(1981) 04 MAD CK 0023

In the Madras High Court

Union of India APPELLANT

Vs

J.K. Parlesha and Co. and Others RESPONDENT

Date of Decision : 09-04-1981

Acts Referred:
Income Tax Act, 1961 — Section 277

Citation : (1983) 144 ITR 767

Hon'ble Judges : Suryamurthy, J

Bench : Single Bench

Advocate : C.K. Venkatanarasimhan, for the Appellant; M. Shamdas, for the Respondent

Judgement

Criminal Appeal No. 811 of 1976.

1. This is an appeal by the Union of Indian represented by the ITO, Central I Circle, Madras, to enhance the sentence awarded to the accused in

C. C. No. 3491/73, on the filed of th Court of the Chief Metropolitan Magistrate, Egmors, Madras. the learned Magistrate found accused 1 to 3

guilty under s. 120B read with ss. 193 and 196 of the Indian Penal code as well as under s. 193 of the India Penal Code. He also found that

second accursed guilty of the three counts of charges under s. 277 of the I. T. Act, convicted him thereunder and sentenced him to imprisonment

till the rising of the court. The learned Magistrate, without convicting the third accursed under s. 277 of the Income Tax Act, nevertheless

sentenced her to imprisonment till e rising of e court on three courts of charges framed under s. 277 of the I. T. Act. In respect f the offences

punishable under s. 120B read with ss. 193 and 196 of the IPC, the first accused wa s sentenced to pay a fine of Rs. 500, the second accused,

Ugamaraj Jain, to pay a fine of Rs. 1,000 and in default to suffer rigorous imprisonment for six moths and e third accused, Smt. Taramani

Bhandari, to pay a fine of Rs., 500 and in default to suffer rigorous imprisonment of three months. In respect of the offences punishable

imprisonment for three months. In respect of the offence punishable under s. 193 of the IPC, the first accused was sentenced to pay a fine of Rs.

500, the second accused, Ugamaraj Jain, was sentenced to pay a find of Rs. 1,000 and in default to suffer rigorous imprisonment for six months

and e third accused, Smt. Taramani Bhandari, was sentenced to pay a fine of Rs. 500 and in default to suffer rigorous imprisonment for three

moths. the appellant contends that e sentences awarded by the lower court are contrary to law and not commensurate with the gravity of the

offences committed by respondent t and the reasons given by the lower court for not awarding even the minimum sentence prescribed under s,.

277 of the I. t,. ACt are not in accordance with law.

2. The facts of the case maybe briefly notice before considering the question whether the sentence should be enhanced, M/s. J. K. Parlesha and

Co. which is the first accursed in this case, is a partnership firm carrying on business in lending money on the security of motor vehicles,

authorickshaws, etc., on hire-purchases basis. The second and thirds accused are the partners of the firms. They are Income Tax assessee. ON

may 20, 1966, he ITO, Cite Circle VI Madras (P. W. 1) received Ex. P-1 dated May 10, 1966, from S. Bhandari and Co. Chartered

Accountants at Madras, on behalf of first accused-firm, with a duplicate copy of the partnership deed (Ex. P-2) and an application for registration

in Form No. 11 (Ex. P-3) singed by the second and thirds accused. P. W. 2, Thireu R. Ponnappa Pillari, was the ITO, CITy Circle VI, Madras,

from June, 6, 1966, to May 5, 1968. He received on February 17, 1967, a statement in Form No. 22 (advance tax estate) form the second

accused. This statement has been marked as Rs. P-4. In Ex. P-4 the income from the firm toward the share of the second accursed for the

assessment year 1967-68 was shown as Rs. 10,000 on JUly 7, 1967. P. W. 1, Pnnappa Pillari, received the return, . 5 from the second accused

for the assessment year 1967-68, wherein the share of e income of the 2nd accused from the profits of the firm was shown as Rs. 10,000. the

verification has been signed by the second accused.

3. P. W. 2 also received in Form No. 22, an advance tax estimate (Ex. P-6) from the third accused on February 17, 1967, wherein her income

from the partnership firm was shown as Rs. 17,000. P. W. 2 also received the return of income for the assessment year 1967-68 (Ex. P-7) from

the third accused. In this return, her income from the partnership firm was shown as Rs. 10,145. The verification in Ex. P. 7 had also been signed

by the third accused. The premises of M/s. Bhandari and Co. at 7/249, Profits Road, Madras, were searched on JUne 18, 1968, by the then

Assistant Director of Inspection Intelligence, Madras, along with others and several books of accounts and documents were recovered from the

premises. P. W. 4, the investigating officer, took possession of the account books seized for the purpose of the scrutiny and investigation. Exs. P-

11 and P-16 are the cash books and ledger respectively in English for the period from the March 9, 1966, to November, 12, 1966, relating to the

first accused-firm and Exs. P-13 and P-15 respectively are similar document in Marvarui Language seized from the premise. On a comparison of

Exs. P-14 and P-16 with the set of accounts maintained in Marvarui language (Exs P-13 and P-15) it was found that the net profits as entered in

the account books maintained in Marvari language under Ex. P-15 was Rs. 37,560 and that the share of each partner was Rs. 18,780 for the

period aforesaid. However, the corresponding figures regarding the net profits to each partner were entered in the English sets of accounts as Rs.

19,983 and Rs. 9,981 respectively. P. W. 4 received the duplicating return of the income for the assessment year 1967-68, viz., Ex. P-23, relating

to the first accused on July 17, 1971. That had been signed and verified by the second accused. The business income was shown in this return as

Rs. 20,140 based on the state ment, Ex. P-24. The statement (Ex. P-24) and thread e return of the income entered in Ex. P-23 wee based on the

figures entered in the books of account maintained in the English language. PW. 4 also received a revised return of income for the assessment year

1967-68 (Ex. P-25) relating to the first accused-firm on July 20, 1971, accompanied by type-written statement, Ex. P-26. these returned are

based on the figures entered in the books of account maintained in Marvari language. The business income in the revised return Ex. P-25 was

shown to be Rs. 38,264. This revised return had been signed and verified by the second accused. Similarly, Ex. P-24 also had bene singed by the second accused on each page. P. W. 4 received a letter dated January 21, 1971, (Ex. P-30) from the first accused-firm, singed by the second

accused submitting the revised returns for the assessment years 1967-68 and 1968-69. P. W. 4 then recorded Ex. P-32, a sworn statement of the

second accused on July 21, 1971. Buy this statement the second accused admitted, that he was a partners of the first accused-firm with the third

accused, that he was attending to e business of the firm as its managing partner and that the third accused was only a sleeping p; partner who had

invested some capital. He also admitted that he was writing the books of account, that he was maintaining the accounts in the Marvari language and

that the one Ramu was employed as accounted on a part-time basis of writing the English accounts. Accepting the income shown tin the revised

return, Ex. P-4 passed as assessment order (Ex. P-33) for the year 1967-68 in respect of the first accused. These facts spoken to by the

witnesses of the prosecution were accepted by the learned Magistrate and the accused were convicted and sentenced as aforesaid.

4. The contention of the learned counsel for the UNion of India is that s. 277 of the I. T. Act lays down :

If a persons makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is

false, and which he either known or believes to be false, or does not believe to be true, he shall be punishable with rigorous imprisonment for a

terms which may extend to to years :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall

not be for less then six months

the learned Magistrate was of the opinion that with regard to the sentence to be imposed on e second and their accused under s. 277 of the I. T.

Act, there are extenuating circumstance calling for mercy. He has observed that the second and third accused are first offenders, that the offences

were committed by them about ten years back and that subsequent to the secure of the Marvari account books of the accused had delivered a

revised return or income where in they has shown the correct figures and e assessment was completed accepting the revised returns. therefore, he

did not award the minimum imprisonment mentioned in the provisos to s. 277 of the I. T. Act, In addition to these facts taken into consideration by

the learned Magistrate, I would add that fourteen years have passed since the offences were committed. Penalties also have been levied on the

accused by the Department. In additional, one more fact may be taken into consideration, viz., the account books were written by a part-time

employee. there is nothing on record to show that either the second accused or the third accused is conversant with English. The learned

Magistrate has observed that ""the manipulation of the English sets of accounts has been done as per the instruction from the second accused"". This

observation is not based on any evidence. Ramu, the part-time accountant, who maintained, the books of account in English, had not been

examined as a witness for the persecution. Therefore, the infernos of the learned Magistrate is not justified. However, the fact remains that he

books of account maintained in English do not show the correct figures of the income and that the returns submitted by the accused earlier

contained false figure. That is why the accused have not preferred any appeal against their convictions. However, having regard to the lapse of time

since the date of e offences and the further fact that there is no allegation that any such offence was committed by any of e accused after the two

cases, namely, the instance case and the case in C. C. No. 3492 of 1973 were instituted, In am of the opinion that a sentence of imprisonment for

the offence publishable under s. 277 of e I. T. act is not necessary. However, the sentences of find for e offence punishable under s. 193 of the

IPC against he second accused and the third accused are enhanced by Rs. 1,000 (rupees one thousand only) in the case of the seconds accused

and Rs. 500 (rupees five hundred only) in the case of the thirds accused, and tin default of payment of the fine, the second accused, shall suffer,

rigorous imprisonment for a period of six months and the thirds accused shall suffer rigorous imprisonment for a further period of three months. Tie

for payment of the fires imposed two months No. enhancement of the sentence awarded to A-1 is called for, because A-2 and A-3 are the partner

who constitute the A-1 firm. The appeal is accordingly allowed.

Criminal Appeal No. 812 of 1976.

5. This is an appeal by the Union of iNdia for enhancement of the sentence awarded to accused Nos, 1 to 3 in C. c. No. 3492 of 1973, on the file

of the Court of the Chief Metropolitan Magistrate, Egmore, Madras, The first respondent in this appeal is a partnership; firm carrying on business

in lending money on the foot of hire-purchase agreement entered into with the owners of motor vehicles, authorickshaws, etc., at Door No. 7/249,

Profits Road Madras. The second respondent, Ugamaraj Jain, and his aunt, the third respondent, Smt. Taramani Bhandar, are partner of the said

firm. As a result of a search conducted on June 18, 1968, at the premises of the firs, two sets of books of account of the firms, one set written in

Mawari language and another in English, for the periods, from March 9, 1966 to Novembers 12, 1966, and November 13, 1966, to November

1, 1967, were discovered and seized. On scrutiny and enquiry, i t was found that the books of account maintained in the Marvari language

contained the correct figures regarding the income from the business of the firms and that the figures entered in. the books of account maintained in

English wee false and fictions and that these figures were entered for the purpose of evading Income Tax Returns were submitted by the accused

regarding their respective incomes from the business conducted in the name of the first respondent-firm to the ITO, City Circles VI, Madras.

These returns based on the books of account maintained in English wee found to be false and subsequently,. after the seizure of the accounts,

returns containing the correct statement of income wee submitted by the second accused. These facts alleged by the prosecution were spoken to

by the witnesses for the prosecute9on and supported by the exhibits filed on the side of the prosecution and marked as Exs. P-1 to P-34. The

learned Magistrate accepted the evidence adduced by the prosecution and fond that the prosecution has proved that accused 1 to 3 conspired

together to fabricate false evidence in the from of sets of accounts maintained in English, suppressing about 50 per cent. of the profits with the

intention that they may appear as genuine in. the cores of the precedence under e I. t. Act and that thereby they committed an offence punishable

under s 129B read with s. 193 of the Indian Penalty Code. He further held that the prosecution also had roved that in pursuance of the aforesaid

conspiracy accused 1 to 3 had fabricated the aforesaid books of account in English beau recorded about 50 per cent. of the profits with the

intention to use the same as genuine evidence in the courts of the proceedings under the I. T. Act, and that thereby they committed an offence punishable under s. 193, IPC. He further held that the second accused has knowingly and wilfully in Form No. 29 (Ex. P-8) for the assessment

year 1968-69 showing therein that his share of income from the first respondent-firm was Rs. 9,000 only by deliberately fabricating ""English sets of

accounts"" and that thereby he committed an offence publishable under s. 277 of the I. T. Act. In the result, in respect of the office publishable

under s, 12OB read with s. 193 and s. 196 of IPC, the learned Magistrate sentenced the first accused to pay a fine of Rs. 500, the second

accused to pay a fine of Rs. 1,000 and in default to suffer rigorous imprisonment for six monthly and the third accused to pay a find of Rs. 500 and

in default to suffer rigorous imprisonment for there months. For the offence punishable under. 277 of the I. T. Act. the second accused was

sentenced to imprisonment till the rising of the court taking into consideration certain extenuating circumstances which, in e opinion of the learned

Magistrate, called for mercy.

6. It is now contended by e learned counsel for e appellant that the sentences are inadequate in vies of the gravity of e offence committed by the

accused. Section 277 of the I. t. Act reads as follows.

If a persons makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is

false, and which he either known or believes to b3e false, or does not believe to be true, he shall be punishable with ignores imprisonment for a

terms which may extent to two years :

Provided that in the absence to special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall

not be for less than six months. >

7. The learned Magist5ate has given dose special reason for not sentencing the second accused to the minimum terms of imprisonment

contemplated under the provisos to s. 277 of the I. t. ACt. The offences were committed by the second accused ten yeas prior to the date of the

judgment of the trial court and this fact was taken into consideration by the learned Magistrate. The judgment was delivered on June 15, 1976.

since then four more years have passed by and the second accused, according to the learned counsel for the respondents, has sufficient the agony

of the anticipatory fall of the knife on his neck at any time, metaphorically. A penalty also has been imposed by the Department on the accused for

the offences committed by them in addition to the fire imposed by the trial court. It is not disputed that the offences, for the commissioner of which

these accused have been charge-sheeted in this case, viz. C. C. NO. 3492 of 1973, and the connected case, C. c. No. 3491 of 1973, they have

gone straight and have not repeated the performance. Once other facts that may be taken into consideration in favour of the second accused is the

admitted fact that the books of account in English were written by a part-time employee. There is nothings on record to shown that either the

second accused or the thread accused can either read or write or even understand English. there is no direct evidence to prove that the second

accused gave instruction to the aforesaid part-time employees to make false entries. the possibility of an over-zealous employees trying to benefits

his master by trying to diminish an accounts of the income which has to be submitted to the I. T. Depart, or alternatively, making false entries to

incriminate and blackmail the financier cannot also be discounted. This is a possibility note probability, in the instinct case, There fore, is a

possibility, not a probability, in the instinct case, /Therefore I am satisfied that the reasons given by the learned Magistrate for not imposing the

sentence of imprisonment for the offence punishable under s. 277 of the I. T. Act are adequate and that the sentences of imprisonment till the rising

of the court for the offence under s. 277 of the I. T. Act need not be interfered with, However, I am of the opinion that sentence of Rs. 1,000 only

awarded to the second accused for the offices under s. 193 IPC, is not sufficient and, therefore, I enhance the sentence of fine of Rs. 1,000 of Rs.

2,000 Viz, by an additional sum of Rs. 1,000 and maintain the default sentence of rigorous imprisonment for a period of six months. Similarly, the

sentence of fine of rs. 500 awarded to the third accused for the offence publishable under s. 193, IPC, is enhanced to Rs. 1,000 namely, by a fine

of Rs. 500 in addition to the fine already imposed. In default of payment of the firms of Rs. 1,000 in all, the third accused will suffer rigorous

imprisonment for six months. Time for payment of the fines imposed, two months, No,. enhancement of the sentence awarded to A-1 is called for,

because A-2 and A-3 are the partners who constitute the A-1 firm. The appeal is accordingly allowed.