(2005) 04 MP CK 0015

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 666 of 1994 12 April 2005

Union of India APPELLANT

Vs

Dashrath Prashad Dubey RESPONDENT

Date of Decision : 12-04-2005

Acts Referred:

Income Tax Act, 1961 — Section 279
Penal Code, 1860 (IPC) — Section 420, 511

Citation : (2006) 152 TAXMAN 654

Hon'ble Judges : A.K. Awasthy, J

Bench : Division Bench

Advocate : R.K. Bhadang, for the Revenue, for the Appellant;

Judgement

1. Appellant/complainant has filed the appeal for the enhancement of the sentence and also setting aside the acquittal u/s 420/511 of the IPC vide judgment and order dated 26-8-1992 by learned Additional Chief Judicial Magistrate, Indore in Criminal Case No. 8/84 whereby the appellant was convicted and sentenced u/s 279 of the Income Tax Act till rising of the court and the fine of Rs. 5,000 and in default of payment of fine further rigorous imprisonment for two months and he was acquitted from the offence punishable u/s 420/511 of the IPC.

2. The case of the appellant/complainant is that the respondent/ accused was the Income Tax payee and the return by the accused was filed for the payment of the Income Tax in the year 1972-73. That in the return he has mentioned his income of Rs. 4,800. That it was found that the accused has wrongly shown his income and his assessable income was found to be Rs. 36,000. The accused has filed the Income Tax return dated 30-6-1973 showing his assessable income mush less than Rs. 36,000 and as such, the complaint was filed against him before the Chief Judicial Magistrate, Indore.

3. The respondent has contended that the learned Trial court has erred in acquitting the respondent/accused from the offence punishable u/s 420/511 of

the IPC. It is observed in case of K.C. Builders and Another Vs. The Assistant Commissioner of Income Tax, that the existence of the fraudulent intention is a necessary ingredient of section 420 and mere failure of the accused to keep up the promise was not sufficient of the existence of the culpable intention. Mere filing of the false return will not bring the case u/s 420/511 of the IPC unless the existence of the fraudulent intention right from the beginning is proved.

4. The appellant is now aged about 80 years. The case is about 32 years old. The amount involved in the assessment is not exorbitant. In the aforesaid circumstances, the prayer of the enhancement of sentence is not tenable.

5. Consequently, the appeal for setting aside the acquittal u/s 420/511 of the IPC and also for the enhancement of sentence is without merit and hereby dismissed. The bail bond furnished by the respondent/ accused are, hereby, discharged.

