

Harkawat and Company and Others Vs Union of India (UOI)

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Jan. 13, 2009

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 482
Income Tax Act, 1961 â€” Section 143(3), 154, 254, 271(1)(c), 276

Citation: (2009) 1 MPLJ 528 : (2010) 187 TAXMAN 33

Hon'ble Judges: Shyam Sunder Dwevedi, J

Bench: Single Bench

Advocate: Shailendra Mukati, for the Appellant; R.L. Jain, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Shyam Sunder Dwevedi, J.

The applicants have filed this petition u/s 482, Cr. P.C. for quashment of the criminal proceedings pending

before the CJM, Ratlam for the offence under sections 276C and 278B of income tax Act, 1961 against the applicants. Briefly stated the facts of

the case are, the non-applicant Union of India through income tax Department had filed a criminal complaint against the applicant u/s 276C read

with section 278B of income tax Act before the CJM at Ratlam in compliance of the order passed by the Assessing Officer against the applicants.

Against the order of Assessing Officer the applicant has filed an appeal before the income tax Commissioner, which had been dismissed.

Thereafter the applicant again preferred an appeal before the income tax Appellate Tribunal. Then the learned Tribunal has made a reference to the

High Court on the legal point, whether the income tax Tribunal was justified in confirming the penalty u/s 271(1)(c) of the income tax Act when u/s

69A the cash of Rs. 1,35,000 found on 9-7-1982 is not assessable in the assessment year 1984-85? This High Court in income tax Reference

Case No. 24/97 by order, dated 2-11-2004 answered the question referred to the High Court in favour of the assessee and held that the Tribunal

was not justified in confirming the penalty imposed by the assessing authority on the applicants. After the aforesaid order in the income tax

Reference Case passed by this High Court the applicant has filed an application before the learned CJM, Ratlam for the discharge of the

applicant/accused as the order has been set aside by the High Court imposing the penalty on the applicants for filing of the criminal complaint

against the applicants. The learned CJM by order dated 26-7-2005 dismissed the application filed by the applicants and held that as the charges

have already been framed against the applicants and after framing of charge the trial Court cannot discharge the accused persons. Aggrieved by the

dismissal of the application the applicants preferred the criminal revision No. 185/05 before the Addl. Sessions Judge, Ratlam. The learned

revisional Court by order dated 17-11-2006 dismissed the revision and again held that the trial Court is not having jurisdiction to discharge the

accused after framing of the charge as the Trial Court is not having inherent power to discharge the accused at any stage. Aggrieved by the

aforesaid orders the applicant has come up before this Court by this petition u/s 482, Cr. P.C. For quashment of the concerning criminal

proceedings pending against the applicants before CJM, Ratlam.

2. Having heard both the counsels for the parties and perused the record.

3. It is submitted by the learned counsel for the applicants that the criminal proceeding has been lodged by the income tax Department in

compliance of the penalty order passed by the assessing authority and if that order has been set aside and found to be illegal in view of the order

passed by High Court in income tax Reference Case No. 24/97 then certainly the order passed by the Assessing Officer for lodging of the criminal

complaint against the applicants is not in existence and, therefore, the Trial Court ought to acquit the applicant in the criminal case concerned and

the learned Trial Court as well as learned Revisional Court have wrongly dismissed the application filed by the applicants for discharge of the

applicants from the offence under sections 276C and 278B of the income tax Act. Therefore, prayed for the quashment of the concerning criminal

proceedings pending before CJM, Ratlam against the applicant.

4. Learned Standing Counsel appearing on behalf of income tax Department, supported the impugned order and submits that the Trial Court has

correctly held that the Trial Court cannot discharge the accused after framing of the charge and, therefore, no illegality is committed in the

impugned order passed by the Trial Court and no substantial grounds are available for quashment of the concerning criminal proceedings pending

against the applicants before the Court concerned. Hence, prayed for dismissal of the petition.

5. After consideration on the rival contentions of both the counsels for the parties and on perusal of the record it is apparent that criminal

prosecution against the applicant has been lodged for the offence under sections 276C and 278B of income tax Act, 1961 and a specific charge

has been framed against the applicants for the aforesaid offence. Admittedly, the aforesaid criminal complaint had been filed by the income tax

Department against the applicants on the basis of the penalty order passed by the Assessment Officer and that order is found to be illegal by this

High Court in income tax Reference Case No. 24/97 by the order, dated 2-11-2004, wherein this Court has clearly opined here as under:--

9. In view of the aforesaid discussion, we answer the question No. 2 in favour of assessee and against the revenue. In other words, we answer the

question No. 2 by holding that Tribunal was not justified in confirming the penalty without disposing of the grounds of appeal claiming immunity

under the Amnesty Scheme.

6. If the legal position is that if the order on which basis the criminal complaint has been filed by the income tax Department has been set aside and

found to be illegal by the High Court then certainly in compliance of that order the criminal complaint filed by the income tax Department is also

found to be illegal and erroneous and on this position criminal proceedings filed against the applicants found to be illegal and futile then certainly

such type of proceedings ought to be quashed.

7. The Hon"ble Apex Court in case of K.C. Builders v. Asstt. CIT [2004] 135 Taxman 461, in the similar circumstances held here as under:--

24. In the instant case, the penalties levied u/s 271(1)(c) were cancelled by the respondent by giving effect to the order of the Tribunal in IT

Appeal Nos. 3129-3132. It is settled law that levy of penalties and prosecution u/s 276C are simultaneous. Hence, once the penalties are

cancelled on the ground that there is no concealment, the quashing of prosecution u/s 276C is automatic.

25. In our opinion, the appellants cannot be made to suffer and face the rigours of criminal trial when the same cannot be sustained in the eyes of

law because the entire prosecution in view of a conclusive finding of the Tribunal that there is no concealment of income becomes devoid of

jurisdiction and u/s 254 of the Act, a finding of the Tribunal supersedes the order of the Assessing Officer u/s 143(3) more so when the Assessing

Officer cancelled the penalty levied.

26. In our view, once the finding of concealment and subsequent levy of penalties u/s 271(1)(c) of the Act has been struck down by the Tribunal,

the Assessing Officer has no other alternative except to correct his order u/s 154 of the Act as per the directions of the Tribunal. As already

noticed, the subject-matter of the complaint before this Court is concealment of income arrived at on the basis of the finding of the Assessing

Officer. If the Tribunal has set aside the order of concealment and penalties, there is no concealment in the eyes of law and, therefore, the

prosecution cannot be proceeded with by the complainant and further proceedings will be illegal and without jurisdiction. The Asstt. CIT cannot

proceed with the prosecution even after the order of concealment has been set aside by the Tribunal. When the Tribunal has set aside the levy of

penalty, the criminal proceedings against the appellants cannot survive for further consideration. In our view, the High Court has taken the view that

the charges have been framed and the matter is in the stage of further cross-examination and, therefore, the prosecution may proceed with the trial.

In our opinion, the view taken by the learned Magistrate and High Court is fallacious. In our view, if the trial is allowed to proceed further after the

order of the Tribunal and the consequent cancellation of penalty, it will be an idle and empty formality to require the appellants to have the order of

Tribunal exhibited as a defence document inasmuch as the passing of the order as aforementioned is unsustainable and unquestionable.

8. In view of the aforesaid decision of the Hon"ble Apex Court, which is squarely covered with the facts of the present case, wherein the penalty

order passed by the Assessing Officer u/s 271(1)(c) of the income tax Act has been set aside by the Competent Court, then certainly the

prosecution of the applicants u/s 276C read with section 278B of the income tax Act has to be quashed automatically.

9. Same view has been taken by this High Court in the case of Sureshchand Gupta Vs. Union of India (UOI), wherein it is held, ""where the levy of

penalty on assessee has been set aside by the Tribunal and also confirmed by the High Court in income tax Reference Case then certainly very

foundation of prosecution under sections 276C and 277 automatically demolished, therefore, the prosecution on the basis of the complaint filed by

the income tax Department against the assessee is liable to be quashed.

10. Same view is again taken by this Court in case of S.S.R. Pirodia and Others Vs. Union of India (UOI), wherein the criminal prosecution under

sections 276, 277 and 278B has been quashed on the ground that the penalty order passed by the Assessment Officer u/s 271(1)(c) is set aside

by the Tribunal.

11. In view of the aforesaid decisions of the Hon"ble Apex Court as well as that of this Court, in the present case also the penalty order passed by

the Assessment Officer under the provisions of section 271(1)(c) of the income tax Act has been set aside by the competent appellate authority,

then certainly the prosecution of the applicants under sections 276C and 278B is also found to be illegal and erroneous and liable to be quashed.

Resultantly, the petition filed by the applicants succeeds and is allowed and the criminal proceedings against the applicants pending before CJM,

Ratlam in Criminal Case No. 784/99 for the offence u/s 276C read with section 278B of the income tax Act is hereby quashed.