(1993) 10 MAD CK 0024

In the Madras High Court

Case No : Criminal O. P. No''s. 15429 to 15431 of 1992

V. Gopal APPELLANT

Vs

Assistant Commissioner of Income Tax RESPONDENT

Date of Decision : 27-10-1993

Acts Referred:
Income Tax Act, 1961 — Section 116, 132, 143(2), 143(3), 148

Citation : (1994) 207 ITR 971

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : S.V. Subramaniam, for the Appellant; Ramaswamy (K.), for the Respondent

Judgement

Pratap Singh J.

1. The accused in C. C. Nos. 22, 23 and 24 of 1991 on the file of the Additional Chief Judicial Magistrate (Economic Offences) Madurai, has

filed these petitions u/s 482 of the Criminal Procedure Code, for quashing all further proceedings in the said C. C. Nos. 22, 23 and 24 of 1991.

2. The respondent has filed these three complaints against the petitioner for offences under sections 276C(1) and 277 of the Income Tax Act and

under sections 193, 196 and 420 of the Indian Penal Code, in respect of three assessment years 1980-81, 1981-82 and 1982-83, respectively.

The allegations in those complaints are similar. They are briefly as follows :

3. The complainant is the Assistant Commissioner of Income Tax. He is a public servant and this complaint is instituted as such. The complaint is

filed with the previous sanction of the Commissioner of Income Tax, Madurai, u/s 279 of the Income Tax Act, 1961. The accused is an individual

engaged in tailoring business. He had filed a return of income on August 29, 1980, for the assessment year 1980-81 admitting a total income of Rs.

20,870. The assessment was completed u/s 143(3) on January 25, 1982, determining the total income of Rs. 26,170. After the assessment was

completed, there was a search u/s 132 of the Income Tax Act in the premises of the assessee on October 5, 1982. During the course of the

search, incriminating documents were seized. With the evidence of those seized materials, the Assessing Officer concluded that there was income

that had escaped assessment. The Assessing Officer sent a notice u/s 148 of the Income Tax Act on March 9, 1984, to the accused, intimating the

assessee about the escaped income. The assessee filed a return of income on October 3, 1985, declaring again an income of Rs. 20,870. He again

filed a revised return of income on January 17, 1986, wherein he admitted a total income of Rs. 48,814. The Assessing Officer issued a notice u/s

143(2) to the accused and gave him full opportunity of being heard. At the time of hearing, the scrutiny of the order book and collection chittai

revealed that the assessee had booked a total number of 8,900 orders. He had not accounted for the full receipts. The total concealment was

determined at Rs. 50,000 and added to the income returned. The assessment was completed, determining the total income at Rs. 1,84,960. Tax

was determined at Rs. 1,15,569. The matter was taken up to the Income Tax Appellate Tribunal and as per the order of the Income Tax

Appellate Tribunal the assessment was revised on December 11, 1987, and the total income was determined at Rs. 1,20,480. The assessee had

filed returns which have been proved to be false. He had concealed his income. The order of the Income Tax Appellate Tribunal has become final.

4. The assessee had attempted to evade tax and had made false verifications in the returns and thus committed offences under sections 276C(1)

and 277 of the Income Tax Act. The accused had carried on business activities not reflected in the regular books of account and had concealed

income, arising from such transactions. He had suppressed and concealed sizeable income for the assessment year in the return originally filed on

August 29, 1980. He had fabricated his account books. He had signed the verification column and wilfully attempted to evade tax. He had made a

false verification in the return of income. With a view to avoid payment of lawful tax to the Government and defraud the exchequer and wilfully to evade tax, etc., he had deceived the Income Tax Officer and had committed offences punishable under sections 193, 196 and 420 of the Indian

Penal Code. Hence the complaint.

5. Mr. S. V. Subramaniam, learned senior counsel, had submitted the following contentions :

(i) For filing a complaint, for offences under sections 276C and 277 of the Income Tax Act, sanction u/s 279 of the said Act is required. In para 2

of the complaint the complainant states that the complaint is filed with the previous sanction of the Commissioner of Income Tax, Madurai, u/s 279

of the Income Tax Act, 1961. No opportunity was given to the petitioner for being heard before the passing of the order sanctioning prosecution.

So the sanction order is vitiated.

(ii) The sanction by the Commissioner of Income Tax must be only on a proposal submitted to him in this behalf. No such proposal was submitted

to him and so the sanction order is not valid.

(iii) In the sanction order, seven documents are referred to. The seventh document is dated September 27, 1988, that subsequent to that date,

many relevant documents had come into existence and they are shown at page 91 of the typed set and the sanction order of the Commissioner,

without looking into those documents subsequent to September 27, 1988, is not valid.

(iv) The petitioner had filed a petition to the Chairman, Central Board of Direct Taxes, regarding reduction or waiver of penalty on April 4, 1988,

and that was forwarded by him to the Chief Commissioner, Madras, and if he gets a favourable order, this prosecution would not lie.

6. I have heard Mr. K. Ramasamy, standing counsel for the Income Tax Department, on the above aspects and I have carefully considered the

submissions made by learned counsel.

7. Submission No. (iv) : In P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , the apex court had held that the mere expectation

of success in some proceedings in an appeal or a reference under the Income Tax Act cannot come in the way of the institution of criminal

proceedings under sections 276C and 277 of the Act. So this submission will not hold good.

8. Submission Nos. (i) and (ii) : To consider these submissions, section 279 of

the Income Tax Act (which I shall hereafter refer to as ""the Act"")

needs extraction. It reads as follows :

279. Prosecution to be at instance of Chief Commissioner or Commissioner. - (1) A person shall not be proceeded against for an offence u/s

275A, section 276, section 276A, section 276B, section 276BB, section 276C, section 276CC, section 276D, section 277 or section 278,

except with the previous sanction of the Commissioner or Commissioner (Appeals) or the appropriate authority :

Provided that the Chief Commissioner or, as the case may be, the Director-General may issue such instructions or directions to the aforesaid

Income Tax authorities as he may deem fit for institution of proceedings under this sub-section.

Explanation. - For the purposes of this section, ''appropriate authority'' shall have the same meaning as in clause (c) of section 269UA.

(1A) A person shall not be proceeded against for an offence u/s 276C or section 277 in relation to the assessment for an assessment year in

respect of which the penalty imposed or imposable on him under clause (iii) of sub-section (1) of section 271 has been reduced or waived by an

order u/s 273A.

(2) Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Chief Commissioner or a

Director-General.

(3) Where any proceeding has been taken against any person under sub-section (1), any statement made or account or other document produced

by such person before any of the Income Tax authorities specified in clauses (a) to (g) of section 116 shall not be inadmissible as evidence for the

purpose of such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief

that the penalty imposable would be reduced or waived u/s 273A or that the offence in respect of which such proceeding was taken would be

compounded.

Explanation. - For the removal of doubts, it is hereby declared that the power of the Board to issue orders, instructions or directions under this Act

shall include and shall be deemed always to have included the power to issue instructions or directions (including instructions or directions to obtain the previous approval of the Board) to other Income Tax authorities for the proper composition of offences under this section.

9. The section does not contemplate any notice to the accused. Mr. Ramasamy, learned counsel, would submit that the Act is a self-contained Act

and wherever notice is required, it has been specifically stated so and in section 279 it is not so stated. He would submit that no notice is required

to the person against whom prosecution is to be launched. He also pointed out that prior to the amendment, which came into effect from April 1,

1989, as per section 279(1), a person shall not be proceeded against for an offence under sections 275A, 276A, etc., except ""at the instance of

the Chief Commissioner or Commissioner"" and after April 1, 1989, when the amendment came into effect, the present section 279(1) reads that a

person shall not be proceeded against for an offence under sections 275A, 276, etc., except ""with the previous sanction of the Commissioner or

Commissioner (Appeals) or appropriate authority"" and thus before launching the prosecution, the matter was being scrutinized by the highest

officer in the hierarchy and thus there is an additional safeguard and beyond that, the section does not require any notice to the person against

whom prosecution is to be launched.

10. In P.V. Pai, B.R. Shetty, Biyar Rubbers Pvt. Ltd. and Smt. Lasha B. Shetty Vs. R.L. Rinawma, Deputy Commissioner of Income Tax, , the

Karnataka High Court had considered the question as to whether the accused must be given an opportunity of being heard before sanction is

accorded and had held that the accused should be afforded an opportunity to be heard before sanction is accorded u/s 279. In the case of

Kalagava Bapiah, In re [1903] ILR 27 Mad 54, this court had referred to section 197 of the Code of Criminal Procedure and had held that the

same is not null and void because no opportunity was given to the person concerned. Section 197 of the Criminal Procedure Code puts an

embargo against prosecution of the Government servants without the previous sanction of the concerned Government. That provision in the Code

of Criminal Procedure is analogous to the provision made in section 279 of the Act. In Naresh Pran Jivan Mehta v. State of Maharashtra [1986]

61 STC 309, the Bombay High Court had occasion to consider an analogous provision under the Sales Tax Act. In that case, criminal

proceedings were instituted against the petitioner after obtaining sanction from the Deputy Commissioner of Sales Tax for certain offences under

the Sales Tax Act. It was contended before the High Court that since the sanction accorded by the Deputy Commissioner of Sales Tax resulted in

penal and serious consequences, viz., criminal prosecution which could result in the sentence of fine or jail, it was obligatory on the part of the

Deputy Commissioner of Sales Tax to give an opportunity of being heard to the petitioner before the sanction was accorded. This argument did

not find favour with the learned judges.

11. In C.B. Gautam Vs. Union of India and Others, , the provisions of Chapter XX-C of the Act came up for consideration. The apex court had

held that opportunity to be heard is to be given before making an order for purchase. The apex court had held that the aim of the rule of natural

justice is to secure justice or to put it negatively to prevent miscarriage of justice. The apex court had pointed out that a plain reading of the

provisions of the said Chapter clearly shows that they do not contain any provision for giving the concerned parties an opportunity to be heard

before an order for purchase of the property by the Central Government is made. But on the principles of natural justice, it was held that

opportunity should be given. So far as the provision u/s 279 of the Act is concerned, the granting of a sanction, by itself, would not result in any

punishment of the accused. Only for launching of prosecution, sanction was required. Then the matter is to be placed before the court and it is for

the court to consider whether the offences are made out or not. The provision for sanction is only an additional safeguard against launching

prosecution in all cases. Hence this ruling does not apply to the facts of the case before me. In Government of India and another Vs. Maxim A.

Lobo and another, , a Division Bench of this court had held that opportunity to be heard must be given before passing an order u/s 269UD and

that principles of natural justice must be followed. Neither is this ruling applicable to the facts of this case, for the reasons which I have given for not

applying C.B. Gautam Vs. Union of India and Others, to the facts of this case.

12. On the ratio of the ruling Kalagava Bapiah, In re [1903] ILR 27 Mad 54 and Naresh Pran Jivan Mehta Vs. State of Maharashtra and others,

referred to supra, I am of the view that no notice is required before passing an order of sanction u/s 279 of the Act. With respect, I am unable to

agree with P.V. Pai, B.R. Shetty, Biyar Rubbers Pvt. Ltd. and Smt. Lasha B. Shetty Vs. R.L. Rinawma, Deputy Commissioner of Income Tax, .

Hence I am unable to accept submission No. (i).

13. Mr. Ramasamy would also point out that nowhere in section 279 there is any requirement explicit or implicit that only on the proposal

submitted in this behalf by some other Income Tax Officer, sanction should be accorded and hence the second submission that sanction by the

Commissioner of Income Tax must be only on a proposal submitted to him, in this behalf, is not tenable. Here again, I find force in the submission

made by Mr. Ramaswamy.

14. Prior to the amendment, which came into effect only on April 1, 1989, no sanction was required for launching prosecution. It can be done at

the instance of the Chief Commissioner or Commissioner. Now, after the amendment, previous sanction of the Commissioner or Commissioner

(Appeals) or appropriate authority is required. It is the sine qua non for a valid prosecution. But it does not appear that such sanction can be given

only on initiation of proposal by some other agency. The clear language of the section would show that the submission that only on a proposal

submitted to him in this behalf, sanction can be accorded by the Commissioner or Commissioner (Appeals) or appropriate authority, is not

warranted. Hence the second submission cannot be accepted.

15. Submission No. (iii) : Whether the documents shown at page 91 of the typed set are relevant and necessary for consideration before sanction

order was passed, is a matter which can be considered only at the time of trial and not at this stage. So I am unable to accept either submission

No. (iii).

16. In view of the above, these petitions do not deserve admission and shall stand dismissed.

