

(2005) 07 AHC CK 0012

In the Allahabad High Court

Case No : Criminal M. Application No. 6470 of 1990

S.P. and Co. and Another

APPELLANT

Vs

Ist Addl. Sessions Judge and Others

RESPONDENT

Date of Decision : 11-07-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Direct Tax Laws (Amendment) Act, 1987 — Section 276E
General Clauses Act, 1897 — Section 6
Income Tax Act, 1961 — Section 269T, 269T(1), 271E(1), 274, 276E

Citation : (2005) 3 ACR 2843

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : Deepak Jaiswal, for the Appellant; Ashok Kumar, A.G.A., for the Respondent

Judgement

Poonam Srivastava, J.—Heard learned Counsel for the applicants M/s. S. P. and Company and another, learned A.G.A. for the State and Sri Ashok Kumar, advocate, appearing for the Union of India.

2. This application has been filed invoking inherent jurisdiction u/s 482, Cr. P.C. to quash the proceeding in Criminal Case No. 164/90 u/s 276E of Income Tax Act and also the order dated 3.12.1999 (Annexure-3) passed by the Ist Additional Sessions Judge, Kanpur Nagar in Criminal Revision No. 447 of 1998 confirming the order passed by the Special Chief Judicial Magistrate, Kanpur Nagar, dated 27.8.1998 in Criminal Case No. 164 of 1990, , u/s 276 Income Tax Act, 1961.

3. The criminal complaint was instituted by the opposite party No. 3 u/s 276E of Income Tax Act, 1961 on 29.3.1990, which is numbered as Criminal Case No. 164 of 1990. A copy of the complaint has been-annexed as Annexure-1 to the application. The allegations as narrated in the complaint are that the applicants contravened the provisions of Section 269T of Income Tax Act, 1961 for the assessment year 1988-89 whereby the deposit of more than Rs. 10,000 in cash

was made to the Firm M/s. Kailash Nath Amar Nath and Company in lieu of Stock-in-trade. The allegation in the complaint was that in view of Section 269T(1), the payment cannot be made in cash in accordance with the provisions of Income Tax Act. Section 269T(1) is enumerated below:

Section 269T(1). - No Company (including a banking company), Co-operative Society or firm shall repay to any person any deposit otherwise than by an account payee cheque or account payee bank draft where the amount of the deposit, or where the amount of the deposit is to be repaid together with any interest, the aggregate of the amount of the deposit and such interest, is ten thousand rupees or more.

The Act provides that violation of provisions of Section 269T(1) of the Act is punishable u/s 276E of Income Tax Act. This provision of Income Tax Act stands deleted by virtue of Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1st April, 1989. Prior to its deletion, Section 276E of the Act read as under:

Section 276E.-If a person repays any deposit referred to in Section 269T otherwise than in accordance with the provisions of that Section, he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine equal to the amount of such deposit.

4. After lodging of the complaint, Special Chief Judicial Magistrate, Kanpur Nagar, opposite party No. 2 summoned the applicants for trial u/s 276E of the Act and the cognizance was taken on the same day. The applicants moved an application on 30.7.1998 to recall the order taking cognizance on the ground that the Firm has been closed and secondly that since Section 276E of Income Tax Act stood deleted w.e.f. 1st April, 1989, the penal provision was no more in force on the date when the complaint was instituted. The complainant filed objection stating therein that in view of Section 6(e) of General Clauses Act, the complaint is legally maintainable and the cognizance taken by the Magistrate cannot be interfered. This application was rejected vide order dated 27.8.1998 for the reasons that though the complaint was filed on 29.3.1990, after repeal of Section 276E of the Act but the offence alleged was committed for the assessment year 1988-89 and during that relevant period, the provision of Section 276E of the Act was very much applicable. This order of the Special Chief Judicial Magistrate, Kanpur Nagar was challenged by filing a revision, which was numbered as Criminal Revision No. 447 of 1998. The revision was dismissed vide judgment and order dated 3.12.1999. Both the orders have been challenged in the present proceedings. Counter-affidavit has been filed on behalf of the Union of India. I have heard counsels for the respective parties and gone through the relevant provisions of law. Section 276E has been omitted w.e.f. 1st April, 1989 and the complaint was instituted subsequently on 29.3.1990. The offence alleged in the complaint was violation of Section 269T(1) of Income Tax Act and the punishment was provided u/s 276E, which admittedly stood deleted on the date when the complaint was filed. After the amendment and deletion of Section 276E, new Section did not provide for any punishment or contemplate any

proceedings in a criminal court. The amended provision runs as follows:

271E.-(1) If a person repays any deposit referred to in Section 269T otherwise than in accordance with the provisions of that Section he shall be liable to pay, by way of penalty, a sum equal to the amount of the deposit so repaid.

5. Bare reading of the amended provision makes it abundantly clear that it is only the Deputy Commissioner of Income Tax, has been given jurisdiction to impose the penalty u/s 271E(1) of Income Tax Act. This penalty can only be imposed by the Deputy Commissioner of Income Tax after giving notice and affording an opportunity of hearing to the accused/defaulters u/s 274 of Income Tax Act, 1961. The view taken by the court below does not stand to reason because once the penal section was omitted altogether, no new proceedings by way of prosecution could be initiated, even though it might be in respect of an offence committed earlier during the period when the old provision was in force. The interpretation given by the court below that the prosecution cannot be curbed in view of Section 6(e) of General Clauses Act, is absolutely wrong. The interpretation on the basis of decision of the Apex Court, 1969 ITR 786, is absolutely ill founded. Section 6(e) of General Clauses Act talks about effect of repeal inasmuch that unless a different intention appears in the repealing Act, any legal proceeding can be instituted and continued in respect of any matter pending under the repealed Act as if that Act was in force at the time of repeal. In the instant case, the complaint itself was filed after the provision was repealed and by no stretch of imagination, it can be assumed that any matter was pending under the repealed Act, once the Section was omitted altogether, no new proceedings by way of prosecution could be initiated even though it might be in respect of an offence committed earlier during the period when the provision was in force. This view finds support from another decision *Assistant Commissioner of Income Tax v. Vijaya Finance and Ors.* 1998 ITR 137 and other decision *Patiram Jain and Ors. v. Union of India and Ors.* 1997 ITR 409. In both the decisions, it has clearly been held that:

If a prosecution had already been started while a provision of a statute was in force, that prosecution can be competently continued. Once the provision of a statute is omitted altogether no new proceedings by way of prosecution could be initiated even though it might be in respect of an offence committed earlier during the period the provision was in force.

In the case of *Patiram Jain (supra)*, the Court had placed reliance on the decision of the Apex Court in *Rayala Corporation (P.) Ltd. v. Director of Enforcement* AIR 1970 SC 494, the Apex Court had ruled that the omission of a particular section or rule from the statute would mean that it never existed. In the circumstances stand taken by the Union of India that in view of provision of Section 6(e) of General Clauses Act, the prosecution was liable to be continued does not hold any weight. The Magistrate was not competent to take cognizance after it had been brought to his notice that he has no jurisdiction to proceed in the matter and the punishment clause stood deleted on the date when the complaint was

instituted. The Magistrate had acted beyond his jurisdiction while summoning the applicants and rejecting the objection filed on behalf of the applicants. The revisional court also erred in law while concurring with the view of the Magistrate and dismissing the revision.

6. For the reasons discussed above, the order of the Magistrate taking cognizance and summoning the applicants in Criminal Case No. 164 of 1990 u/s 276E of Income Tax Act and the order dated 3.12.1999, confirmed in revision are hereby quashed. The application u/s 482, Cr. P.C. is allowed.