(1991) 08 MAD CK 0051

In the Madras High Court

Case No : Criminal Original Petitions No''s. 3314 to 3319 of 1991

V.G. Santhosham APPELLANT

Vs

V. Raghavan, Assistant Commissioner RESPONDENT

Date of Decision : 30-08-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Wealth Tax Act, 1957 — Section 14(1), 16(4), 16(5), 17A, 35B

Citation : (1994) 120 CTR 206 : (1994) 206 ITR 605

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : R.V. Easwar, for the Appellant; Ramaswamy K., for the Respondent

Judgement

Pratap Singh, J.—The accused in EO.C.C. Nos. 71 to 76 of 1989 has filed these petitions u/s 482 of the Code of Criminal Procedure,

praying to call for the records in the aforesaid cases and quash the same.

2. The respondent has filed a complaint against the petitioner arraying him as the accused in EO.C.C. No. 71 of 1989 u/s 35B of the Wealth-tax

Act, 1957. The allegations in it are as follows :

The complaint is in respect of the wealth-tax assessment for the year 1975-76. The valuation date was March 31, 1975. The accused has been

assessed to wealth-tax from the assessment year 1969-70 onwards. For the assessment year 1975-76, the return of wealth u/s 14(1) of the

Wealth-tax Act was due on July 31, 1975. The accused failed to file his return of wealth in due time. Notice was issued u/s 17A of the Wealth-tax

Act on March 20, 1982, calling upon the accused to file the return of wealth within 35 days of the service of notice. Notice was served on March

24, 1982. Despite notice, the accused failed to file the return of wealth. Notices u/s 16(4) of the Wealth-tax Act were issued on August 31, 1982,

and September 2, 1982, calling upon the accused to file his return of wealth. There was no response. A fresh notice u/s 16(4) of the Wealth-tax

Act was issued posting the case on February 14, 1986. The accountant of the accused appeared on February 14, 1986, and requested time till

February 17, 1986. The return of wealth was not filed even within the time requested. In view of the default on the part of the accused, the

assessment was completed on March 13, 1986, u/s 16(5) of the Wealth-tax Act estimating the net wealth at Rs. 6,40,000 and tax of Rs. 9,200

was demanded. Notice was issued to the accused to show cause why prosecution proceedings u/s 35B of the Wealth-tax Act, 1957, should not

be initiated for his wilful failure to furnish the return of wealth for the assessment year 1975-76. It was served on the accused on March 17, 1988.

No reply was sent by the accused. The failure on the part of the accused to deliver the return of wealth for the assessment year 1975-76 is wilful.

He has committed an offence punishable u/s 35B of the Wealth-tax Act, 1957. Hence the complaint.

3. Criminal Original Petitions Nos. 3315 to 3319 of 1991 are in respect of complaints in EO.C.C. Nos. 72 to 76 of 1989. The allegations in those

complaints are similar in nature as in EO.C.C. No. 71 of 1989. These complaints are for the assessment years 1976-77, 1978-79, 1979-80 and

1980-81, and in respect of which the wealth-tax assessed was Rs. 7,421, Rs. 8,850, Rs. 5,544 and Rs. 19,300, respectively. On the ground of

wilful failure, the accused is liable to be punished u/s 35B of the Wealth-tax Act, 1957.

4. Mr. R. V. Easwar, learned counsel appearing for the petitioner, would contend that there was no wilful failure in submitting the return of wealth

and hence section 35B of the Act which provides for punishment for ""wilful failure"" is not attracted. The second contention was that, regarding

initiation of prosecution, there were instructions of the Central Board of Direct Taxes to the Officers in paragraph 4 of Volume II of the Board''s

Instruction to the Departmental Officers F. No. 285/20/82 II Inv., dated February 19, 1986, whereunder prosecution should not be launched

unless the amount involved exceeded Rs. 10,000. In these prosecutions in EO.C.C. Nos. 71 to 74 of 1989, the wealth-tax involved was less than

Rs. 10,000 and hence those prosecutions are to be quashed. Regarding EO.C.C. Nos. 75 and 76 of 1989, learned counsel would contend that

assessments were reopened and returns were filed and while so, the assessment made earlier becomes inoperative.

5. Per contra, Mr. K. Ramaswamy, learned Special Public Prosecutor for Income Tax cases, would contend that the allegations in the petition

giving time repeatedly to the accused to file return of wealth and his failure to do so would show his ""wilful failure"". His further submission was that

the instructions relied upon by learned counsel for the petitioner is applicable where the amount involved was less than Rs. 10,000 and not that the

tax involved was less than Rs. 10,000 and that, in all the cases, the amount involved is above Rs. 10,000.

6. Regarding the first contention put forth by the petitioner as has been rightly pointed out by Mr. K. Ramaswamy, though the due dates for

submission of return of wealth was July 31, of the wealth-tax assessment year, despite repeated notices granting time to the accused, he had not

filed the same and, while so, it cannot be stated at this stage that there was no ""wilful failure"". The allegations are definitely there in the complaint to

make out a case of ""wilful failure"". It is open to the accused to show, during the course of trial, that it was not really so. That stage would come

only at the time of the trial and not now. Regarding the second contention, the instructions relied upon by the petitioner are extracted in Ground

No. C in the petitions which read as follows :

As per existing instructions, prosecution would not be launched unless the amount involved exceeded Rs. 10,000. The aim of the Department

should be to process only the case of big concealment and not fritter away its energy in petty cases of no consequence.

7. The language of this instruction is quite clear and unambiguous. Only if the amount involved is less than Rs. 10,000, prosecution should not be

launched. The submission made by learned counsel for the petitioner does not find support from the language of the instructions. In all the six cases

the amount involved exceeded Rs. 10,000. Hence, the petitioner cannot at all take advantage of these instructions. Regarding the last contention of

learned counsel for the petitioner that the assessment was reopened and returns were filed, it is clear that on the due dates the returns of wealth were not filed. The allegations to that effect are clearly made in the last two cases also. While so, whether it was wilful or not is a question which

can be considered only during trial. I make it clear that EO.C.C. Nos. 75 and 76 of 1989 cannot be quashed at the threshold. The grounds urged

by learned counsel for the petitioner do not find acceptance with me. There is no legal infirmity in the maintainability of the complaints.

8. In view of the above, all the above petitions are dismissed.

