

(1991) 01 KL CK 0005

In the High Court Of Kerala

Case No : Criminal Revision Petition No. 294 of 1987

S.N. Vadhyar and Sons

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 08-01-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195(1)(b)(i)
Income Tax Act, 1961 — Section 277, 278, 278B
Penal Code, 1860 (IPC) — Section 193, 193, 194, 195, 196

Citation : (1992) 62 TAXMAN 231

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Advocate : K. Kunhirama Menon and R. Raya Shenoi, for the Appellant; M.K. Abdulla and Avshe Youseff, for the Respondent

Final Decision : Allowed

Judgement

1. This revision is directed against the conviction and sentence entered against accused Nos. 1 to 3 in C.C. No. 5 of 1985 on the file of the Additional Chief Judicial Magistrate (Economic Offences), Ernakulam. The first accused is a partnership firm and accused Nos. 2 and 3 are its partners. All the three accused have been convicted for the offence punishable u/s 277 of the income tax Act, 1961 ("the Act") and sections 193 and 196 of the Indian Penal Code, 1860. For the offence u/s 277, accused Nos. 2 and 3 are sentenced to undergo rigorous imprisonment for six months. No separate sentences are awarded to these accused for the offences under sections 193 and 196. The case in short is as follows: The first accused firm has been engaged in the business of purchase and sale of iron and steel materials. The firm was assessed to income tax and the second accused filed exhibit P-3 return for the assessment year 1971 -72 disclosing an income of Rs. 1,54,194.40. The return was submitted to the ITO, A-Ward, Ernakulam. Later, this file was transferred to the Special Circle, Ernakulam. The ITO attached to the Special Circle, Ernakulam, conducted a search in the business premises of the accused on 27-7-1972. The houses of the

partners of the first accused and the business premises of one Narayanaswamy Iyer were also searched and books of account and other records were seized. The search and other investigations conducted by the complainant disclosed that there were irregularities in certain business transactions and the facts stated in exhibit P-3 return were not true. Therefore, steps were initiated to prosecute the accused.

2. We are concerned with only a few transactions. It was alleged by the complainant that two wagon loads of M.S. rods purchased from Ganesh Exports and Imports Company, Calcutta, by the accused were not shown in their accounts. The two wagon loads of M.S. rods were consigned under exhibits P-14 and P-17 railway receipts. The complainant's case is that these goods were sent in the name of a fictitious person, namely, Abraham, contractor, though, in fact, the goods were purchased by the first accused firm. Secondly, three purchases made by the accused firm, Hardware and Mills Stores, Bombay, under exhibit P-25(a) invoice dated 21-5-1970, exhibit P-25(b) invoice dated 20-2-1971, and exhibit P-29(a) invoice dated 28-5-1970, were shown in the account of the accused but the price shown therein did not represent the actual price paid by the accused. There was also an allegation against the accused that there was a sale of 5,395 Kgs. 125 mm. M.S. rods under exhibit P-35(a) dated 23-12-1970, and this transaction was not shown in the return.

3. On the side of the complainant, PWs 1 to 7 were examined and exhibits P-1 to P-39 were marked. On the side of the accused, four witnesses were examined. The trial Court found the accused guilty and this finding was confirmed in the appeal filed by the accused.

4. As regards the first allegation against the accused that they purchased two wagon loads of M.S. rods from Ganesh Exports and Imports, Calcutta, in the name of one Abraham, contractor, it was attempted to be proved through the oral evidence of PWs 1 to 3 and various documents produced in this case. The accused also adduced evidence by way of rebuttal of the complainant's evidence. PWs 2 and 3 are two employees of Ali Moopen and Sons. They gave evidence to the effect that exhibits P-14 and P-17, railway receipts, were handed over to them by the first accused and they took delivery of these goods from the railway authorities and handed over the same to the first accused. The Courts below accepted the evidence of these two witnesses. The evidence of these two witnesses is supported by documents. Exhibits P-20(a) and P-20(b) are the two receipts given by Ali Moopen and Sons as receipts for transporting of these goods. Exhibits P-14 and P-17 would show that the goods were taken delivery by PW-3. Though exhibit P-19(a) was originally prepared in the name of the first accused firm, it was corrected in the name of Abraham, contractor. PW-4 is another witness who was the indenting agent of Hardware and Mills Stores, Bombay and Madras and Ganesh Exports and Imports Co., Calcutta. He deposed that the goods covered under exhibit P-13 bill were taken delivery of by the accused. Therefore, the oral as well as the documentary evidence would show

that the accused had in fact purchased the goods and the name Abraham, Contractor, was shown falsely to conceal the transaction. Though PW-3 in his cross-examination made certain contradictory versions, his evidence was analysed in the background of chief examination and re-examination and the Court ultimately found that his evidence proved that the real purchaser was not Abraham, contractor, but the accused. It cannot be said that the finding arrived at by the Courts below is either perverse or unreasonable. The evidence adduced by the complainant was dealt with in detail and I do not propose to reassess the evidence as it is unnecessary. The counsel for the accused contended that so many relevant documents were not produced and the accounts maintained by Ali Moopen and Sons were necessary. I am not inclined to accept this contention. It was also contended that, as per the complainant's case, one lorry KLE 2778 was used for transporting the goods. But, exhibit D-2 G. V.R. shows that this lorry was in the workshop during the relevant time. The Court rejected this contention for the reason that the trip sheet and the G.V.R. were not regularly maintained by the driver. The finding to that effect cannot be said to be unreasonable. In the face of serious incriminating documents, I do not think that the finding by the Courts below is in any way assailable.

5. As regard the next set of transactions, three invoices were produced. They are exhibits P-25(a), P-25(b) and P-29(b). The allegation against the accused is that the first accused purchased certain goods from Hardware and Mills Stores and the price shown in the invoices did not represent the actual price. The file relating to these transactions was seized by PW-1. It showed that, under exhibit P-25(a), the accused purchased from Hardware and Mills Stores, Bombay, 10,180 Kgs. of G.I. wire of 22 gauge at the rate of Rs. 95 per 50 kgs., and the purchase price was shown as Rs. 19,342. Exhibit P-24 file was seized from the custody of PW-4. It was the duplicate copy of exhibit P-25(a) invoice and it was marked as exhibit P-24(a). The date, the quantity of goods purchased and the description of the goods given in exhibit P-24(a) tallied with the date and description of the goods given in exhibit P-25(a). The rates shown in exhibit P-24(a) is Rs. 105 per 50 kgs. and the purchase price is Rs. 21,378. This evidently showed that there was some difference between the rate shown in exhibit P-24(a) invoice and exhibit P-25(a) invoice. PW-7 gave evidence in support of exhibits P-24(a) and P-25(a) invoices. Other relevant records were also produced to prove this transaction. The details of the same have been dealt within paragraph 35 of the judgment of the trial Court. The trial Court held that there was ample evidence to show that the actual price was Rs. 39,498.40 and that the accused paid Rs. 18,629 over and above the amount shown in the bill.

6. On the above facts and on allied circumstances, the trial Court as well as the lower appellate Court came to the conclusion that the accused committed offences punishable u/s 277 and sections 193 and 196. The conviction and sentence entered against the accused are challenged on various other technical grounds. It was submitted that the return was admitted by the ITO, A-Ward, Ernakulam, whereas the complaint was filed by ITO, Special Circle, Cochin, and

therefore, the same is not maintainable. Reliance was placed on the decision rendered by this Court in ITO v. Kerala Oil Mills [1986] KLJ 702. That is a case wherein the Court held that the Court before which the offence under sections 193 and 196 was committed should file the complaint as contemplated u/s 195(1)(b)(i) of the Code of Criminal Procedure, 1973. This Court, on an earlier occasion, held in Friends Union Oil Mills and Others Vs. Income Tax Officer and Others, that, when a complaint has been filed as authorised by the Commissioner it cannot be said that section 195(1)(b)(i), was violated. I fully subscribe to that view and in the instant case also, the Commissioner had granted sanction to prosecute the accused. Therefore, it cannot be said that the ITO, A-Ward, Ernakulam, alone had jurisdiction to file the complaint. Moreover, section 195(1)(b)(i) says that any offence punishable under any of the following sections of the Indian Penal Code, namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, the Court shall not take cognizance except on the complaint in writing of that Court, or of some other Court to which that court is subordinate. In the instant case, though exhibit P-3 return was submitted to the ITO, A-Ward, Ernakulam, the entire assessment proceedings, the search and other incidental matters were carried out by the ITO, Special Circle, Cochin. It cannot be said that the offence was completed when exhibit P-3 report was submitted. In any view of the matter, the ITO Special Circle, Cochin, was competent to initiate proceedings against the accused.

7. The next contention urged by the accused is that accused Nos. 1 and 3 cannot be found guilty on the basis of the returns submitted by the second accused. As regards the complicity of the third accused, there is no direct evidence. There is no evidence to show that the third accused was carrying on the business of the partnership firm. The third accused could be roped in only on the basis of section 278B of the Act. This section came into force on 1-10-1975. Exhibit P-3 report was submitted long prior to the introduction of section 278B. Therefore, the conviction and sentence entered against the third accused are not sustainable.

8. The first accused is the firm. Though the first accused is found guilty, no sentence of fine has been imposed. Prior to the amendment effected on 1-10-1975, the punishment for offences under sections 277 and 278 was imprisonment only. Hence, a firm which is a juristic entity cannot be proceeded against under sections 277 and 278 and the Court took the view that when there cannot be any effective punishment the prosecution itself is not maintainable. In Vijaya Commercial Credit Ltd. Vs. Sixth Income Tax Officer, , agreeing with this view, the Karnataka High Court quashed the criminal proceedings against the company.

9. In view of the aforesaid circumstances, I find no reason to interfere with the conviction and sentence entered against the second accused. The conviction and sentence entered against the third accused are set aside. As no sentence has been awarded to the first accused no interference is called for in the case of the

first accused. Criminal revision petition is allowed to the extent indicated above.