Surjit Engg. Works Vs Income Tax Officer

Criminal Miscellaneous No. 7218-M of 1993

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 13, 1994

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 482#Income Tax Act, 1961 â€" Section 276C, 277

Citation: (1996) 84 TAXMAN 490

Hon'ble Judges: A.S. Nehra, J

Bench: Single Bench

Advocate: S.M. Lall Arora, for the Appellant; R.P. Sawhney, for the Respondent

Final Decision: Dismissed

Judgement

A.S. Nehra, J.
The petitioners have filed this petition u/s 482 of the Code of Criminal Procedure, 1973, for quashing the complaint,

annexure P-1, and consequent proceedings taken on the said complaint by the Chief Judicial Magistrate, Bathinda, the order dated 26-2-1990,

passed by the Chief Judicial Magistrate and the order dated 18-3-1993, passed by the Additional Sessions Judge, Patiala, in a revision petition

against the order of the Chief Judicial Magistrate. The ITO, Faridkot, filed a compliant against the petitioners u/s 276C, read with section 277, of

the income tax Act, 1961 ("the Act"). On the basis of the pre-charge evidence led by the complainant, the petitioner were charge-sheeted under

the abovesaid provisions on 21-7-1989, for making false entries in the account books and also for making false verification regarding the stocks so

as to evade income tax. The case was thereafter adjourned for evidence of the complainant. On 6-12-1989, the petitioners filed an application

before the trial court stating that since discrepancies to the tune of Rs. 39,485 in the stock of the petitioner-firm, on the basis of which the prosecution was launched against the petitioners, had been set aside by the Commissioner (Appeals), Bathinda, vide order dated 3-10-1989, the

complaint against the petitioners could no longer proceed and the proceedings be dropped.

2. Notice of this application was given to the complainant. A reply was filed on behalf of the complainant stating that the petitioners were being

prosecuted for allegedly introducing a false cash credit entry of Rs. 50,000, dated 19/20-11 -1970, and the addition of the aforesaid amount of

Rs. 50,000 had been confirmed by the appellate authority of the department and the petitioners were being validly prosecuted for the same. It was

also stated in the reply that an appeal had been preferred against the order of the Commissioner (Appeals) and, therefore, the application filed by

the petitioners for dropping the criminal proceedings was not maintainable.

3. The petitioners are being prosecuted under sections 276C and 277 for allegedly introducing a false entry of Rs. 50,000 in the account books of

the petitioner-firm with the intention of evading income tax liability and also for making false verification of the stock of the petitioner-firm relating to

the financial year 1976-77. It has been submitted that in the order of the Commissioner (Appeals) dated 3-10-1989, the contention of the

department regarding the false verification of the stock to the tune of Rs. 39,485 has not been upheld by the appellate authority. In other words,

the petitioners claim that the charge framed u/s 277 against them for not making proper verification of stocks is not legally maintainable in view of

the order of the appellate authority. The complainant has stated in the reply that the department has filed a second appeal against the order of the

Commissioner (Appeals) and the matter is still sub-judice in the Tribunal and, therefore, the application for dropping the criminal proceedings was

not tenable. After hearing the counsel for the parties, the trial court held that even if the order passed by the appellate authority be taken at its face

value, the same did not in any way absolve the petitioners of their liability u/s 276C for allegedly making a false entry in the account books of the

firm for evading income tax liability. It was further held by the trial court that the effect of the appellate order dated 3-10-1989, would be seen

when the case is finally disposed of and the application filed by the petitioners was dismissed. The petitioners'' revision petition against the order of

the trial court was dismissed by the Additional Sessions Judge, Patiala, on 18-3-1993.

4. Mr. S.M. Lall Arora, the learned counsel for the petitioners, has contended that the petitioner-firm had filed C.W.P. No. 5206 of 1985, which

stands admitted and, therefore, the proceedings in the criminal complaint be stayed till the decision of the writ petition. He has further contended

that since the matter regarding the addition of Rs. 50,000 is sub-judice, the proceedings in the criminal complaint be stayed. In support of his

argument, he has referred to the decisions in Shambu Nath v. Mohd. Bhat (1961) 2 Crl. LJ 580 and Swastika Metal Works v. Vimal Vashist

(1989) 1 Recent C.R. 504, which are not applicable to the facts of this case.

5. Mr. R.P. Sawhney, Advocate, the learned counsel for the respondent, has contended that mere expectation of success in the civil writ petition

cannot come in the way of institution of criminal proceedings under sections 276C and 277 and in support of this argument, he has relied upon P.

Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , wherein it has been held by the Supreme Court as under:

...A mere expectation of success in some proceeding in appeal or reference under the Act cannot come in the way of the institution of the criminal

proceedings under sections 276C and 277 of the Act. In the criminal case all the ingredients of the offence in question have to be established in

order to secure the conviction of the accused. The criminal court no doubt has to give due regard to the result of any proceeding under the Act

having a bearing on the question in issue and in an appropriate case it may drop the proceedings in the light of an order passed under the Act. It

does not, however, mean that the result of a proceeding under the Act would be binding on the criminal court. The criminal court has to judge the

case independently on the evidence placed before it. Otherwise, there is a danger of a contention being advanced that whenever an assessee or

any other person liable under the Act had failed to convince the authorities in the proceedings under the Act that he has not deliberately made any

false statement or that he has not fabricated any material evidence, the conviction of such person should invariably follow in the criminal court....

(p. 700)

After hearing the learned counsel for the parties, I hold that mere expectation of success in a civil writ petition cannot come in the way of institution

of criminal proceedings under sections 276C and 277. The criminal court has to judge the case independently on the evidence placed before it and

the trial court is not supposed to await the decision of the civil writ petition, which is pending in this Court since 1985. In view of the decision of the

Supreme Court in P. Jayappan''s case (supra), I find no merit in this petition and the same is dismissed.