(2003) 08 MAD CK 0184

In the Madras High Court

Case No : Criminal Revision Case No. 971 of 2002 and Criminal M.P. No. 4852 of 2002

V. Sadasiva Chetty (HUF) APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 20-08-2003

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 245, 397
Income Tax Act, 1961 — Section 276C, 277

Citation : (2003) 264 ITR 527 : (2004) 136 TAXMAN 138

Hon'ble Judges : A. Packiaraj, J

Bench : Single Bench

Advocate : P. Tamizhkumaran, for the Appellant; Ramasamy K., Special Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A. PACKIARAJ J.

1. This revision has been filed against the order passed in Crl. M. P. No. 5432 of 2001, in C. C. No. 688 of 1989 on the file of the Judicial Magistrate No. III, Salem, dismissing the petition for discharge filed by the petitioner herein against whom a complaint has been given by the Income Tax Officer, Circle I, Salem, for the offences punishable under Sections 193, 196, 420 of the Indian Penal Code, and Sections 276C(1) and 277 read with Sections 278C of the Income Tax Act, 1961.

2. On an earlier occasion, the petitioner had filed an application before this court for quashing the said proceedings on the same ground, but this court had dismissed the said application, viz., Crl. M. P. No. 8460 of 1985, stating that the said application was premature and the petitioner is entitled to raise all these points when charges are likely to be framed. It is well known that this case being a warrant procedure, charges would be framed only after some witnesses have been examined. However, the accused has filed the petition even before that

could be done, before the lower court with the similar prayer for discharge, probably, because there was no progress in the case. The learned Magistrate dismissed the said petition stating that there was a prima facie case against the petitioner. Against the said order the present criminal revision petition has been filed.

3. I have no hesitation to hold that this petition should not have been really to be entertained since the earlier order was passed to the effect that the accused was entitled to raise all these contentions at the time of framing charges.

4. The case of the complainant is that during the year 1982-83 the petitioner had submitted his assessment wherein he has concealed the purchase of iron and steel for Rs. 7,508 and has not brought the same into records. When notice was issued to the accused, he had made a request for reassessment and reassessment notice was also served. But though two years had lapsed, there were no orders from the Department and hence prosecution was launched. The contention of the petitioner is that even after the reassessment notice has been passed and he having given his explanation, orders should have necessarily been passed and if the explanation offered by the accused is negatived, the petitioner could have got a right of appeal. In the present case since no such order has been passed consequently, the prosecution is not maintainable.

5. I am unable to accept the said contention. After the reassessment notice has been served and explanation has been given by the petitioner, then order has to be passed within two years and if no order has been passed within two years, the explanation offered by the petitioner is not to be considered as accepted. Further, the main point is that because of the pendency of the reassessment, the prosecution cannot be whittled down on that score and that the original assessment alone is to be considered for prosecution.

6. Consequently, I do not find any merit in this criminal revision petition and the same is dismissed. Crl. M. P. No. 4852 of 2002 is also dismissed.

7. Since the case is of the year 1989, I direct the learned Magistrate to give preference to C. C. No. 688 of 1989 and dispose of the same as early as possible.