

(1977) 25 BLJR 156

Patna High Court

Case No: Criminal Revision No"s. 315, 919 and 1445 of 1971 and

Income Tax Officer

APPELLANT

Vs

United Karanpur
Colliery (P) Ltd.

RESPONDENT

Date of Decision: Jan. 31, 1976

Acts Referred:

General Clauses Act, 1897 " Section 6#Income Tax Act, 1961 " Section 133, 139, 200,
206, 226

Citation: (1977) 25 BLJR 156

Hon'ble Judges: Shambhu Prasad Singh, J; Nagendra Prasad Singh, J

Bench: Division Bench

Judgement

Nagendra Prasad Singh, J.

The three criminal revision applications have been filed on behalf of the Income Tax Officer, Ward "C"

Dhanbad for encroachment of the sentences imposed on opposite party No. 2 in these applications, who is the Director of the Company

(Opposite Party No. 1), and for imposition of sentence on opposite party No. 1, against which no sentence has been imposed by the learned

Magistrate, although the Company has been found to be guilty of offences u/s 276(b), read with Section 276(d), of the Income Tax Act, 1961

(hereinafter referred to as the "Act").

2. As common questions of law and fact are involved in these applications, they have been heard together and are being disposed of with the

consent of the parties, by this common judgment.

3. I shall first take up Criminal Revision No. 315 of 1971. The petitioner Income Tax Officer submitted a prosecution report before the Sub-

Divisional Magistrate, Baghmara at Dhanbad, on the 16th June, 1970, alleging therein that opposite party No. 1 (hereinafter referred to as the

"Company") was carrying on business at Kharkhari in the district of Dhanbad and opposite party No. 2 was its Director and the Principal Officer

responsible for the management and administration of the affairs of the Company. It was further alleged that the accused opposite party did not file

the annual return for the financial year 1967-68 within the prescribed time and, as such, there was a contravention of the provisions of Section 206

of the Act, read with Rule 35(1) of the Income Tax Rules, 1962 (hereinafter referred to as the "Rules"). A further contravention of Section 200 of

the Act, read with Rule 30(1)(b) of the Rules was alleged because the opposite party had failed to pay within the prescribed time limit to the credit

of the Central Government a sum of Rs. 8,397-35 paise, which the accused had deducted as Income Tax and super-tax from the salaries paid to

their employees during the aforesaid period of 1967-68. On the aforesaid allegations, according to the prosecution report, offences punishable u/s

276(b) and (d) of the Act was made out and the accused were liable to be punished for the same.

4. On the basis of the said prosecution report, the learned Sub-Divisional Magistrate, by his order; dated the 16th June, 1970, summoned the

accused and transferred the case for disposal to a First Class Munsif-Magistrate. Before the Munsit-Magistrate, opposite party No. 2 appeared

and pleaded guilty, whereupon the learned Munsit-Magistrate, by his order, dated the 14th November, 1970, convicted him u/s 276(b) and (d) of

the Act and sentenced to pay a fine of Rs. 51/- on each count. He further directed that, in default of payment of fine u/s 276(b), opposite party No.

2 will undergo simple imprisonment for one month. He passed no sentence so far as the Company was concerned, saying that it was a limited

Company, and, as such, there was no question of its conviction.

5. So far as Criminal Revision No. 919 of 1971 is concerned, it relates to non-filing of the annual return for the financial year 1966-67 within the

prescribed time. In this case also the other charge against the opposite party is that they failed to deposit Rs. 325/13 paise deducted from the

salaries of the employees to the credit of the Central Government, as required by Section 200 of the Act. The learned Magistrate in this case,

however, has convicted both the accused u/s 276(b) and (d) of the Act and has sentenced them each to pay a fine of Rs. 51/- under that Section.

6. In Criminal Revision No. 1445 of 1971, the opposite party were charged under Sections 276(b) and 276(d) of the Act for having not filed the

annual return for the financial year 1965-66 and for having not deposited a sum of 2,192/96 paise which had been deducted from the salaries of

their employees during the financial year 1965-66. The learned Magistrate found opposite party No. 2 guilty for non-submission of the annual

return for the financial year 1965-66. However, instead of convicting him u/s 276(b), he convicted him u/s 276(d) and sentenced him to pay a fine

of Rs. 100/-. Perhaps, Section 276(d) has been wrongly mentioned for Section 276(b).

7. Learned Counsel appearing on behalf of the petitioner has submitted that in all these three cases the sentences imposed on the opposite party

are too lenient calling for enhancement by this Court under Sections 435 and 439 of the Code of Criminal Procedure, 1898. In this connection

learned Counsel has drawn our attention to Section 276(b) and (d) of the Act. Relevant portion of Sections 276(b) and 276(d) reads as follows:

276. If a person fails without reasonable cause or excuse....

* * *

(b) to furnish in due time any of the returns or statements mentioned in Section 133, Sub-section (2) of Section 139, Section 206, Section 285 or

Section 286;

* * *

(d) to deduct and pay tax as required by the provisions of Chapter XVI1B or under Sub-section (2) of Section 226; or

* * *

he shall be punishable with fine which may extend to ten rupees for every day during which the default continues.

Learned Counsel has submitted that, in view of the aforesaid Section, the accused opposite party are liable to pay fine at the rate of Rs. 10/- for

every day during which the default on tow counts continued, and in no case it can be held that the fine of Rs. 51/- or Rs. 100/-, as imposed by the

learned Magistrate in the different cases, is consistent with the requirements of the said Section. In my opinion, the Section in question does not

prescribe that in every case the sentence of fine to be imposed for default will be at the rate of Rs 10/- for every day during which the default

continues. That is an enabling piovision. None the less, the discretion rests with the authority concerned to award suitable punishment taking into

consideration the facts and the circumstances of the case. Learned Counsel for the opposite party In Criminal Revision No. 1445 of 1971, while

supporting the Judgment and the sentence imposed, has also pointed out that Section 276(d) was amended by the Finance Act of 1968, and from

Clause (d) the words ""as required by the provisions of Chapter XVIIB"" have been deleted. According to learned Counsel for the opposite party,

in view of this deletion, on the day when the prosecution was launched, that is, in the year 1970, any default u/s 200, which occurs in Chapter

XVIIB of the Act, is not punishable under any of the Clauses of Section 276, much less u/s 276(d). Learned Counsel further submitted that it is

immaterial as to whether on the day when the contravention is complained of those words were there in Section 276(d), the relevant date for

consideration is the date on which an accused person is charged and tried for the contravention alleged. In my opinion, it is difficult to accept this

argument In view of the provisions of Section 6 of the General Clauses Act (X of 1897), which reads as follows;

6. Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter

to be made, then, unless a different intention appears, the repeal shall not

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment

as aforesaid;

and any such investigation, legal proceeding or remedy, may be instituted, continued or enforced, and any such penalty, forfeiture or punishment

may be imposed as if the repealing Act or Regulation had not been passed.

As stated earlier, the words ""as required by the provisions of Chapter XVIIIB"" have been deleted from Section 276(d) by the Finance Act of

1968. Even if there is no saving clause in the said Finance Act, in view of Section 6 of the General Clauses Act, any legal proceeding may be

instituted, continued or enforced and any penalty or punishment may be imposed as if the repealing Act had not been passed. This aspect of the

matter has been considered in several judgments of the Supreme Court, and a reference may be made to the case of *The Brihan Maharashtra*

Sugar Syndicate Ltd. Vs. Janardan Ramchandra Kulkarni and Others, In my opinion, the decision of the aforesaid words relating to applicability of

Section 200 of the Act from Section 276(d) is of no consequence so far as the prosecution of the opposite party is concerned. However as I have

already pointed out, Section 276 enables the authority concerned to impose a fine of Rs. 10/- for each day's delay; but that does not mean that in

every case of default of whatever nature or quantum it may be, the authority concerned has to impose the fine at that rate. From the records of the

instant cases it appears that the opposite party pleaded guilty and they were convicted on the said plea. It also appears that the amount which they

had failed to deposit with the Central Government in accordance with the Section 200 of the Act was not a heavy sum from which it can be

inferred that they had intentionally kept the said amount with them after having deducted the same, to divert it to some other end. It is well known

that the sentence is a matter of discretion of the Court, and, unless it is arbitrary, this Court, in exercise of its revisional powers, does not interfere

with the same.

8. So far as the argument of the learned Counsel for the petitioner about imposition of fine in relation to opposite party No. 1 in Criminal Revision

Nos. 315 and 1445 of 1971 is concerned, learned Counsel for the opposite party in these two revision applications have no objection if a fine is

also imposed against the Company. Accordingly, I direct that opposite party No. 1 in Criminal Revision No. 315 of 1971 shall also pay a fine of

Rs. 51/- on each count and opposite party No. 1 in Criminal Revision No. 1445 of 1971 shall pay a fine of Rs. 100/- u/s 276(b) of the Act.

9. With the above modification in the sentence Criminal Revision Nos. 315 and 1445 of 1971 are allowed against opposite party No. 1 to the

extent indicated above and dismissed as against opposite party No. 2 Criminal Revision No. 919 of 1971 is dismissed.