(1997) 04 MAD CK 0091

In the Madras High Court

Case No : C.A. No''s. 814 and 831 of 1987

T.G. Rajaram Income Tax Officer APPELLANT

Vs

M.A. Jaffar RESPONDENT

Date of Decision : 25-04-1997

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 193, 196, 276C(1), 277

Citation : (1999) 236 ITR 941

Hon'ble Judges : S.M. Siddick, J

Bench : Single Bench

Advocate : Deokinandan, K.M.L. Majele, for the Appellant;

Judgement

S.M. Sidickk, J.—Both these appeals are disposed of together since the parties are the same and the point is common. Criminal Appeal No. 814 of 1987 is directed against the order of acquittal dated March 31, 1987, passed by the learned Additional Chief Judicial Magistrate, Madurai, in C.C. No. 54 of 1985. The other appeal in C.A. No. 831 of 1987 is directed as against the order of acquittal passed by the very same Magistrate in C.C. No. 53 of 1985 on the very same date.

2. The material averments in both the complaints in these two appeals arising out of these two cases in C.C. No. 54 of 1985 and 53 of 1985 are as follows :

The accused is dealing in the purchase and sale of iron and steel materials and he is assessed to Income Tax. In the normal course of business transaction, the accused purchased iron and steel materials from Iron and Steel Traders, 77, Sembudoss Street, Madras - 600 001. Enquiry and investigation made in the case of the above accused revealed that the under-mentioned demand drafts have been purchased by M. A. Rahim, employee of the accused in favour of one Muthu, employee of Iron and Steel Traders, 77, Sembudoss Street, Madras - 600 001. In the course of the sworn statement recorded on August 10, 1984, the accused admitted the purchase of the undermentioned demand drafts towards payment of on money or extra money over and above the invoice price for the purchase of iron and steel materials from Iron and Steel Traders, Madras-1.

-- SI D.D. No. Date of Amount Purchased from No. Purchase Rs. -- 1. 906934 19-12-80 5,140 Dena Bank, East Marrate St., Madurai 2. 417795 10-5-78 10,000 Dena Bank, 203, East Marrate St., Madurai --

-------------------------------------- Person buying In whose favour bought -------------------------------------- M. A. Rahim E. Muthu, employee of employee, Iron accused and Steel Traders, Ms-1 M. A. Rahim E. Muthu, employee of employee, Iron accused & Steel Traders Ms-1 --------------------------------------

3. The abovementioned financial transactions have not found a place in the account books maintained by the accused. A sworn statement was recorded from E. Muthu, employee of Iron and Steel Traders of which he was an employee. The accused filed a return of income accompanied by the trading and profit and loss account and balance-sheet declaring an income of Rs. 24,130 on June 9, 1981. The assessment was completed on March 21, 1984, u/s 143(3). This Income Tax assessment was made on the basis of the figures mentioned in the day book and ledger, which do not record the demand drafts mentioned above. With a view to evade Income Tax and to defraud the exchequer of its legitimate revenue and to mislead and deceive the Income Tax Officer, the accused committed offences punishable under sections 193, 196 and 420 of the Indian Penal Code of 1860 and sections 276C(1) and 277 of the Income Tax Act, 1961. The accused has fabricated false evidence in the form of false cash book, false ledger and false statement of accounts for the aforesaid assessment year with a view to produce them in the Income Tax assessment proceedings as genuine evidence, to deliver a false return of income with supporting statements in the course of the assessment proceedings with a view to wilfully evade tax imposable under the Income Tax Act, 1961, and fraudulently and dishonestly attempted to induce the Income Tax Officer to deliver an assessment order based on the false return of income and statements determining the tax payable by the accused at a far lower amount than the legitimate amount of tax payable by him and thereby committed the offences under sections 193, 196 and 420 of the Indian Penal Code and sections 276C(1) and 277 of the Income Tax Act, 1961. In pursuance of the above intention, the accused has intentionally fabricated false evidence in the shape of cash book and ledger which omitted to enter the abovementioned demand drafts thereby committing the offences punishable under sections 193, 196 and 420 of the Indian Penal Code, 1860. The accused delivered the return of income for the assessment year mentioned above declaring a false total income and thus wilfully attempted to evade tax imposable on the income of the accused and has thus committed the offence punishable u/s 276C(1) of the Income Tax Act, 1961. The accused delivered before the Income Tax Officer, in the Income

Tax assessment proceedings for the assessment years mentioned above, the false return of income accompanied by false trading and profit and loss account and a false balance-sheet based on the fabricated cash book and ledger, which omitted to record the demand drafts knowing them to be false and thus committed an offence punishable u/s 277 of the Income Tax Act, 1961.

4. The learned Additional Chief judicial Magistrate at Madurai framed the charges u/s 193 of the Indian Penal Code read with section 196 of the Indian Penal Code, section 420 of the Indian Penal Code. Section 276C(1)(ii) and u/s 277(ii) of the Income Tax Act in both the cases and read over them to the accused, who denied the charges and claimed to be tried in both the cases. In proof of the charges framed against the accused the complainant in C.C. No. 54 of 1985 examined P. Ws.-1 to 8 and filed the documents marked as exhibits P-1 to P-20.

5. While so the complainant has examined eight witnesses in C.C. No. 53 of 1985, and filed documents marked as exhibits P-1 to P-23 and the accused has marked one document each on his side in both these criminal cases. No material object has been marked on the side of the complainant. The accused has not chosen to examine any witness on his side in both these cases.

6. On consideration of the evidence and the materials placed before the lower court, the learned Additional Chief judicial Magistrate at Madurai, came to the conclusion that the accused in both these cases was not guilty or the offences with which he was charged. Aggrieved against the order of acquittal, the Income Tax Officer Ill, at Madurai, who is the complainant in these two cases, has preferred both these appeals.

7. After hearing the learned Special Public Prosecutor for the appellant/ complainant and learned defence counsel for the respondent/accused, the point that arises for determination in both these appeals is as to whether the complainant has proved his case beyond all reasonable doubt and as to whether the respondent/accused is guilty of the offences with which he is charged in both these cases and if so, what is the sentence.

8. Point. - The respondent/accused in these two criminal appeals by name M. A. Jaffar had dealings in iron and steel materials with one Iron and Steel Traders at Madras. One Vinod Kumar Didwani is said to be the proprietor of the said Iron and Steel Traders situate at Sembudoss Street at Madras. One Muthu, who was examined as P-W. 5., in both these cases, was the godown keeper of the said Iron and Steel Traders at Madras. The accused in these cases M. A. Jaffar was a dealer in the purchase and sale of iron and steel materials, doing his business at Door No. 129B, North Veli Street at Madurai. The impugned two demand drafts - one for Rs. 10,000 dated May 10, 1978, and another for Rs. 5,140 dated December 19, 1980,were purchased in the name of the abovesaid Muthu examined as P-W. 5 in these two cases by an employee of the accused in these two cases by name one Raheem, who was not examined as a witness in these two cases. The Income Tax Department, who is the complainant herein gathered

the information that Vinod Kumar Didwani was in the habit of doing business transactions outside the books of account all over India including the accused M. A. Jaffar doing business at Door No. 129-B, North Veli Street at Madurai. According to the prosecution, the difference in the invoice price and the actual price was sent by way of demand drafts by the accused in favour of P-W. 5 Muthu, who is the employee of Iron and Steel Traders at Madras and for this purpose Vinod Kumar Didwani opened a savings bank account in the name of P-W. 5 Muthu having Savings Bank Account No. 417 in Dena Bank at Madras. The abovesaid two impugned demand drafts amounts find a place in the savings bank account of P-W. 5 Muthu. According to the prosecution, the amount covered by these two demand drafts were handed over by P-W. 5, Muthu, to Vinod Kumar Didwani by withdrawing the same from Dena Bank at Madras. The accused M. A. Jaffar had not shown these two amounts covered by the two demand drafts taken in the name of P-W. 5 Muthu in the computation of his total income, and the accused has not recorded the said amounts in his books of account and the accused has not included these two amounts in his Income Tax return filed by him, thereby, according to the prosecution, the real income and the real Income Tax were brought down by these two amounts in the books of account of the accused. It is the further case of the Income Tax Department that by not including these two amounts covered by the two demand drafts mentioned earlier taken in the name of Muthu in the books of account of the accused, the account books of the accused were fabricated and by producing such fabricated account books the accused has induced the Income Tax Officer to levy a lesser Income Tax and so the accused was guilty of the offences with which he is charged.

9. In support of the prosecution case narrated above, the complainant has examined eight witnesses in each of these two cases and their ranking is similar in these two cases. P-W. 1 Rajaram is the complainant, who filed the complaint in these two cases against the accused and he stated categorically in his chief examination itself that the accused M. A. Jaffar was doing business at door No. 129-B, North Veli Street at Madurai and the accused filed revised Income Tax return and the two demand drafts dated May 10, 1978, and December 19, 1980, were taken by one Raheem in the name of P-W. 5 Muthu. P-W. 2 Bose is the Assistant Director of Income Tax (Inspection) at Madras, who recorded the statement of the accused dated August 10, 1984, marked as exhibit P-4 and he also recovered the application for getting the draft in the name of P-W. 5 Muthu by Raheem residing at Door No. 132, North Veli Street at Madurai, P-W. 3 Sundaresan recorded the statement of P-W. 5 Muthu on August 23, 1982, marked as exhibit P-14, P-W 4 Gurunatha Krishnan recorded the second statement of P-W. 5 Muthu on November 15, 1984 under exhibit P-17. P. W. 5 Muthu is the godown keeper of Vinod Kumar Didwani, who was,running the business concern under the name and style of Iron and Steel Traders situate at Madras. P-W. 6, Rajan,is the manager of Dena Bank at Madurai, and though he made an attempt to speak to the application for obtaining the draft from Dena

Bank, he meekly submitted that he did not know as to who filled up that application as under exhibit P-13 and who obtained the demand draft as per the application form marked as exhibit P-13. P-W. 7 Ganapathy is a person who wrote the statement of the accused dated August 10, 1984, marked as exhibit P-4. P-W. 8 Venkataraman the manager of Dena Bank situate at Sembudoss Street at Madras and he had spoken to the opening of the Savings Bank Account No. 417 by P-W. 5 Muthu and the introduction of P-W. 5 to the bank by master Vinod Kumar Didwani. However, P-W. 8 Venkataraman stated during his cross-examination that he had no personal knowledge about the opening of the savings bank account of P-W. 5 Muthu and also his introduction to the bank by his master Vinod Kumar Didwani. Except the witness P-W. 5 Muthu all the other witnesses examined in these two cases are only Income Tax officials and bank officials.

10. Learned counsel for the appellant, Mr. K. Ramaswamy, took me through several paragraphs of the complaint and the relevant evidence on record to show that the transactions of these two demand drafts dated May 10, 1978 and December 19, 1980, in the name of P-W. 5 Muthu by one Raheem, who is an employee of the accused M. A. Jaffar, did not find a place in the account books maintained by the accused, and the Income Tax Department made the assessment on the basis of the figures mentioned in the ledger, which did not record the amount covered by these two demand drafts mentioned earlier. According to learned counsel for the appellants, Mr. K. Ramaswamy, thus there was deliberate concealment of income on the volume of transactions purposely to pay a lesser Income Tax and a wilful omission was made by the accused to evade a higher amount of Income Tax with fabricated books of account containing false or untrue statements by not mentioning the purchase of these two demand drafts by Raheem at the instruction of the accused which amounts were immediately paid to Vinod Kumar Didwani through his godown keeper P-W. 5 Muthu, and so the prosecution has proved its case beyond all reasonable doubt, and the accused must be found guilty of all the charges.

11. Per contra learned counsel for the respondent/accused repelled the above arguments of learned counsel for the appellant and contended that there was no connection whatsoever between the purchase of the two demand drafts by Raheem and the accused herein, and the accused filed the revised return which is admitted in the testimony of the witnesses of the complainant because the Income Tax Officer included the amounts covered by these two demand drafts in the income of the accused by reopening the assessment, and the Income Tax Officer completed the revised assessment on the basis of these two amounts covered under the two demand drafts escaped from assessment, and aggrieved against the order of the revised assessment, the respondent/accused filed an appeal before the appellate authority, viz., the Deputy Commissioner of Income Tax (Appeals), Madurai, who deleted those two additions covered by these two demand drafts taken by Raheem in the name of P-W. 5, Muthu and so there is no evasion of Income Tax or concealment of Income Tax or fabrication of account books or filing of false Income Tax return because the Income Tax Department

did not go in further appeal as against the order of the appellate authority at Madurai. So the first contention of learned counsel for the accused is that the very basis of the complaint in these two cases has gone.

12. To appreciate the later part of the arguments of learned counsel for the accused, the certified copy or the xerox copy of the order passed by the appellate authority, viz., the Deputy Commissioner of Income Tax (Appeals) at Madurai was not placed either before the lower court or before this appellate court. Even though time was taken by learned counsel for the respondent/accused to produce the same, till date the respondent/accused has not produced the same. At any stage learned counsel for the appellant/complainant stated that there was such an order passed by the appellate authority at Madurai deleting the two amounts covered by two demand drafts which is the subject-matter of these two criminal cases in the total income of the respondent/accused. This is not disputed by the appellant''s counsel. However, learned counsel for the appellant would contend that the findings of the appellate authority are not binding on this court and this court has to judge the case, independently on the materials placed before the lower court.

13. Before considering this aspect of the order passed by the appellate authority of Income Tax at Madurai, it is but necessary for me to refer to two decisions on this point.

14. In K.T.M.S. Mohd. and another Vs. Union of India, , it was held by the Supreme Court that though the criminal court had to judge the case before it independently on the materials placed before it, there was no legal bar to giving due regard to the proceedings under the Income Tax Act. A similar view was taken by our Madras High Court in the case in Mohamed I. Unjawala and etc. etc. Vs. Assistant Commissioner of Income Tax, City Circle VI (1), Madras, , wherein it was laid down as follows :

"Even though the Supreme Court in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , has made the observation that the result of the proceedings under the Act is not binding on the criminal court, and the criminal court has to judge the case independently on the evidence placed before it, a rider is also provided expressing that the criminal court no doubt has to give due regard to the result of any proceedings under the Act, having a bearing on the question in issue and, in an appropriate case, it may drop the proceedings in the light of an order passed under the Act. Therefore, it cannot be treated that every finding of the authorities under the Income Tax Act had to be disregarded and ignored for the criminal prosecution. On the other hand, due regard must be given and in appropriate cases, the criminal prosecution has to be dropped. Therefore, in deserving cases the criminal court has to give weight to the findings of the authorities under the Income Tax Act and it is not in all cases to ignore the conclusions of the Income Tax Tribunal."

15. Therefore, it follows that even though the findings of the Income Tax

authority are not binding on this court, due regard should be given to the order passed by the Income Tax appellate authority at Madurai. In view of the order passed by the Income Tax appellate authority at Madurai deleting the two amounts covered by the impugned two demand drafts in these two cases, it has to be concluded that these two amounts were not connected with the business dealings of the accused with Vinod Kumar Didwani. The order passed by the Income Tax appellate authority has not been further challenged by the Income Tax Department by filing further appeal and so the findings of the Income Tax appellate authority have become final. Thus due regard being given to the order of the appellate authority at Madurai, the result is that there is no basis for the charges that the accused concealed his income in respect of these two amounts covered by the impugned two demand drafts, which is the subject-matter of these criminal appeals. The liability to pay higher Income Tax is interconnected with the concealment of income by the accused, When the liability to pay higher amount of Income Tax has been erased by virtue of the order passed by the Income Tax appellate authority at Madurai, then the question of concealment of income by the accused or the fabrication of his account books does not arise at all. In such circumstances, I am of the view that having due regard to the order passed by the appellate authority, viz., the Deputy Commissioner of Income Tax (Appeals) at Madurai, the charges against the accused in these criminal cases must fall to the ground.

16. Even assuming and without admitting that the order of the Deputy Commissioner of Income Tax (Appeals) at Madurai is to be ignored for some reason or other, and the criminal cases in these two appeals have to be decided independently as urged by learned counsel for the appellant, let us consider the same on the available evidence and materials on record.

17. Now taking up the oral evidence adduced in these two criminal cases it has to be noted that except P-W. 5 Muthu, the evidence of other witnesses cannot be relevant to decide the guilt of the accused. The only evidence that is sought to be advanced to prove the guilt of the accused in these two criminal cases is that of the witness Muthu, who was examined as P-W. 5 in both these cases. His evidence in his chief examination as well as during his cross-examination is similar in these two criminal cases. His evidence as P-W. 5 in C.C. No. 52 of 1983 reads as follows :

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18. While it is the evidence of P-W. 5 Muthu at the end of his cross-examination that he was questioned by the Income Tax Officer in Tamil and he answered the questions in Tamil but his statement was recorded in English and except his signature, he did not write down anything in his statement recorded by the Income Tax Officer. On the other hand, P-W. 3 Sundaresan, who recorded the statement of P-W. 5 Muthu on August 23, 1982, under exhibit P-14, would assert in his cross-examination as follows:

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19. Thus the evidence of P-W. 3 Sundaresan during his cross-examination was that P-W. 5 Muthu gave the statement in Tamil as well as in English and he was questioned by him both in Tamil as well as in English. Such a version of P-W. 3 Suderesan is contradictory to the evidence of P-W. 5 Muthu in every word. The testimony of P-W. 3 Sundaresan and P-W. 5 Muthu are mutually inconsistent and contradictory and it is destructive of each other''s evidence. So the testimony of P-W, 5 Muthu is discrepant and far from satisfactory and, therefore, it is not entitled to any credibility in this case.

20. Even otherwise, a careful scrutiny of the oral testimony of P-W. 5 Muthu would disclose that he did not know for which of the invoices these two demand drafts were sent even though there are invoices available in the business concern of Iron and Steel Traders at Madras. However, these two demand drafts could not be correlated to any particular transaction of the accused, even though the invoices are available. The evidence of P-W. 5 Muthu will not very much advance the case of she complainant that the accused gave amounts to Raheem for the purchase of these two demand drafts. There is no acceptable explanation forthcoming as to why Raheem, who had purchased these two demand drafts, was not examined as a witness in these two criminal cases nor there was no plausible explanation on the side of the complainant as to why his statement was not recorded even though he was very much available. Likewise there is no explanation forthcoming on the side of the complainant as to why no action was taken against Vinod Kumar Didwani by examining him in these two cases or impleading him as co-accused. It cannot be said that Vinod Kumar Didwani is not a party to all these shady transactions, more so in respect of these two demand drafts, which are the subject-matter of these two criminal appeals. In such circumstances, I am of the view that the benefit of doubt must go to the accused.

21. It is not made clear on the side of the complainant that the two amounts covered by two demand drafts have been credited to the account of Vinod Kumar Didwani. However, no lorry receipts or invoices or railway receipts have been produced to show that the transactions between Vinod Kumar Didwani and the accused had taken place in respect of these two demand drafts. In other words, there is no evidence to show that the amounts sent by the two impugned draft amounts related to any particular transaction of the accused. P-W. 5 Muthu has not stated for which transaction of the accused the impugned draft amounts were sent to him. The complainant was not able to point out or specify the transactions in the books of account of the accused correlating the same to these two demand drafts. The evidence adduced in this case and the materials placed on record would not go to show that the amounts covered by the two demand drafts belong to the accused. In other words, there is no satisfactory proof in this case to show that there was nexus between the accused and the amounts sent by way of two demand drafts sent by Raheem to P-W. 5 Muthu, and there is no satisfactory evidence available on record to show that the funds of the accused

were utilised or made use of for purchasing these two demand drafts by Raheem, who had sent these two drafts to P-W. 5 Muthu. In such circumstances, I am to hold that the complainant has not proved his case beyond all reasonable doubt and the order of acquittal passed by the lower court in C.C. Nos. 53 of 1985 and 54 of 1985 is not erroneous or perverse, and so the order of acquittal passed by the lower court in both the cases is confirmed, and both the Criminal Appeals Nos. 814 of 1987 and 831 of 1987 are dismissed, and consequently I answer this point against the appellant and in favour of the accused.

22. In the result, the Criminal Appeals Nos. 814 of 1987 and 831 of 1987 are dismissed. The orders of acquittal dated March 31, 1987, passed by the learned Chief Judicial Magistrate at Madurai in C. C. Nos. 53 of 1985 and 54 of 1985, are confirmed.

