(1999) 07 BOM CK 0111

In the Bombay High Court

Case No : Criminal Revision Application No. 320 of 1997 2 July 1999

UNION OF INDIA APPELLANT

Vs

PRAKASH MEHRA RESPONDENT

Date of Decision : 02-07-1999

Acts Referred:

Citation : (1999) 107 TAXMAN 71

Hon'ble Judges : D.G. Deshpande, J

Bench : Division Bench

Advocate : H.V. Mehta, Bansal Verma and R.Y. Mirza, for the Appellant;

Judgement

1. Leave to amend the revision, i,e., to add the State as party respondent, is granted. Amendment is carried out immediately. Heard APP for State along with Mr. Mehta for the petitioner and Mr. Verma for respondent No. 1.

2. The petitioner-Union of India through Income Tax department has challenged the order of the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, dated 7-8-1997 by which he discharged the accused u/s 276-0 of the Income Tax Act, 1961 (''the Act''). The accused was prosecuted by the Income Tax department by filing a complaint u/s 276CC of the Act, i.e., for not filing the returns for the year 1986-87 within time or on due date. According to the prosecution, the due date f or filing returns f or 1986-87 was 31-7-1986, that the accused had applied for extension of time and same was granted up to 31-10-1986. However, the accused filed the return on 22-6-1988 and, hence, he was prosecuted by filing a complaint. The Trial Court examined three prosecution witnesses before framing the charge and when the case came up for framing of the charge, the accused also simultaneously applied or prayed for discharge. His prayer was allowed on two counts. Firstly, on the ground that no notice was given by the complainant to the accused u/s 276CC and secondly, on the ground that so far as the merits of the case were concerned, there were sufficient reasons for the accused not to file the return in time or on due date.

3. Mr. Mehta for the petitioner relied upon a judgment of the Supreme Court in Union of India and Another Vs. Banwari Lal Agarwal, .

4. It appears from the impugned order that the contention of the accused for discharge was that before initiating prosecution, no show-cause notice was given by the Commissioner and no personal hearing was, therefore, given to the accused. According to the accused, giving of notice and giving of an opportunity of being heard was mandatory before launching prosecution and for non-compliance thereof, the prosecution was liable to be quashed and the accused was entitled for discharge. It was further contended before the Trial Court that show-cause notice was given by the Assistant Commissioner, Central Circle Mumbai, and not by the Commissioner and, consequently, there was no legal notice.

5. While dealing with these submissions, the Trial Court relied upon the judgments of the Calcutta and Rajasthan High Courts in Dunlop India Ltd. and Others Vs. Arun Chandra Sinha, Assistant Commissioner of Income Tax and Others, and Shree Singhvi Brothers and Others Vs. Union of India (UOI) and Others, , respectively. The Trial Court has referred to these judgments and observed that both the Calcutta High Court and the Rajasthan High Court have laid down that the principles of natural justice must be followed before the prosecution is launched and an opportunity to be heard must be given to the assessee before launching the prosecution. The Trial Court also relied upon the judgment of this Court - Panaji Bench - in Vishnoo Kamat Tarcar and others Vs. First Income Tax Officer and another, , wherein it has been observed by Justice Dr. E.S. De Silva that since the provision under which the penalty was imposed by the department, being section 271 (1)(a), was different from the one under which criminal proceedings had been instituted, (which was section 276CC) the Commissioner was expected in all fairness to give to the applicants a fresh opportunity to be heard on the question of their prosecution under the aforesaid provision. It was also to be borne in mind that the penalty having been imposed, the criminal proceedings were ultimately lodged only after a period of almost ten years from the date of the commission of the alleged offence and that the prosecution was not valid and was liable to be quashed.

6. According to Mr. Mehta, the reliance by the Trial Court on the aforesaid three judgments of the Calcutta, Rajasthan and Bombay High Courts and the consequent findings thereon were wrong. He relied upon the judgment of the Supreme Court in Banwari Lal Agarwal''s case (supra).

7. A perusal of section 279 of the Act (as it stood in 1986-87) will show that it does not require a Chief Commissioner or Commissioner to give any show-cause notice or any hearing before launching prosecution. Subsection (2) of section 279 empowers the Chief Commissioner or the Commissioner to compound the offence after or before the institution of the proceedings. It will be, therefore, clear that so far as section 279 was concerned, there was no provision requiring the Chief Commissioner or the Commissioner to give notice to the assessee or to give a Ly

personal hearing to him.

8. It appears from the judgment of Justice Dr. E.S. De Silva that reliance was placed on the judgment of the Rajasthan High Court in the case of Shree Singhvi Bros. (supra). This judgment of the Rajasthan High Court has also been relied upon by the Trial Court and it is on the basis of this judgment that Justice De Silva held that the principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary. However, as rightly pointed by Mr. Mehta, the judgment of the Supreme Court in Banwari Lal Agarwal''s case (supra) has clearly laid down while interpreting section 279 and particularly subsection (2) of section 279 as under:

There is no warrant in interpreting this sub-section to mean that before any prosecution is launched, either a show-cause notice should be given or any opportunity afforded to compound the matter. The enabling provision cannot give a right to a party to insist on the Chief Commissioner or the Director General to make an offer of compounding before the prosecution is launched.

In view of this judgment of the Supreme Court, the observations and findings of the Trial Court on the basis of the rulings of the Calcutta, Rajasthan and Bombay [Panaji Bench] High Courts, that the prosecution was not sustainable against the accused, cannot be upheld and those findings are required to be set aside. It has to be clarified on the basis of the aforesaid judgment of the Supreme Court that no show-cause notice or opportunity of being heard for compounding the matter is required to be given either before the institution of the proceedings or for compounding the offence.

9. As far as the facts of the present case are concerned, I am not in agreement with the submissions made by Mr. Mehta. The Trial Court has in paragraph Nos. 7 and 8 of its order considered the circumstances and the evidence brought on record and the admissions made by the prosecution witnesses and thrown light on the genuine difficulties of the respondent in not submitting the return in time or on due date. The Trial Court had quoted admissions made by the witnesses of the respondent. Since those admissions are a matter of record and since it is clear from those admissions that P.W. No. 1 complainant - Paramjit Singh, the Assistant Commissioner, had no doubt about the reasons given by the accused for seeking extension, he granted extension to the accused for furnishing the return. Further, it is also borne out by the record that the accused was called upon to produce a statement of facts, which had been produced as Exhibit P-20 to P-27 running into 2000 pages. This was at the instance of the Settlement Commissioner. The Court has come to the conclusion that apart from the factual aspect and the difficulties faced by the accused, there was no wilful default on the part of the accused in not submitting the return in time.

10. I do not find any error on the part of the Trial Court in accepting the case of the accused on merits. Therefore, even if the submissions of Mr. Mehta regarding legal aspect are required to be accepted and they are accepted, the revision fails

on merits. Hence, the following order:

ORDER

The petition is dismissed.

Rule is discharged.

No order as to costs.

