

(1994) 11 AHC CK 0020

Allahabad High Court

Case No: Criminal Miscellaneous Application No's. 4712 and 4730 of 1994

Sheo Balak Ram Ganesh Prasad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Nov. 15, 1994

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482

Citation: (1995) 212 ITR 148 : (1995) 79 TAXMAN 137

Hon'ble Judges: O.P. Jain, J

Bench: Single Bench

Advocate: Rajesh Kumar, for the Appellant;

Final Decision: Dismissed

Judgement

O.P. Jain, J.

The brief facts of Case No. 4730 of 1994 are that the petitioner filed its return of income in the year 1987-88. While passing the assessment order, the Income Tax Officer added Rs. 74,000 and Rs. 69,300 as unexplained income. The assessee filed an appeal before the Commissioner of Income Tax who allowed it partly. Being dissatisfied the assessee-applicant filed an appeal before the Income Tax Appellate Tribunal, Allahabad, where it is pending.

2. On the basis of the additions made by the Income Tax Officer, penalty proceedings have been initiated and an appeal has been filed against the same. The penalty has been reduced from Rs. 40,000 to Rs. 26,000 by the Commissioner of Income Tax and an appeal is pending before the Income Tax Appellate Tribunal.

3. Under these circumstances, a complaint has been filed by respondent No. 2 against the petitioner in the court of the Special C. J. M., Allahabad.

4. The facts in Case No. 4712 of 1994 are almost similar and need not be mentioned in detail. It is sufficient to say that in this case also some addition was made by the

Income Tax Officer and penalty was levied. An appeal was filed which was partly allowed and a second appeal filed by the assessee is pending before the Income Tax Appellate Tribunal.

5. The contention in both the cases is that during the pendency of the appeal, criminal prosecution could not be launched and if the Department has filed the complaint, proceedings in the complaint case should be stayed till the appeal is decided by the Tribunal. Learned counsel has not prayed for quashing of the criminal proceedings pending in the court of the Special C. J. M., Allahabad.

6. Learned counsel has reproduced the orders passed by this court in various cases from time to time. In those cases, in similar circumstances, this court has stayed the proceedings in the criminal complaint. Learned counsel has also cited a copy of my order in Criminal Miscellaneous Case No. 4655 of 1994 in which criminal proceedings were stayed up to a particular date.

7. Learned counsel for the Union of India has brought to the notice of the court the case of [P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin](#), in which it has been held that the prosecution cannot be quashed simply because the proceedings under the tax laws are pending. (This case is also reported as [P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin](#), .

8. In Ananda Fabrics v. Asst. CIT [1990] 185 ITR 412, the Madras High Court has held that the criminal proceedings cannot be quashed or stayed simply because the appeal is pending before the Tribunal. In the case before the Madras High Court, a prayer was made that a direction may be issued to the learned Magistrate not to pronounce judgment till the departmental proceedings are over. But this prayer was refused and it was held that such a direction cannot be given at the initial stage. The court further observed that if after the conclusion of the trial and before the pronouncement of the judgment, the petitioner feels that he should make such a request to the trial court, he is free to do so and the learned Magistrate will deal with this request according to law.

9. It may be mentioned here that the only prayer in these petitions u/s 482, Criminal Procedure Code, is that the criminal proceedings may be stayed. The applicant has not alleged that there is any illegality in the criminal proceedings.

10. Learned counsel for the applicant has cited a large number of cases of this court in which stay orders were granted by this court and it appears that the case of [P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin](#), cited in paragraph 7 (at page 49) above was not brought to the notice of the court. The case of [P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin](#), was cited before a single Bench of this court in Criminal Miscellaneous Application No. 8578 of 1992--Sadaf Enterprises v. Union of India--and in that case the application u/s 482, Criminal Procedure Code, was summarily dismissed.

11. In view of the above discussion, both the applications filed u/s 482, Criminal Procedure Code, are dismissed.