(2010) 07 MAD CK 0085

In the Madras High Court

Case No : Criminal R.C. No''s. 465, 466 and 467 of 2010 and M.P. No''s. 1+1+1 of 2010

Vijayalalitha APPELLANT

Vs

State RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245
Income Tax Act, 1961 — Section 276C, 276C(1), 278E
Income Tax Rules, 1962 — Rule 48G
Penal Code, 1860 (IPC) — Section 193

Citation : (2011) 237 CTR 500 : (2010) 327 ITR 261

Hon'ble Judges : T. Sudanthiram, J

Bench : Single Bench

Advocate : V. Krishnamurthi, for P. Ramesh Kumar, for the Appellant; K. Ramasamy, Spl. P.P., for the Respondent

Final Decision : Disposed Off

Judgement

T. Sudanthiram, J.—The petitioner in all these criminal revision cases is one and the same. He is the accused in E.O.C.C. Nos. 180 of

1988, 1645 of 1989 and 1646 of 1989 on the files of the learned Additional Chief Metropolitan Magistrate, (E.O-I), Egmore, Chennai.

Complaints have been filed by the respondent against the petitioner u/s 276C(1) of the Income Tax Act, 1961 r/w Section 193 IPC.

2. The case of the complainant in brief is that a raid was conducted in the premise of the accused/petitioner herein and during the raid, two

agreements for construction of a building dated 04.02.1985 were found. One of the agreement shows the total value as Rs. 6,63,250/- and the

other one was for a value of Rs. 3,08,400/-. Though the two agreements are for the same purposes, they were showing different values, Income

Tax department filed three complaints stating that the petitioner might have suppressed her income by resorting to the agreements for construction

of similar projects. Three complaints were filed by the department against the petitioner for three different assessment years namely 1985-1986,

1986-1987 and 1987-1988.

3. The petitioner herein filed an application u/s 245(1) Cr.P.C. seeking to discharge him in all the three cases. Learned Additional Chief

Metropolitan Magistrate, (E.O-I), Egmore, Chennai had dismissed all the three applications. Aggrieved by the orders of the learned Magistrate,

the petitioner has preferred these three criminal revision applications.

4. Mr. V. Krishnamurthi, learned Counsel appearing for the petitioner would submit that Section 193 IPC is not attracted. Section 193 IPC would

be complied only if the person gives false evidence in any judicial proceedings or fabricates false evidence for the purpose of any judicial

proceedings. Here, no judicial proceedings are pending and no proceedings initiated also. Learned Counsel for the petitioner further submitted that

even as per the allegations made by the complainant, there is no malafide to show that the petitioner wilfully attempted to evade any tax imposed.

Mere possession of two agreements may not lead to presumption that the petitioner wilfully attempted to evade the tax. Even otherwise, it must be

said that the accused is at the stage of preparation and not reached the stage of attempting. Learned Counsel for the petitioner relied on the

decisions of this Court reported in N. Srinivasan v. Uma Rani in 2004 ITR 77 and A. Radhakrishnan v. ITO City Circle I(4) Madras in 1991

L.W. (Crl.) 87.

5. Per contra, learned Special Public Prosecutor for IT Cases would submit that after tracing out the two agreements with different values, the

revision petitioner/accused admitted that the second agreement was made for the lower amount for the purpose of evading income tax, though the

actual cost for construction of the house is Rs. 6,63,250/-. Her statement is marked before the trial Court as Ex.P.11. Learned Special Public

Prosecutor also submitted that the possession of two different documents is only for the purpose of evading tax and it cannot be merely construed

as preparation to commit the offence, but willful attempt has been made by the accused. The attempt made by the petitioner can be construed as willful attempt, since as per Section 278E of the Income Tax Act, the culpable mental state on the part of the accused should be presumed by that.

6. This Court considered the submissions made on either side and perused the materials available on record.

7. The main allegation against the petitioner is that a search was conducted at the residence of the petitioner on 09.04.1986 and in the bank

lockers. At that time, it came to light that the petitioner had entered into an agreement with the contractor for a total amount of Rs. 6,63,250/-, but

with the view to suppress the actual cost, she had entered into another agreement with him for Rs. 3,08,400/-. Both the documents have been

seized by the Income Tax authorities and based on which, three complaints have been filed against the petitioner.

8. This Court is not able to understand as to why three different complaints have been filed. According to the complainant, the act committed by

the petitioner is only one relating to preparation of two sets of agreements. From that, the complainant makes accusation against the petitioner u/s

276C of the Income Tax Act. Though learned Special Public Prosecutor for IT Cases submitted that subsequently, three income tax returns were

filed by the petitioner relating to the assessment years 1985-1986, 1986-1987 and 1987-1988 and on that basis, three complaints have been filed

and this Court is unable to accept such contention. The complainant ought to have filed only one complaint against the petitioner.

9. It is to be seen whether as per case of the complainant, prima facie charge can be framed for offence u/s 193 IPC, which is as follows:

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any

stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also

be liable to fine;

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term

which may extent to three years, and shall also be liable to fine.

At the time of seizure of the documents, no proceedings was initiated and further, it cannot be said that the documents were prepared by the

petitioner for using it for any judicial proceedings in future. Therefore, this Court is of the view that no charge can be framed against the petitioner

u/s 193 IPC.

10. Now, it is to be seen whether any prima facie case for the offence u/s 276C of the Income Tax Act is made out. It was contended by the

learned Counsel for the petitioner that it cannot be said that by mere preparation of two documents, the petitioner made willful attempt to evade tax

and the petitioner has not filed any returns on the basis of the documents. The contention of the learned Counsel for the petitioner cannot be

accepted in view of the explanation given u/s 276C of the Income Tax Act, which reads as follows:

2. If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without

prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term

which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

Explanation: For the purposes of this section, a willful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the

payment thereof shall include a case where any person;

i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any

proceeding under this Act) containing a false entry or statement; or

ii) makes or causes to be made any false entry or statement in such books of account or other documents; or

iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

iv) causes any other circumstances to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or

imposable under this Act or the payment thereof.

As per the Explanation (i), if any person is in possession or control of any document containing false entry or statement, it should be taken as wilful

attempt made by such person to evade the tax. Hence, the decision cited by the learned Counsel for the petitioner reported in 2004 ITR Pg. 77

(N. Srinivasan v. Uma Rani) is not applicable to the facts of the case. The allegation against the accused in that case is that the accused made a false statement during search, he did not disclose owning of the locker thereby attempted to evade tax. Only on such allegation, it was held that

Section 276C was not made out.

11. The decision reported in 1991 L.W. (Crl.) 87 (A. Radhakrishnan v. ITO City Circle I(4) Madras) also is not applicable to the facts of this

case. It is observed at the Paragraph No. 9 of that order as follows:

The Explanation to the Section does not in any way restrict or cut done the ambit of the expression ""wilfully"" occurring in Section 276-C(1) of the

Act. Therefore, mens rea is important, and if, there was any wilful attempt to evade tax, will necessarily depend upon the facts of each case.

Though the line of demarcation between ''preparation'' and ''attempt'' ma be thin, before a person can be prosecuted for an offence punishable u/s

276-C(1) of the Act, there must be material available, that the stage of preparation had been crossed and attempt to evade wilfully, payment of

tax, was the only conclusion possible, on facts.

Therefore, the prosecution case was that the petitioner in that case, who was legally by express provisions of law to state the truth and make a

declaration regarding the market value of the property having failed to do so, has reference to the alleged declaration of the petitioner in Form 37-

G prescribed under Rule 48-G of the Income Tax Rules.

12. In this particular case, there is a specific allegation that the petitioner/ accused was in possession of two documents of agreements for the same

purpose with different values. As already observed and as per the explanation u/ s 276C of the Income Tax Act, prima facie material is available

against the petitioner to frame charge u/s 276C of the Income Tax Act.

13. Therefore, for the above said reasons, the first complaint filed by the prosecution in E.O.C.C. No. 180 of 1988 is maintainable, but the

proceedings in E.O.C.C. Nos. 1645 and 1646 of 1989 have to be quashed, since the complaint is for the same offence mentioned in E.O.C.C.

No. 180 of 1988.

14. In the net result, with the above observation, the Criminal Revision Petition No. 466 of 2010 is dismissed and the other two Criminal Revision

Petition Nos. 465 and 467 of 2010 are allowed and the proceedings in E.O.C.C. Nos. 1645 and 1646 of 1989 are quashed. Consequently, connected miscellaneous petitions are closed.

15. The complaints were filed in the year 1988 and 1989. Petitions seeking discharge were filed by the accused in the year 1999 and they were

pending for more than 10 years for disposal. 13 Presiding Officers during the said period did not dispose those petitions. The present Presiding

Officer Mr. P. Velmurugan disposed them by passing orders within four months from the date of his assuming charge, which this Court

appreciates.

