(1994) 11 KL CK 0029

In the High Court Of Kerala

Case No : Criminal R.P. No. 989 of 1994

S.M. Syed Mohan and Others APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 28-11-1994

Acts Referred:

Income Tax Act, 1961 — Section 277

Penal Code, 1860 (IPC) — Section 120B, 193, 196, 420

Citation : (1995) 126 CTR 449 : (1995) 214 ITR 634

Hon'ble Judges : K.P. Balanarayana Marar, J

Bench : Single Bench

Advocate : K. Kunhirama Menon and P. Ramakrishnan Nair, for the Appellant;

Judgement

K.P. Balanarayana Marar, J.—The petitioners are some of the accused in C C No 12 of 1985 on the file of the Additional Chief Judicial Magistrate (Economic Offences), Ernakulam. The complaint is that the petitioners and five others had committed offences punishable under Sections 277 and 278 of the Income Tax Act, 1961, and Sections 120B, 193, 196, 420 and 109 of the Indian Penal Code, 1860. The Assessing Officer found that the accused were not accounting all their sales and it was also found that the sales were short-credited or in other words, the full consideration was not shown in the sale bills. It was also revealed that inflated figures were shown regarding the expenses under the head "Freight and cooly inwards in the trading and profit and loss account". They are also alleged to have fabricated documents knowing them to be false or not believing them to be true. They had also produced account books for being used in the proceedings before the Income Tax Officer and used them as genuine knowing that they were false and fabricated. The offences mentioned above are alleged to have been committed in these circumstances.

2. It is stated in the petition that the only allegation in the complaint against the partners, viz., accused Nos. 2 to 12, was that they had full knowledge of the acts and manipulations. Accused Nos. 13 and 14 were employees of the firm during

the relevant period and accused Nos. 15 to 17 were also employed there.

3. The thirteenth accused had earlier filed Criminal Revision Petition No, 201 of 1985 and Criminal M. C. No. 717 of 1985 before this court which was disposed of by a common order against which he filed special leave petitions before the Supreme Court. Those special leave petitions were disposed of by order dated July 18, 1994. On behalf of the petitioners, it was submitted that there was no material for framing charges against them and that they are entitled to be discharged. The court below rejected those contentions and the request for discharge was disallowed. That order is challenged in this revision.

4. Heard counsel for petitioners.

5. On a reading of the impugned order and on a reference to the earlier proceedings, the order of the Magistrate refusing the request for discharge seems to be perfectly justified. By the common order passed by this court in Criminal R. P. No. 201 of 1985 and Criminal M. C. No. 717 of 1985, the complaint as against the first accused was quashed and it was directed that the case shall proceed against the remaining accused. By that time, accused Nos. 2, 3, 6 and 15 were no more. The Magistrate has, therefore, proceeded against the remaining accused. The Magistrate has considered the question whether a case had been made out against the petitioners which if unrebutted would warrant their conviction and if not whether they are liable to be discharged. The first accused is a partnership-firm engaged in the business of purchase and sale of iron and steel. Accused Nos. 2 to 12 are the partners of the firm and accused Nos. 13 to. 17 are employees. It is the case of complainant that the return submitted by the first accused was false and the books of account were manipulated which included purchase in fictitious names. There were even unaccounted purchases and sales also. These aspects are seen mentioned by the Magistrate in paragraph 6 of the judgment. The Magistrate is, therefore, of the view that there is sufficient basis for the factual allegations which if left unrebutted can be the basis of conviction of the accused. It was also contended that the partners are not liable for the reason that the assessment relates to a period before the introduction of the amendment to Section 278 of the Income Tax Act. The contention is that the partners are not liable and there is no averment in the complaint to suggest abatement of any offence by the partners. These contentions were repelled by the Magistrate mainly on the ground that this court has directed the Magistrate to proceed against the partners of the firm after quashing the complaint against the first accused. The Magistrate has also referred to certain decisions cited at the Bar which would not help the case advanced by the petitioner.

6. Anyway, the allegations in the complaint would go to show that the partners had full knowledge of all the acts and manipulations as is evident from their individual returns of income submitted to the respective Income Tax Officers and from other circumstances. Regarding accused Nos. 13 to 17, the employees of the firm, also there are sufficient allegations in the complaint and prima facie

evidence to suggest their complicity in the offences alleged against them. In these circumstances, the Magistrate was right in finding that there is no ground to hold that no case has been made out against the accused as regards the offences alleged against them which if unrebutted would warrant their conviction. The request for discharge of the accused was rightly declined by the Magistrate. No interference is called for.

7. For the aforesaid reasons the criminal revision petition is dismissed. It is made clear that it will be open to the petitioners to raise all objections which they can before the court below including the liability of the partners of the firm and the employees thereof.