

(1999) 05 MP CK 0013

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Criminal Case No. 1130 of 1996

Kanhaiyalal Deepchand Jain and
Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision: May 4, 1999

Acts Referred:

- Income Tax Act, 1961 - Section 276, 276E, 277, 278B

Citation: (2000) 241 ITR 323 : (1999) 2 MPLJ 19

Hon'ble Judges: S.B. Sakrikar, J

Bench: Single Bench

Advocate: S.C. Bagadia and R.S. Chhabra, for the Appellant; S.K. Pawanekar, for the Respondent

Judgement

S.B. Sakrikar, J.

The unsuccessful petitioners (accused) have filed this petition u/s 482 of the Criminal Procedure Code, for quashing of the proceedings of Criminal Case No. 10 of 1986 of the court of the ACJM (Economic Offences), Indore.

Briefly stated the facts of the case are that the non-applicant, Income Tax Officer, "A" Ward, Khandwa, filed a complaint in the Court of Additional Chief Judicial Magistrate (Economic Offences), Indore, against the petitioners and the deceased partners of the firm, Kanhaiyalal Deepchand Jain, alleging commission of an offence punishable u/s 276E/ 278B of the Income Tax Act, 1961. It is alleged that during the course of assessment proceedings for the year 1983-84 of applicant No. 1, the asses-see-firm, it was found that the firm repaid the loan amount in cash, i.e., otherwise than by account payee cheques or the draft, respectively, to Smt. Basanti Bai wife of Kanhaiyalal ; Rajeshkumar Roopchand, Rs. 1,000 and Rs. 10,200 when the balance in their account was exceeding Rs. 10,000.

That after recording the evidence u/s 200 of the Criminal Procedure Code, a criminal case was registered against the present petitioners and the deceased partners, Shri Kanhaiyalal Jain and Deepchand Jain, of the applicants/firm u/s 276E/ 278B of the income tax Act, 1961. The applicants raised objections before the trial court and prayed for quashment of the proceedings of the said criminal case on various grounds but the learned trial court rejected the objection and framed charges against the applicants for the offence punishable u/s 276E/ 278B of the Income Tax Act, 1961. The revision petition filed by the applicants against the order of the trial court framing charges against them, was dismissed by the ASJ, Indore, by the impugned order. Aggrieved, the petitioners have filed this petition u/s 482 of the Criminal Procedure Code, for quashment of the proceedings of the aforesaid criminal case registered against the applicants.

Right at the threshold the main contention of counsel for the applicants is that, when it is alleged that the offence has been committed by a firm u/s 276, 277 or 278 of the Income Tax Act, then only the person or partner of the said firm who at the time of commission of the offence was in charge of, and was responsible to the firm for the conduct of the business of the company besides the firm will be liable for the offence committed. He also submitted that when no allegation to the effect that the petitioners were in charge of and were responsible to the firm for the conduct of its business at the time of commission of the offence alleged is made in the complaint, the complainant could not sue the petitioners for any criminal act unless the petitioners were shown to be running the affairs and to be responsible to the firm for the conduct of its business. Counsel submitted that in the present case no allegations have been made in the complaint to the effect that petitioners Nos. 2 and 3 were in charge of and responsible to the firm for the conduct of its business at the time of commission of the alleged offence. As such applicants Nos. 2 and 3, though they are partners of the assessee-firm, cannot be prosecuted for the alleged offence. Counsel contended that in view of the facts and circumstances of the case on hand, no useful purpose would be served by dragging the prosecution against the applicants and to prevent abuse of the process of the court proceedings of the criminal case registered against the applicants deserve to be quashed exercising the powers u/s 482 of the Criminal Procedure Code. Counsel relied on the undernoted decisions of the various High Courts :

(1) [B. Rajagopal Vs. Assistant Director of Inspection \(Investigation\)](#), ;

(2) [Sat Pal and Another Vs. State of Punjab and Another](#), ;

(3) [K. Subramanyam Vs. Income Tax Officer](#), ; and

(4) [Ganesh Steel Traders and Another Vs. Commissioner of Income Tax and Others](#), .

As against this counsel for the non-applicant/Department supported the impugned order of framing the charges against the applicants and submitted that at this stage proceedings of the criminal case cannot be quashed u/s 482 of the Criminal

Procedure Code.

I have considered the rival submissions of counsel for the parties and carefully perused the record as also the relevant provisions of the Income Tax Act in force at the time of filing of the complaint against the applicants.

On a perusal of the judgment of various High Courts relied on by the petitioners, it is well settled law that, before prosecuting a person under the provisions of Sections 276, 277/278B of the Income Tax Act, 1961, the prosecution must prove that a person was in charge of and responsible to the firm or company.

In the case of [Ganesh Steel Traders and Another Vs. Commissioner of Income Tax and Others](#), , the Patna High Court has held that (headnote): "In the case of prosecution under the Income Tax Act with regard to the offence alleged to have been committed by a firm or company there should be a specific averment in the complaint that the directors or the partners were in charge of and responsible for the conduct of the business of the firm or the company at the time of commission of alleged offence. In the absence of such averment their prosecution is not sustainable in law,"

A similar principle is laid down by the Punjab and Haryana High Court in [Sat Pal and Another Vs. State of Punjab and Another](#), as also by the Madras High Court in the cases of [B. Rajagopal Vs. Assistant Director of Inspection \(Investigation\)](#), and [K. Subramanyam Vs. Income Tax Officer](#), .

On a perusal of the complaint filed by the non-applicant before the ACJM (Economic Offence), Indore, it emerged that no specific averment in the complaint has been made that applicants Nos. 2 and 3 or the deceased partners of the firm were in charge of and responsible for the conduct of the business of the firm at the time of the alleged offence. The aforesaid fact is not stated in the statement of PW 1, Rajeev Nayan Prasad, recorded u/s 200 of the Criminal Procedure Code. In view of the omission of the said allegation in the complaint or in the statement of the complainant/witness, recorded u/s 200 of the Criminal Procedure Code, applicants Nos. 2 and 3 cannot be prosecuted for the said offences alleged to have been committed by the assessee/firm.

On a perusal of the record of the trial court it also emerged that the complaint against the petitioners and the deceased partners of the firm was filed in the trial court on March 21, 1996, and till today no evidence is recorded in the said criminal case after framing of alleged charges against the applicants. In view of the aforesaid delay no useful purpose would be served by continuing the criminal case instituted against the applicants. In Sheela Borse's case [1986] Cri LJ 249 and [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#), , it is held by the apex court, that the fundamental right of speedy trial is implicit under article 21 of the Constitution and the consequences of the violation of that right would be that the prosecution itself would be liable to be quashed on the ground that it is breach of fundamental rights,

In view of the facts and circumstances of the case on hand and the law applicable, in my considered opinion, continuance of the prosecution against the applicants will be a sheer wastage of public time and money, I am also of the opinion that continuance of the criminal prosecution against the applicants of the present case amounts to abuse of the process of the court, and that to secure the ends of justice the proceedings of the criminal case pending against the applicants in the trial court deserve to be quashed.

In the result this petition filed by the applicants is allowed and Criminal Case No. 10 of 1986 and the proceedings thereof instituted against the applicants pending in the court of the ACJM (Economic Offence) Indore, stand quashed, exercising the powers u/s 482 of the Criminal Procedure Code. No orders as to costs.