

(2001) 07 MP CK 0063

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 1681 of 1992, Criminal Appeal No's. 541, 542 and 573 of 1992 24 July 2001

Union of India

APPELLANT

Vs

Narayan Timbers

RESPONDENT

Date of Decision : 24-07-2001

Acts Referred:

Income Tax Act, 1961 — Section 269SS, 276DD, 276E, 278B, 6

Citation : (2002) 121 TAXMAN 406

Hon'ble Judges : N.K. Jain, J;N. K. Jain, J

Bench : Division Bench

Advocate : R.L. Jain, for the Revenue and Ajay Ukasand S.M. Dagaonkar, for the Assessee, for the Appellant;

Judgement

The judgments impugned in these appeals filed u/s 378 of the Code of Criminal Procedure, 1898 are rendered by Additional Chief Judicial Magistrate (Economic Offence), Indore, in Criminal Case Nos. 36 of 1988, 39 of 1988 and 95 of 1990, acquitting accused respondents of the charges under sections 276DD and 278DD read with section 269SS of the Income Tax Act, 1961 (hereinafter referred to as the Act).

2. Although the trial court below has recorded acquittal on merits with a finding that the charges against the accused persons are not established, these appeals in my judgment must fail on a law point as to the tenability of the prosecution against the respondents.

3. The prosecutions in question were launched in the years 1988 and 1990. The punishing section 276DD was omitted by the Amendment Act of 1981 with effect from 1-4-1989. It will be thus seen that the prosecution in Criminal Case No. 1053 of 1992 was launched after the said deletion while the other two cases were pending when the said Amendment Act came into force. In all the three cases the punishing provision of section 276DD was not on the book of statute when the impugned judgments were passed. In the Amendment Act there was

no saving clause to protect the pending prosecutions. Section 278B is merely an enabling section to create vicarious liability on the companies of the offences committed by the directors. This section by itself creates no offence but makes the company liable for the offence punishable u/s 276DD.

4. The Supreme Court in Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, held :

"38. The position is well-known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this Rule, an exemption is engranted by the provisions of section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in section 6 or in special Acts may modify the position. Thus, the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings, then it can be reasonably inferred that the intention of the Legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision." (p. 821)

5. Following the ratio in Kolhapur Canesugar Works Ltd.s case (supra), this court in Parmanand Das Brij Bhushan Das v. Union of India (Criminal Revision No. 528 of 1997, dated 14-2-2001), quashed the conviction recorded u/s 276E of the Act. The prosecution of the present accused respondents was also, therefore, bad in law after coming into force of the Amendment Act, 1987 and the judgment of acquittal recorded by the trial court deserves to be maintained on that short ground alone.

6. On merits also I find no substance in these appeals.

7. These appeals, thus, fail and are dismissed.