**(1997) 04 PAT CK 0043**

**In the Patna High Court**

**Case No :** Criminal Miscellaneous No. 5590 of 1992

Shyam Kumar Arora and Another — APPELLANT

Vs

Government of India and Another — RESPONDENT

**Date of Decision :** 24-04-1997

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 276C, 277

**Citation :** (1998) 234 ITR 775

**Hon'ble Judges :** D.S. Dhaliwal, J

**Bench :** Single Bench

**Advocate :** Chittaranjan Sinha, Prabhat Kumar and A. Kundu, for the Appellant; L.N. Rastogi and S.K. Sharan, for the Respondent

## Judgement

D.S. Dhaliwal, J.—The prayer in this petition u/s 482 of the Code of Criminal Procedure is for quashing of order dated February 6, 1992, passed by the Special Court (Economic Offences), Muzaffarpur, whereby cognizance for the offence under Sections 276C and 277 of the Income Tax Act, 1961, was taken against the petitioners in Complaint Case No. 3 of 1992. The petitioners also pray for quashing their criminal prosecution in the proceedings arising from the said complaint.

2. The allegation against the petitioners in the complaint are that for the assessment year 1988-89, the petitioners filed the Income Tax return showing a net loss of Rs. 38,743. The Income Tax Officer assessed the annual income of the petitioners for the said period at Rs. 1,19,820. The Assistant Commissioner of Income Tax, Circle 2(1), Patna, filed the alleged criminal complaint against the petitioners in the Special Court (Economic Offences), Muzaffarpur, for the aforesaid offence on the ground that the petitioners wilfully attempted to avoid tax by concealing true particulars and filed inaccurate particulars of their income. Acting on the complaint, the special court took cognizance of the offence as indicated earlier.

 

3. I have heard learned counsel for the petitioner, counsel for opposite parties Nos. 1 and 2 and have perused the records with their assistance.

4. The contention of learned counsel for the petitioners is that against the assessment order of the Income Tax Officer, the petitioners filed appeal which has been allowed by the Commissioner of Income Tax vide order dated March 27, 1992 (annexure-5), and, as such the very basis for the prosecution has been taken away and in this situation counsel for the petitioners submitted that the order taking cognizance and the prosecution of the petitioners cannot be sustained being an abuse of process of law.

5. Learned counsel appearing for opposite parties Nos. 1 and 2 admit the fact that the appeal of the petitioners has been accepted and the case has been remanded back for fresh assessment.

6. I find merit in the contention raised by learned counsel for the petitioners. A perusal of annexure-5 goes to show that against the assessment order on the basis of which the criminal complaint has been filed against the petitioners, the petitioners preferred an appeal which was allowed by the Commissioner of Income Tax and the assessment order was set aside and the matter has been remanded for fresh assessment according to law. As the assessment order which formed the very basis of the prosecution is no longer in existence, the petitioners cannot be prosecuted on the strength thereof.

7. In the result, the petition is allowed and the impugned order taking cognizance as also the criminal prosecution of the petitioners resting thereon are hereby set aside. It would be open to the Department to file a fresh complaint against the petitioners in case after fresh assessment the petitioners are found to have committed any offence while filing their return for the assessment year in question.