any other person liable under the Act had failed to convince the authorities in the proceedings under the Act that he has not deliberately made any false statement or that he has not fabricated any material evidence, the conviction of such person should invariably follow in the criminal court."

This decision on which the complainant has heavily relied clearly expounds that a criminal court can in an appropriate case drop the proceedings in the light of the order passed under the Income Tax Act, where the result of those proceedings have a bearing on the question in issue in the criminal case. It was, of course, further observed that a result of those proceedings would not always bind a criminal trial. This was said in the context whether a conviction should ipso facto follow where a penalty has been sustained under the Income Tax Act. Naturally, in such circumstances, the duty cast upon the prosecution to still establish its case beyond reasonable doubt before the criminal court remains and is not taken

away. This may, however, not be entirely the case when the position is converse, i.e., when the penalty is dropped on the sufficiency of Explanation put forth by the assessed. Such a result is certainly a valuable piece of evidence and circumstance in favor of the accused in criminal trial.

Thus, in the case of *Gulab Chand Sharma v. H. P. Sharma* [1974] 1 Delhi 190, a Division Bench of this court discussed the essentials of the general principles of *res judicata* in criminal cases and observed that where a decision by a competent judicial tribunal has been finally given and determines the same questions as are sought to be controverted in a sub-sequent litigation and between the same parties, the plea of *res judicata* is available. The following pertinent observations may be reproduced here with advantage :

"Since the principle of issue estoppel is aimed at the exclusion of evidence to prove facts which have been already proved between the parties, it has not been held to apply against the accused though it always applies in favor of the accused."

The Allahabad High Court in *Dr. D.N. Munshi Vs. N.B. Singh*, took note that if the law permits, the order of the Tribunal may be utilised as a piece of evidence to show that there was no offence committed by the accused. But the finding given by the Tribunal cannot by itself be sufficient to direct the dismissal of the complaint or acquittal or discharge of the accused the provisions of the Code of Criminal Procedure. The facts of that case were entirely distinguishable inasmuch as during the course of the original assessment, penalty had been imposed. That assessment itself was set aside by the Appellate Tribunal and the matter remanded to the Income Tax Officer as he had in the meanwhile also commenced reassessment proceedings u/s 147 of the Income Tax Act. Since the original assessment had been knocked out and the reassessment proceedings were going on, the Tribunal set aside the assessment. Naturally, Therefore, the question of levy of penalty on the completion of reassessment proceedings still remained open and in the circumstances, it was held that there was no bar to the criminal trial in case concealment of income was otherwise proved. There was thus no quashing of the penalty on merits nor all possibilities closed under which penalty could still be levied. In fact, in the case of *P. Jayappan Vs. S.K. Perumal*, First Income Tax Officer, Tuticorin, , the Supreme Court also held that the mere non-completion of reassessment proceedings before the Income Tax Officer could not justify the dropping of the criminal case. In the present case, however, no such reassessment is involved and the penalties have been quashed on merits after acceptance of the case of the assessed that there was good and sufficient reason for not depositing the tax with the Revenue within time. It must, Therefore, be taken that the milder proof of reasonable cause should be taken to have been Established and, in the circumstances, it would be a sheer exercise in futility and harassment of the accused to allow criminal prosecution proceedings. Petitioners Nos. 2 to 4 were, of course, not parties in those penalty proceedings under the Income Tax Act. However, their liability is being invoked in their status as

directors of petitioner No. 1 company and as appurtenant to its liability. The prosecutions must, Therefore, be quashed.

The case of RAJINDER NATH Vs. M. L. KHOSLA, Income Tax OFFICER, AND ANOTHER., , is also distinguishable inasmuch as in that case, the quantum addition in the trading account of the assessed had been knocked down by the Appellate Assistant Commissioner and that decision was confirmed by the Tribunal. When in the regular assessment, it was found that there was no withholding or concealment of income, naturally the penalty or prosecution could not be sustained. The other observations of the court with regard to the maintainability of the criminal proceedings, where penalty has been dropped, were in the nature of obiter. Rather, the observation that initiation of penalty proceedings is not a condition precedent to the initiation of the complaint u/s 277 cannot be taken exception to when the Supreme Court in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , has upheld the maintainability of the criminal case even where reassessment proceedings have still to be completed. In fact, levy of penalty in such a case follows after the completion of reassessment proceedings.

The view of this court in RAJINDER NATH Vs. M. L. KHOSLA, Income Tax OFFICER, AND ANOTHER., that when additions to income is knocked down the prosecution cannot be sustained finds approval in a somewhat different situation, when the Supreme Court knocked down the prosecution in the case of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, and found that the genuineness of the firm had been established in the regular assessment and, Therefore, the assessed could not be prosecuted for filing false returns.

The complainant has next made a reference to section 279(1A) and pointed out that the Legislature has made specific provision for cases where prosecutions cannot be maintained when penalties have been reduced or waived. The prosecution u/s 26B, it is next pointed out, is not included under that provision and in the circumstances, it is pleaded that the cancellation of penalty can have no effect on the prosecution. In my opinion, however, section 279(1A) creates a legal bar. The same, how_ever, does not preclude or exhaust cases which are otherwise on merits found to be already adjudicated under the Income Tax Act and there is no possibility of, nor would the judicial propriety permit, taking a different view. The present cases are such cases.

The result, Therefore, is that the petitions are allowed and the three prosecutions pending in the trial court are quashed.