K. Balakrishnan Nair Vs Assistant Commissioner of Income Tax

Court: High Court Of Kerala

Date of Decision: June 30, 1995

Acts Referred: Income Tax Act, 1961 â€" Section 275A, 276, 276A, 276B, 276BB

Citation: (1995) 83 TAXMAN 562

Hon'ble Judges: N. Dhinakar, J

Bench: Single Bench

Advocate: P.G.K. Warriyar and H. Sivaraman, for the Appellant; P.K.R. Menon and N.R.K. Nair, for the Respondent

Final Decision: Dismissed

Judgement

N. Dhinakar, J.
This miscellaneous case is to quash the proceedings in C.C. No. 95 of 1992 on the file of the Additional Chief Judicial

Magistrate, Ernakulam. The petitioners are the second and third accused in the said C.C. and that they are the partners of a firm, which is shown

as the first accused in the said complaint. The proceedings against the petitioners and the firm were instituted for offences under sections 276C and

277 of the income tax Act, 1961 ("the Act"), on an allegation that the first accused, namely, the firm, and the petitioners who are the partners of

the said firm have made an attempt to evade tax for the assessment year 1988-89. The counsel for the petitioner submits that the Commissioner,

by his order dated 3-11-1992, accorded sanction to prosecute the petitioners and that the Commissioner violated the principles of natural justice,

in that he did not issue any notice to the petitioners and hear them before the said sanction order was passed. In support of this contention, the

learned counsel relied upon a decision in P.V. Pai, B.R. Shetty, Biyar Rubbers Pvt. Ltd. and Smt. Lasha B. Shetty Vs. R.L. Rinawma, Deputy

Commissioner of Income Tax, . While dealing with section 279 of the Act, the Karnataka High Court took the view that as far as compounding is

concerned, the same may be made either before or after institution of the proceedings and, therefore, an assessee may be anxious to offer

composition even before prosecution to save himself from the "disgrace and ignominy of the prosecution". It was also held that simply because

there was an opportunity to compound after the prosecution is launched, it does not necessarily follow that such opportunity should be denied

before the prosecution is launched. Relying upon this decision, the counsel for the petitioners strenuously contended that had a notice been issued

to them they would have offered to compound the offence and could have avoided the ignominy of facing a trial before the Criminal Court. With

respect, I am not able to agree with the said view expressed by the Karnataka High Court in the above decision. A reading of section 279 clearly

shows that it is nowhere expected that the Commissioner before according sanction must issue a notice to the person or persons concerned.

Section 279 reads as follows:

279(1) Prosecution to be at instance of Chief Commissioner or Commissioner. --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 Commissioner or Commissioner (Appeals) or the appropriate authority.

If the intention of the Legislature was to enjoin a duty upon the Commissioner to issue a notice, then it could not have enacted subsection (2) of

section 279. Sub-section (2) reads as follows:

(2) Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Chief Commissioner or a

Director-General.

2. The above sub-section shows that even after the institution of the proceedings, the offence can be compounded. The section nowhere prevents

the persons from approaching the Commissioner to compound the offence. It is not as if a notice is a must for the persons to approach the

Commissioner and seek the permission of the Commissioner to compound the offence.

3. The words in section 279 "before or after" show that a compounding can be done even after the institution of the proceedings and that the

petitioner is not barred from compounding the offence. The above said words will also indicate that there was no need for the Commissioner to

have issued a notice before passing an order of sanction.

4. The counsel for the petitioner also brought to my notice a judgment of the Supreme Court in C.B. Gautam Vs. Union of India and Others, . For

his above argument the judgment of the Supreme Court is no way helpful to the cause of the petitioner. All that the Supreme Court has stated is

that the Courts have generally read into the provisions of the relevant sections a requirement of giving a reasonable opportunity of being heard

before an order is made which would have adverse civil consequences for the parties affected, and that would be particularly so in a case where

the validity of the section would be open to serious challenge for want of such an opportunity. Here the validity of the section is not questioned and

adverse civil consequences to the parties will not be affected as section 279 itself takes care of the rights of the parties to compound the offence

even after the proceedings were instituted.

5. As the accused are not prohibited from approaching the Commissioner even before the sanction is accorded, the petitioners could have very

well approached the Commissioner and sought for compounding the offence. They, not having done it, cannot at this belated stage, say that natural

justice was violated in that the Commissioner did not order any notice to them. No such notice is contemplated in the Act and the Act also does

not prohibit persons from approaching the Commissioner for compounding the offence at a later stage. Under these circumstances, I feel that this

criminal miscellaneous case cannot be allowed and, accordingly, it is dismissed.