

---

**(1993) 09 CAL CK 0035**  
**In the Calcutta High Court**  
**Case No : Criminal Revision No. 970 of 1993**

|                                                     |    |            |
|-----------------------------------------------------|----|------------|
| Warren Tea Ltd. and . Another                       | Vs | APPELLANT  |
| A.L.K. Bihari Chand, Dy. Comsn. of I.T. and Another |    | RESPONDENT |

---

**Date of Decision :** 16-09-1993

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 203, 204, 482  
Income Tax Act, 1961 — Section 139(1), 143(2), 143(3), 179(1), 249

**Citation :** 98 CWN 462

**Hon'ble Judges :** A.K. Dutta, J

**Bench :** Single Bench

**Advocate :** Alok Kumar Sengupta and Kallol Dasgupta, for the Appellant; Nilava Mitra, for the Respondent

**Final Decision :** Allowed

---

## Judgement

A.K. Dutta, J.—The instant Revisional Application, along with three other Applications, being Criminal Revision Nos. 1175, 1176 and 1177 of 1991, u/s 482 of the code of Criminal Procedure are all directed against the order dated 18.3.91 passed by the learned Chief Metropolitan Magistrate at Calcutta in case No. C/573 of 1991 directing issue of processes against all the accused-petitioners therein under Sections 276C (1) and 277 of the Income Tax Act praying for quashing the said proceedings on the grounds set forth therein. M/s Warren Tea Ltd. (hereinafter referred to as Company) had filed its Return on 29.8.1986 in form No. 1 u/s 139(1) of the Income Tax Act (hereinafter referred to as Act) relating to its previous year ending on 31st March, 1986 for the Assessment year 1986-87, duly verified and signed by the accused-petitioner No. 8, Sri P.K. Bose, in the office of the Deputy Commissioner of Income Tax, Special Range-2, Calcutta. The Company had shown in the said Return an amount of Rs. 6,02,22,478/- only under the heading "profit before taxation as per profit and loss accounts" for the year ended on 31st March, 1986. The Company in the said Return had shown various other income from different sources, and had claimed deduction for the total amount of Rs. 44,40,706/- under four different Heads, as

indicated below, under the various provisions of the Income Tax Act:--

i)

payments made to various parties (on voucher, each exceeding Rs. 2,500/-)

..

Rs. 1,63,925/-

ii)

Liabilities towards Bonus, Sales Tax

..

Rs. 1,42,888/-

iii)

Commission paid on foreign contracts

..

Rs. 32,37,083/-

iv)

Purchases of complimentaries

..

Rs. 8,96,870/-

Purchases of complimentaries

Rs. 2,29,17,870/-

(rounded up) as its total income upon which it was liable to pay income tax.

2. The Assessing Officer had completed the assessment proceeding and had made assessment for the year 1986-87 u/s 143(3) of the I.T. Act on 31.3.89 after obtaining various details and explanatory statements from the Company upon issue of notice u/s 143(2) of the Act. In his aforesaid Assessment Order, he had disallowed certain claims of the Company for deduction of different amounts on different Heads either wholly or in part, and had assessed a total amount of Rs. 2,95.44,923/ as taxable income. While communicating the Assessment Order to the Company on 25.4.89 (beyond the statutory period), the Assessing Officer, along with the Assessment Order, had issued notices under Sections 274/ 271 and 273(1) of the Act initiating penalty proceedings against the company in connection with its Return submitted for the Assessment year 1986-87.

3. Being aggrieved by and dissatisfied with the aforesaid order of Assessment dated 31.3.89 passed by the aforesaid Assessing Officer, the Company had preferred appeal thereagainst u/s 249 of the Act before the Commissioner of

Income Tax (Appeal) on 23.4.89. The Company had thereafter prayed for stay of the penalty proceedings during the pendency of the appeal, which was granted. The said appeal was finally heard and disposed of by the Commissioner of Income Tax (Appeals - III), Calcutta, on 26.3.90 and the appeal was allowed in part with various directions upon the Assessing Officer.

4. Not being satisfied with the order of the aforesaid Appellate Authority, the Company had again preferred appeal before the Income Tax Appellate Tribunal (hereinafter referred to as Tribunal) on 25.5.90 u/s 253 of the Act, which had eventually been disposed of during the pendency of the instant four proceedings before this Court on 6.1.92. The said appeal by the Company had also been partly allowed in the manner and for the reasons recorded therein, as appearing from Annexure "C to the supplementary Affidavit filed on behalf of the Company on 13.5.93. While the said appeal was pending before the (Income Tax Appellate) Tribunal, the Assessing Officer had issued notices under Sections 271(1)(c) and 273 of the Act on 16.1.91 and 17.1.91 respectively, fixing the hearing of the penalty proceedings on 30.1.91, which was lying stayed, in the meanwhile. The Company had thereupon prayed for stay of the penalty proceedings pending disposal of the appeal before the Tribunal on 29/ 30.1.91, which was stayed. During the pendency of the Company's appeal before the Tribunal, the Deputy Commissioner of Income Tax concerned, as complainant, had filed the relevant complaint against the accused-Company and all the Directors thereof on 18.3.91 before the Chief Metropolitan Magistrate at Calcutta for alleged offences punishable under Sections 276C (1) and 277, read with Section 278S of the Act, whereupon the learned Magistrate had directed issue of processes against them all upon taking cognizance of the alleged offence.

5. The instant four Revisional Applications had thereupon been filed by the accused-petitioners against the aforesaid order of the learned Chief Metropolitan Magistrate dated 18.3.91 praying for quashing the relevant proceedings for the reasons stated therein.

6. During the pendency of the instant Revisional Applications before this Court the aforesaid relevant penalty proceedings against the Company was finally heard and disposed of on 31.8.92 by the aforesaid Assessing Officer, who had imposed penalty upon the Company amounting to Rs. 5,04,166/- only u/s 271(1) (c) of the Act for the Assessment year 1986-87 for the reasons indicated therein. The Assessing Officer had, however, dropped the penalty proceedings initiated by him against the Assessee-company under Sections 271(1)(a) and 273 of the Act.

7. Being aggrieved by and dissatisfied with the aforesaid penalty order dated 31.8.92 the company had preferred appeal thereagainst before the Commissioner of Income Tax (Appeal)VI Calcutta, on 14.10.92 u/s 249 of the Act. The said appeal had since been finally heard and disposed of by the said Appellate Authority on 20.4.93, which upon hearing the parties and perusing the materials on record, had allowed the appeal holding, inter-alia, that it was not a case where penalty u/s 271(1)(c) of the Act can be levied. The impugned order

dated 31.8.92 imposing penalty of Rs. 5,04,166/- only had been cancelled by the Appellate Authority for the reasons recorded at length in its relevant judgment, the xerox copy of which has been annexed to the supplementary Affidavit filed on behalf of the Company on 13.5.93 in Criminal Revision No. 970 of 1991 as Annexure "B" thereto.

8. The complainant, A.L.K.B. Chand, Deputy Commissioner of Income Tax, Special Range-2, had filed the relevant petition of complaint before the Chief Metropolitan Magistrate at Calcutta for prosecution of all the eight accused petitioners for alleged offences punishable under Sections 276C(1) and 277 of the Act on the basis of the authorisation given to him by the Commissioner of Income Tax, West Bengal-2, Calcutta, u/s 279(1) of the Act on the allegation that they (accused) had wilfully made attempt to evade tax, penalties, etc. and had made statement in the verification or delivered an account of statement knowing the same to be false or not believing the same to be true in terms thereof. The petition of complaint has been filed by the complainant in respect of all the four Heads for which deduction had been claimed, as already indicated above, on the allegations made therein. But it would oddly appear from the Authorisation given u/s 279(1) of the Act that the Commissioner of Income Tax concerned had thereunder authorised and directed the complainant to file before the competent court a petition of complaint against the Company (for the alleged fences) only in respect of their claim of deduction of Rs. 1,42,858/- towards payment on account of Provident Fund, Bonus and West Bengal Sales Tax from its income, and thereby concealing its income to that extent, and thus wilfully attempting to evade tax by falsely claiming deduction therefor. No Authorisation appears to have been given by the Commissioner for prosecuting the company in respect of which deductions had been claimed by the Company. The prosecution of the Company under the relevant petition of complaint in respect of the three other Heads for which deduction had been claimed by the Company not having been authorised under the relevant authorisation order cannot therefore clearly be held to be according to law. So also frankly conceded by Mr. Mitra, learned Advocate for the Opposite-party-Department, in his usual wisdom. And, in respect of the claim for deduction of the sum of Rs. 1,63,925/- only, it would oddly appear that the Tribunal by order dated 6.1.92, during the pendency of the instant revisional applications, had allowed the appeal of the Company in respect of the said claim which had been disallowed by the Assessing Authority and the Appellate Authority, and had allowed the claim of the Assessee and deleted the allowance in that respect for the reasons recorded therein, as appearing from the Annexure "C" to the Supplementary Affidavit filed on behalf of the Company on 13.5.93 in Criminal Revision No. 970 of 1991. The aforesaid judgment and order of the Tribunal must be deemed to have merged with the Assessment order of the Assessing Officer. The Tribunal having thus allowed the petitioners' claim for deduction of the sum of Rs. 1,63,925/- only in respect of the aforesaid item, the prosecution of the accused-petitioners on the allegation that they had wilfully attempted to evade tax by falsely claiming deduction in respect thereof could

neither be sustained.

9. As already indicated above, the Company and its Directors have been prosecuted by the complainant for the alleged offences on the allegations made on the petition of complaint. But as held by the Division Bench of this Court in the decision in *M/s. Champa Agency and am. vs. R. Chowdhury and anr.*, 74 C.H.N. 400. a Company or a corporate body cannot be prosecuted for an offence under the Indian Penal Code where Mens-Rea is an essential ingredient on the reasoning that a corporate body cannot be said to have the necessary Mens-Rea therefore. On the same analogy, the offences punishable under Sections 276C(1) and/or 277 of the Income Tax Act. where Mens-Rea appears to be an essential ingredient, the Company cannot certainly commit such offence and cannot be prosecuted therefor, as it cannot be said to have the necessary Mens-Rea therefor, and, if the Company cannot commit any such offence and cannot be prosecuted therefor, its Directors can neither be prosecuted therefor merely on the allegation that they were persons in charge of and were responsible to the Company for the conduct of its business during the relevant period, without anything more. On the analogy of the decision in *Sheoratan Agarwal and Another Vs. State of Madhya Pradesh*, before the (other) Directors of the Company can be prosecuted for the alleged offence on the mere allegation that they were persons in charge of, and were responsible to the Company for the conduct of its business during the relevant period, it must be alleged that the alleged offence had been committed by the Company. As held by their Lordships therein that should be axiomatic as laid down in the decision in *State of Madras Vs. C.V. Parekh and Another*, The liability of the persons in charge of the Company only arises when the offence is committed by the Company itself. If the Company is unable to commit the alleged offence, the liability of the persons in charge of the Company on that score alone could not conceivably arise. It would also be pertinent to note in this context that it has been specifically stated in the petition of complaint that on 29.8.86 the Assessee-Company had filed the Return of Income for the relevant assessment year through one of its Directors, the accused No. 8, Probhat Kumar Bose, duly verified and signed by him in the prescribed manner. In the absence of any allegation that the other Directors of the Company had aided and/or abetted the filing of the said Return by the aforesaid accused No. 8 and thereby wilfully attempted to evade tax by falsely claiming deduction, as they allegedly did, the other Directors of the Company could not clearly be prosecuted, for the alleged offence on the mere allegation that they, as Directors of the Company, were persons in charge of and responsible to the Company for the conduct of its business. It has been contended on behalf of the petitioners-accused that the accused No. 2, A K. Ruia and the accused No. 6, A.N. Musry, are both non-resident Indians. and the accused No. 5. S.S. Ruia and the accused No. 6. H.P. Barooah, are residents of Bombay and Guwahati respectively. None of them could either conceivably be held to be persons in charge of and responsible to the Company for the conduct of its business.

10. So far as the accused No. 8, petitioner Probhat Kumar Bose, is concerned it is alleged in the petition of complaint that the Return in Form No.1 u/s 139(1) of the Act for the Assessment year 1986-97 had been filed no 29.8.86, duly verified and signed by him (accused No. 8), in the office of the Deputy Commissioner of Income Tax, Special Range-2, Calcutta, containing allegations therein that an attempt had been wilfully made to evade tax, penalties, etc. and statement in the verification made and account of statement delivered knowing the same to be false or not believing the same to be true. The question as to whether the aforesaid accused No. 8 while filing the aforesaid Return, duly verified and signed by him, had wilfully made attempt to evade tax, penalties, etc. and had made statement in the verification or delivered an account of the statement knowing the same to be false or not believing the same to be true would clearly be a question of fact to be decided during the trial by the competent court, which cannot certainly be considered by this Court at this stage in this proceedings. True it is, the mere fact that certain claims for deduction made in a Return has been disallowed by the Assessing Officer, by itself, could not constitute an offence punishable under Sections 276C(1) and 277 of the Act. A claim for exemption wrongly made or for want of proper appreciation of the provisions could neither constitute any actionable statement of verification. But as held in *S. Harnam Singh Suri Vs. Central Board of Direct Taxes*, a statement of wrong facts affecting assessment may constitute an offence if there is evidence or inference of mens-rea. But that would certainly be a matter to be considered by the Trial Court at the appropriate stage upon consideration of evidence to be presented before it by the prosecution. It is a settled principle of law that a Magistrate will issue process u/s 204 of the Code of Criminal Procedure if there is sufficient ground for proceeding. If there be no sufficient ground he will dismiss the complaint u/s 203. The Magistrate in deciding whether process should issue must exercise judicial discretion having regard to the materials duly placed before him. At the time of issuing process what the Court is required to find out is whether there is prima facie case. It need not and should not determine the adequacy of the evidence or the probability of the accused being guilty. Nor. could the Revisional Court do so. The mere fact that there is no whisper in the relevant Assessment Order of the Assessing Authority that the petitioners had wilfully made attempt to evade tax penalties, etc, and had made statement in the verification or delivered an account of statement knowing the same to be false or not believing" the same to be true could clearly be no ground for presuming that no offence punishable under Sections 276C(1) and 277 of the Act has been made out as urged by the learned advocate for the petitioners. The relevant petition of complaint, as it is, without adding anything more to it or without subtracting anything from it, clearly appears to make out a prima-facie case for an alleged offence punishable thereunder so far as the aforesaid accused No. 8 is concerned. The question as to whether there was the requisite mens-rea therefor would be a matter to be considered by the Trial Court upon evidence at the appropriate stage.

11. The learned Advocate for the petitioners had waxed eloquent during the hearing that since the penalty imposed by the authority concerned u/s 271(1)(c) of the Act had been set aside by the Appellate Authority by the relevant judgment and order dated 20.4.93 clearly recording therein that it was not a fit case where penalty thereunder can be levied, the relevant criminal proceedings, being case No. C/573 of 1991 pending before the Chief Metropolitan Magistrate at Calcutta, is liable to be quashed as a matter of course. The submissions so made would be reinforced by the decision of the Hon'ble Supreme Court of India in Uttam Chand and ors. vs. Income Tax Officer, Central Circle, Amritsar, (1982)133 Income Tax Report 909. Applying the aforesaid decision of the Supreme Court, the Punjab and Haryana High Court had also held in the decision in Parkash Chand Vs. Income Tax Officer, A-Ward, "that in view of the finding of the Tribunal that there was no concealment and no inaccurate were filed by the petitioners, the Criminal proceedings against the assessee would not continue and were liable to be quashed. The Punjab and Haryana High had further held in the decision in Kanshi Ram Wadhwa Vs. Income Tax Officer, relying upon the aforesaid two decisions, "that if there was no case for sustenance of penalty, it equally would not be a case for Criminal Prosecution, echoing the pronouncement of the Supreme Court to that effect in Uttam Chand's case. "Therefore, the criminal complaint filed against the assessee was liable to be quashed." it had been observed by His Lordship therein that it has to be borne in mind that the court's time is precious and is not meant to be employed for proceedings which are directionless. The Learned Counsel for the (Income Tax) Department had nothing to submit before the Court in the said proceedings and he did not either venture to distinguish that case. Since the Appellate Authority by his relevant order dated 20.4.93 had clearly held that the relevant penalty proceedings against the company was not a case where penalty u/s 271(1)(C) of the Act can be levied, and had set aside the penalty imposed by the Deputy Commissioner of Income Tax (against the Company), the relevant criminal proceedings against all the petitioners accused is clearly liable to be quashed in view of the aforesaid decisions, in the facts and circumstances indicated above.

12. The aforesaid relevant criminal proceedings is all the more liable to be quashed on another technical/legal ground as I shall presently state. u/s 279(1) of the Act, as it is stood before the amendment by the Finance Act, 1988 :--

A person shall not be proceeded against for an offence u/s 275A, Section 276A, 276AA, Section 276B, Section 276C, Section 276CC, Section 276D, Section 276DD, Section 276E, 277, Section 278, or Section 278A except at the instance of the Chief Commissioner or Commissioner.

13. But under the amended section 279(1), substituted by the Finance Act, 1988, which had come into effect from 1.4.1989 :--

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 Chief Commissioner or Director General or Commissioner :

Provided that no such sanction shall be required if the prosecution is at the instance of the Commissioner (Appeals) or the appropriate authority.

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

14. In terms of the aforesaid proviso no sanction shall be required if the prosecution is at the instance of the Commissioner (Appeals) or the Appropriate Authority. The relevant prosecution is neither at the instance of the Commissioner (Appeal) or the Appropriate Authority.

15. The relevant petition of complaint against the accused petitioners appears to have been filed and the relevant proceedings had been started thereon on 18.3.1991 after the aforesaid amended provision of Section 179(1) had come into force. The said petition of complaint had been filed by the Deputy Commissioner of Income Tax, Special Range-2, Calcutta, on being authorised and directed by the Commissioner of Income Tax, West Bengal-2, Calcutta, under the relevant Authorisation issued therefor under the old Section 279(1) of the Act. The relevant petition of complaint clearly, therefore, appears to have been filed on the basis of the aforesaid Authorisation issued in terms of the old Section 279(1) of the Act, which was no longer in force while the same had been filed before the Court. No previous sanction in terms of the amended Section 279(1) of the Act appears to have been obtained for filing the relevant petition of complaint. The aforesaid relevant prosecution, undeniably, was neither at the instance of the Commissioner (Appeals) or the "Appropriate Authority" within the meaning of clause (c) of section 269UA. The petitioners - accused have been prosecuted on 18.3.1991 without the previous sanction of the Chief Commissioner or Director General or Commissioner in terms of the amended Section 279(1) of the Act. The relevant Authorisation under old Section 279(1) of the Act by the Commissioner could not clearly be deemed to be previous sanction within the meaning of the amended Section 279(1) of the Act, which had come into force with effect from 1.4.1989. The prosecution of the accused-petitioners, in the aforesaid circumstances, clearly, therefore, appears to be incompetent. The relevant proceedings is accordingly liable to be quashed on this score as well

16. It had been submitted on behalf of the Department that an appeal has been preferred against the order dated 20.4.1993 passed by the Commissioner of Income Tax (Appeal) vs., Calcutta, In connection with the relevant penalty proceedings, setting aside the penalty imposed by the Deputy Commissioner, Income Tax, u/s 271(1)(c) of the Act, which is stated to be pending. It had thus been submitted that the Department may be given the liberty to proceed against the guilty person in case the order imposing penalty is restored. The Court from proceeding according to law shall not certainly stand in the way of the Department if the law permits it to do so.

17. In view of the discussions above, the instant Revisional Applications succeed.



The relevant criminal proceedings before the Court below be accordingly quashed. The accused be all discharged from their Bail Bonds if on bail.

18. This order, however, shall not debar the Department from proceeding against the accused No. 8. petitioner Probhat Kumar Bose. according to law in case the aforesaid order of the Appellate Authority dated 20.4.1993 canceling the order imposing penalty in the relevant penalty proceeding is set aside on appeal, which is stated to be pending, should there is any ground for proceeding against him (accused No. 8), if not otherwise barred. This judgment governs all the four relevant Criminal Revision Case Nos. 970, 1175, 1176 and 1177 of 1991. No order for costs.