

(2012) 07 MAD CK 0100

Madras High Court

Case No: Criminal R.C. No. 705 of 2012

P. Jayanandan, Income Tax
Officer

APPELLANT

Vs

Sri Ramakrishna Steel Industries
Ltd. and Others

RESPONDENT

Date of Decision: July 16, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 245
- Income Tax Act, 1961 - Section 176(b), 194, 2(35)(b), 200, 201(1)(a)

Citation: (2013) 355 ITR 528

Hon'ble Judges: C.S. Karnan, J

Bench: Single Bench

Advocate: Ramasamy K., Special Public Prosecutor for Income-tax, for the Appellant; K. Sukumaran, for the Respondent

Judgement

C.S. Karnan, J.

The revision petitioner/complainant/income tax Officer, TDS ward, Coimbatore, had filed a case in C.C. No. 62 of 2000, respectively, on the file of the Judicial Magistrate, Mettupalayam, against three respondents herein/accused for the offence under sections 276B and 276B read with section 278B of the income tax Act, 1961, for failure to remit income tax deducted at source into the Government account from dividend paid to the shareholders, as per the provisions of section 194 of the income tax Act, 1961, for the assessment year 1988-89 stating that the first accused is a public limited company functioning at Karamadai, the second and third accused are the managing directors and administrative manager, respectively, of the first accused company and they are in charge of the affairs and responsible for the conduct of the business of the first accused. The complainant further submits that M/s. Ramakrishna Steel Industries Ltd., Karamadai, a public limited company, has paid a dividend on September 25, 1987, relating to the period ending on March

31,1987. The tax deducted on September 25, 1987, in the case of G. Narayanaswamy Naidu has been paid into the Government account only on March 28, 1988. The delay involved in the payment is five months and 21 days. The other details are as follows:

2. The interests for belated payments of tax deducted at source from dividend paid has been demanded as per section 201(1)(a) of the income tax Act which has been paid by the accused on June 30, 1989. The dividends paid are covered by the issue of certificate showing the date of payment as September 25, 1987. The complainant had sent a show-cause notice dated January 9, 1990, requiring them to show as to why they should not be prosecuted for the delay in making the payments into the exchequer and for the same, the accused had sent replies dated January 10, 1990, and March 8, 1999.

3. The complainant had also served a notice u/s 2(35)(b) of the income tax Act, on February 28, 1990, against the second and third accused, being the managing director and the administrative manager of the first accused; fixing them as principal officers connected with the management and administration of the first accused company and the same was served on them on March 2, 1990. The accused had, willfully omitted to pay the tax deducted at source in time without any reasonable cause. The first accused company has willfully failed to remit, the tax deducted at source on dividend payments into the Government, of India account within the time allowed as per rule 30(1)(b) of the income tax Rules, 1962. The first accused has, by this default; committed an offence punishable u/s 276B of the income tax Act 1961.

4. The second and third accused, being the managing director and administrative manager, respectively, of the first accused, at the material time, were in charge of the affairs and were responsible for the conduct of the business of the first accused have committed an offence punishable u/s 176(b) read with section 278B of the income tax Act, 1961. The complainant, therefore, submits that the accused have wilfully committed the offence u/s 276B, read with section 194 and section 200 of the income tax Act and read with rule 30 of the income tax Rules, 1962, and section 276(b) read with section 278(b) of the income tax Act, 1961. Hence, the complainant prays to issue summons to the accused for the offence mentioned above and render justice.

5. The complainant had listed four witnesses including himself and listed 22 documentary evidence. The complainant had entered into witnesses box on July 18, 2000, and rendered evidence stating that the income tax Commissioner had granted permission on February 9, 2000, to proceed with the case. The permission order was marked as exhibit P-1. The PW 1 (complainant) had further stated that, the shareholders of the first accused company, while giving dividend had deducted income tax. The same was remitted to the income tax Department after delay. The matter was posted for further evidence of PW 1 and also for marking of

documentary evidence. Hence, the matter has been adjourned for about 23 hearings. The complainant had filed 131 cases. In spite of this, the complainant had not taken any steps to produce the witnesses or mark the documents. Under the circumstances, the complainant had filed a memo stating that 22 documents had been filed before the Chief Judicial Magistrate, Coimbatore, for some other case. The complainant had further informed the court that at the time of hearing, he would produce the Said documents.

6. Under the circumstances, the learned Magistrate dismissed the said complaint and assigned the reason that the complainant had been given sufficient opportunities to prove their case but the complainant had failed to do so. Hence, the complaint was dismissed u/s 245 of the Code of Criminal Procedure and all the accused were discharged. Subsequently, the complainant had filed Cr. P.C. No. of 2002, on the file of District and Sessions Judge, Coimbatore, but rejected the case in limine. Thereafter, the above revision has been filed by the complainant.

7. The learned counsel for the revision petitioner submits that the accused have failed to remit the income tax deducted at source into the Government of India account from dividend paid to the shareholders and thereby committed an offence under sections" 276B and 276B read with 278B of the income tax Act, 1961, for the assessment years of 1988-89 to 1989-90. The learned counsel further submits that without taking evidence, the case was dismissed by the trial court, which is an erroneous view. PW 1 had marked a document as exhibit P-1, viz., a sanction order to proceed with the prosecution case. The prosecution had listed 22 documents which were filed before the Chief Judicial Magistrate, Coimbatore, in another case. Therefore, those documents could not be produced before the trial court. The learned Magistrate, without completing the evidence, dismissed the main case. The documents are not created ones but are genuine. The learned counsel further submits that as per the prosecution case, several issues have arisen and all the issues have to be decided after recording evidence. In the instant case, there is pecuniary loss to the Government. Therefore, proper adjudication is absolutely necessary in this case. The learned counsel submits that now, the complainant had collected all the documents from the file of the Chief Judicial Magistrate, Coimbatore, and is ready to mark the said documents before the trial court in order to prove the prosecution case.

8. The learned counsel for the revision petitioner further submits that the criminal revision petition had been filed before the District Court and the same was returned without numbering. Hence, the revision had been filed before this court for judicial remedy. If the complainant could be given an opportunity, the accused would not be prejudiced. Hence, the learned counsel has prayed to restore the case, on the file of the trial court and to dispose the same on the merits.

9. The learned counsel for the accused submits that 23 hearings were given to the complainant to produce the documentary evidence but the complainant could not

produce the same for about two years. Therefore, there is a delay and lapse on the side of the complainant. Therefore, the complaint was dismissed and the accused were discharged. The learned counsel further submits that the assessment was made in the year of 1988-89 and as such about 22 years have lapsed. At this juncture, the case may not be remitted back to the trial court.

10. Per contra, the learned counsel for the revision petitioner submits that the complainant had initially approached the District Court, wherein a delay was caused. Thereafter, the above revision has been filed before this court, with condonation of delay petition in the year of 2004. Therefore, the case was pending for about eight years on this court's file. The learned counsel further submits that there is possibility for settlement of the issue which arises between the complainant and the accused, and the same could be solved before the trial court.

11. On considering the prosecution case and on submissions made by the learned counsel on either side and on perusing the impugned order of the trial court, this court is of the considered view that:

(1) The complainant had listed 22 documents along with the complaint. Those documents were on the file of the Chief Judicial Magistrate, Coimbatore. Therefore, the complainant could not produce the same before the trial court within a reasonable time. Therefore, the delay had not been caused by the complainant since the documents were in judicial custody in some other case. Besides this, the documents are not created ones. Therefore, the character of the prosecution case had not been changed.

(2) The complainant had knocked the doors of the judicial forum for their remedy. Hence, their case has to be decided on the merits and justice should be rendered to the parties concerned. Therefore, a complete trial is absolutely necessary.

(3) If the original complaint is restored on the file of the Judicial Magistrate, Mettupalayam, and the case disposed of on the merits, the accused will not be prejudiced?

(4) In the prosecution case, some issues have arisen which have to be sorted out after trial. As such this court is inclined to allow the above revision petition.

12. Therefore, this court directs the learned Judicial Magistrate, Mettupalayam, to restore the case in C.C. No. 62 of 2000, respectively, on his file and proceed with the case on the merits after giving an opportunity to the parties within a period of five months from the date of receipt of this order without being influenced by this court's discussion. In the result, the above revision has been disposed of with the above modifications. Consequently, the order passed in C.C. No. 62 of 2000, on the file of Judicial Magistrate, Mettupalayam, dated September 11, 2012, is set aside and the cases in C.C. No. 62 of 2000, is restored on the file of the Judicial Magistrate, Mettupalayam, for disposal on the merits.