(2000) 01 PAT CK 0113

In the Patna High Court

Case No : Criminal Miscellaneous No. 8536 of 1998 (R)

Smt. Bimla Sharma APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 06-01-2000

Acts Referred:

Citation : (2000) 3 PLJR 266

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Advocate : B. Poddar and A. Raut Choudhary, for the Appellant; K.K. Jhunjhunwala, for Opposite Party No. 3, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—As a common question of law is involved in both the cases, they have been heard together and this judgment will cover both the cases.

2. The Petitioner are admittedly the partners of a firm, namely, M/s. A.B. Sales, who have been proceeded against in complaint case No. 4/96 on the basis of a complaint filed by the Income Tax authority. The Petitioners have impugned the order dated 22.9.1998 by which the learned Special Judge, Economic Offences, Ranchi, has rejected the prayer of the Petitioners for their discharge.

3. There is no dispute of the fact that the complaint petition has been filed on the basis of the assessment order dated 30.9.96 in respect of the return of the assessment year 1995-96. It is also not in controversy that this assessment order was challenged by the Petitioners before the Income Tax Commissioner (Appeal) and by order dated 29.10.98, as contained in annexure-10 the Appellate court has set aside the said assessment order dated 30.9.96. Paragraph 47 of the appellate order reads thus;

The entire gamut of facts make me look askance. The matter has not reached a stage of finality and it is just and fair that the case is thoroughly enquired and investigated thread-bare to arrive at a conclusion which can be sustained either way. For this purpose, I set aside the case to the file of the Assessing Officer to investigate into the bank accounts and look into the linkage between them as also he should make enquiries from the investigating authorities about the possible cause of death and the genuineness of the suicide note.

4. Learned Counsel for the Petitioners submits that when the very basis of the criminal case, that is, the assessment order dated 30.9.96 for the assessment year 1995-96 has been set aside by the appellate authority and the matter has been remitted for investigation by the Assessing Officer, there is no ground for proceeding against the Petitioners. In support of his contention he has relied on the decisions reported in K.T.M.S. Mohd. and another Vs. Union of India, ; Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, ; Banwarilal Satyanarain and Others Vs. State of Bihar and Another, and EQUIPMENT SERVICE CENTRE AND OTHERS Vs. UNION OF INDIA AND OTHERS . His second contention is that in view of the decision of this Court reported in Jamshedpur Engineering and Machine Manufacturing Company Ltd. and Others Vs. Union of India (UOI) and Others and State of Haryana Vs. Brij Lal Mittal and Others, , in absence of, any specific allegation against a particular partner of a firm he cannot be proceeded against criminally. According to him, there is no averment in the complaint petition that these two Petitioners were incharge of day to-day affair of the firm at the relevant time.

5. Mr. K.K. Jhunjhunwala appearing on behalf of the Revenue submits that as the assessment order dated 30.9.96 for the assessment year 1995-96 has been set aside by the appellate authority, the very basis for proceeding against the Petitioners becomes nonest and the Petitioners can be proceeded against in accordance with law, if on investigating the matter the Assessing authority finds anything against them.

6. Under these circumstances, in my the continuation of the proceeding against the Petitioners at this stage will be an abuse of the process of the court and for the ends of justice the entire proceeding in complaint case No. 4 of 1996 must be quashed.

7. In the result, these petitions are allowed and the entire criminal proceeding including the impugned order dated 22.9.98 refusing to discharge the Petitioners is quashed.

8. However, it is made clear that if on the assessment of the firm for the assessment year 1995-96 the concerned authority finds anything against the Petitioners, it will be open for him to proceed against the partners of the firm in accordance with law and the observations made in this order will not prejudice the parties in any way.

