

(1986) 07 KL CK 0039

High Court Of Kerala

Case No: Criminal A. 378, 379 and 391 of 1982

Income Tax Officer, Special Circle
Ernakulam

APPELLANT

Vs

Kerala Oil Mills and another

RESPONDENT

Date of Decision: July 8, 1986

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 195, 195(1)(b)(i), 248(1)
- Income Tax Act, 1961 - Section 121, 123, 124, 125, 127
- Penal Code, 1860 (IPC) - Section 193, 196

Citation: (1986) 23 KLJ 702

Hon'ble Judges: K. Sreedharan, J

Bench: Single Bench

Advocate: P. Ramakrishnan Nair, for the Appellant; K.P. Balasubramaniyan, for the Respondent

Final Decision: Dismissed

Judgement

K. Sreedharan, J.

These appeals, between the same parties relate to one and the same question of law. Therefore I consider it advantageous to dispose of them by a common judgment. Respondents were prosecuted by the Income Tax Officer for offences punishable u/s 227 of the Income Tax Act and Sections 193 and 196 of the Indian Penal Code. The allegation made against the respondents is that they filed false accounts before the Income Tax Officer to evade payment of tax. The assessment years in relation to which the proceedings were initiated are 66-67 and 69-70.

2. The complaints in all these cases were filed before the Chief Judicial Magistrate's Court, Alleppey on 6-10-72. They were entertained by that court as C. C. 277/72, C. C. 278/72 and C. C. 279/72. They were subsequently renumbered by the Judicial First Class Magistrate's Court, Ambalapuzha as C. C. 387/80, 388/80 and 389/80. The

learned Magistrate acquitted accused I and 3 under Sections 248 (1) of the Code of Criminal Procedure. The second accused passed away during trial; so the charge against him abated. Aggrieved by the said acquittals the complainant has preferred these appeals 378/82, 379/82 and 391/82 respectively

3. The learned counsel appearing for the respondents challenges the maintainability of the complaint before the trial court. According to the learned counsel the complaint was one not maintainable, that it ought to have been dismissed on the sole ground that the said defect cannot be cured and that the appeal must be dismissed without going into the merits of the case. The argument of the counsel is that the complaint regarding offence u/s. 193 and 1961. P. C. should have been filed by the court in which the offence was alleged to have been committed or by some other court to which that court was subordinate. The court for the purpose of this proceeding is the Income Tax Officer, B Ward, Alleppey. So, the Income Tax Officer, B Ward, Alleppey ought to have filed the complaint. The complaints in all the three cases were filed by Income Tax Officer, Special Circle, Ernakulam. The Income Tax Officer Special Circle, Ernakulam was not the court in which the offence was alleged to have been committed. Therefore it is argued that the complaints were filed by an incompetent person and so the same must be dismissed.

4. The learned counsel appearing for the appellant meets the above argument by stating that the cases relating to the respondent were transferred by the Commissioner of Income Tax to the Income Tax Officer, Special Circle, Ernakulam in exercise of the powers u/s. 127 of the Income Tax Act 1961 and that P. W. 1, the Income Tax Officer, Special Circle, is the court in relation to the respondents' cases and so the complaints filed by P.W. 1 are maintainable.

5. Section 136 of the Income Tax Act provides that any proceeding before an income tax authority shall be deemed to be a judicial proceeding for the purpose of Section 196 of the Indian Penal Code and" that every income tax authority shall be deemed to be a Civil Court for the purpose of Section 195 of the Code of Criminal Procedure. So an Income Tax Officer before whom a proceeding under the Income Tax Act is pending is deemed to be a Civil Court for purpose of Section 195 of the Code of Criminal Procedure. Section 127 of the Income Tax Act authorises the Commissioner of Income tax to transfer any case from one Income Tax Officer to any other Income Tax Officer. The Explanation to the said Section reads as follows:

In this section and in sections 121, 123, 124 and 125, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.

The explanation makes it clear that when a case is transferred from one officer to another, all proceedings under the Income Tax Act will stand transferred. A prosecution for offence u/s 193 and 196 of the Indian Penal Code can never be considered as a proceeding under the provisions of the Income Tax Act. So it is argued that the transfer of the case of the respondents to P. W. 1 will not authorise him to launch a complaint before the criminal court because the offence alleged was not committed before the court of P.W. 1 but in some other court.

6. The assessment could be completed according to law by the Officer having proper jurisdiction over the case. Returns and documents were filed before such an officer That officer under the above mentioned provisions of the Income Tax Act is deemed to be a Civil Court By filing returns and accounts before that court if it appears that offence u/s 193 or 196 I. P. C. has been committed the complaint has to be filed" by the court. In this view the short question that arises for consideration is whether the respondents did commit offence under Sections 193 and 196 IPC by filing returns before P.W. 1.

7. P. W. I was the Income Tax Officer, B Ward. Alleppey for the period from 20-12-68 to middle of April 1970. The respondents filed their returns before the Income Tax Officer B Ward, Alleppey. Returns were filed on 28-11-66. 1-12-66 and 31-1-70. By order dated 10-4-70 P, W. 1 was transferred and posted as Income Tax Officer, B Ward, Salary Circle, Ernakulam. He continued in that post till he was transferred as Income Tax Officer, O Ward, Ernakulam by order dated 30-6-70 P. W I worked in that post till 23-8-70. On 20-8-70 the Commissioner of Income Tax transferred and posted P. W. 1 as Income Tax Officer B Ward, Company Circle, Ernakulam. He worked in that post till 23-7-72. Thereafter by order dated 18-7-72 the Commissioner posted P. W. 1 as the Income Tax Officer, Special Circle, Ernakulam. He assumed that office on 24-7-72 and was continuing there when he filed complaints in these cases on 6-10-72. In exercise of the powers u/s. 127 (1) of the Income Tax Act the Commissioner of Income tax transferred the case relating to the respondents from the file of the Income Tax Officer, B Ward Alleppey to the Income Tax Officer, B Ward, Company Circle, Ernakulam by a notification dated 9-12-70. Thus P.W. 1 got the cases of the respondents transferred to his file. Subsequently by another notification dated 26-7-72 the Commissioner transferred the case to the Income Tax Officer. Special Circle, Ernakulam. P.W. 1 thus was seized with the case relating to the respondents.

8. The allegation against the respondents is that they filed false returns before the income Tax Officer and fabricated false accounts for the purpose of being used in the assessment proceedings. These returns and the supporting documents were filed before the Income Tax Officer, B ward, Alleppey. So the offence was committed in a proceeding before the Income Tax Officer, B ward, Alleppey, who is deemed a Civil Court. It is that Court that is to file the complaint in writing as contemplated by Section 195(1) (b) (i) of the Code of Criminal Procedure That court has" not filed the

complaint, PW1 has filed the complaint because the case has been transferred to him by the Commissioner of Income tax. Then question is whether by that transfer P.W. 1 could get jurisdiction to file the complaint. At the time of the argument it has been admitted by counsel appearing on the either side that assessment orders in relation to the impugned returns were passed prior to 26-7-72 when the cases were transferred to P.W. 1. Income Tax Officer, Special Circle, Ernakulam. When the proceedings end in final order of assessment it cannot be said that the case is pending. Even otherwise the prosecution has no case that the respondents committed any offence under Sections 193 or 196 of the Indian Penal Code by filing any false documents before the Income Tax Officer, Special Circle, Ernakulam. In [Commissioner of Income Tax, Calcutta Vs. Bidhu Bhushan Sarkar \(Dead\) through his Legal Representative Mihir Kumar Sarkar](#), the Supreme Court considered the scope of the Explanation to Section 5(7A) of the Income Tax Act, 1922. Their Lordships observed:

The Explanation to Section 5 (7A) makes it clear that the word "case", in relation to any person whose name is specified in the order or transfer means all proceedings under the Act in respect of any year which may be pending on the date of the transfer, and also includes all proceedings under the Act which may be commenced after the date of the transfer in respect of any year. The word "case" is thus used in a comprehensive sense of including both pending proceedings as well as proceedings to be instituted in future. Consequently, an order of transfer can be validly made even if there be no proceedings pending for assessment of tax and the purpose of the transfer may simply be that all future proceedings are to take place before the officer to whom the case of the assessee is transferred.

From the above, it is clear that the transfer can have effect only in respect of proceedings under the Income Tax Act. So the officer to whom the case is transferred can continue proceedings under the provisions of the Income Tax Act. The proceedings in these cases are not arising under the provisions of the Income Tax Act, they are proceedings in connection with offences punishable under the Indian Penal Code. The transfer of the case to the file of P. W. 1, Income Tax Officer, Special Circle, Ernakulam will not empower him to prosecute the respondents for offence under 193 or 196 IPC because those offences if at all committed was not before the court of the Income Tax Officer, Special Circle, Ernakulam but was before the Income Tax Officer, B Ward, Alleppey. The offences were not committed against P. W. 1 personally but against the court of Income Tax Officer, B Ward, Alleppey. This view is well supported by the decision in [Kuldip Singh Vs. The State of Punjab and Another](#), From the above discussion, it follows that the court before which the offence u/s. 193 and 196 were committed should file the complaint as contemplated by Section 195 (1) (b) (i) of the Code of Criminal Procedure. No superior court can by an order of transfer of the case to another court confer jurisdiction upon the transferee court to file a complaint. Thus the Commissioner could not transfer the case of the respondents to the file of P. W. 1 while holding a different office so as to

confer jurisdiction on him to file a complaint u/s. 195 of the Code of Criminal Procedure Any authority to which the Income Tax Officer, B Ward, Alleppey was subordinate could have filed the complaint. The Income Tax authorities have not considered this aspect of the matter and they proceeded as if the offence committed by the respondents is one against the court of P. W. 1 in his individual capacity. Since the Income Tax Officer, Special Circle, Ernakulam was neither the original court before which the offence was committed nor the superior court to which the income Tax Officer, B Ward, Alleppey was subordinate the complaint filed in these cases are incompetent and hence not maintainable.

The result, therefore, is these appeals fail. They are accordingly dismissed.