

**(2001) 11 DEL CK 0078**

**Delhi High Court**

**Case No:** Criminal Misc. No. 4602 of 1998 9 November 2001

N.K Jain

APPELLANT

Vs

Union of India and Others

RESPONDENT

**Date of Decision:** Nov. 9, 2001

**Citation:** (2002) 173 CTR 120

**Hon'ble Judges:** S.K. Agarwal, J

**Bench:** Division Bench

**Advocate:** Anoop Sharma, for the assessed R.D. Jolly and Ms. Prem Lata Bansal, for the Revenu, for the Appellant;

### **Judgement**

S.K. Agarwal, J.

By this petition u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.PC) read with article 227 of Constitution of India, petitioner is seeking quashing of the order dated 27-10-1998, passed by the court of Additional Chief Metropolitan Magistrate, Delhi dismissing his application for discharge and for quashing of the proceedings arising out of Criminal Complaint No. 11194 u/s 277 of the Income Tax Act (hereinafter referred to as "the Act" read with sections 193 and 196 of the IPC.

2. Facts in brief are : that the Assistant Commissioner filed a complaint under above noted sections against the petitioner, alleging therein that on 8-2-1991 search and seizure operation u/s 132(1) of the Act was carried out at the premises of the petitioner and the valuables comprising of following items were seized

Rs.

(a) Bullion/Gold ornaments	78,61,000
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(b) Cash	42,19,100
(c) Unexplained jewellery	10,00,000
(d) Unexplained investment	29,19,000
(details to be submitted later) of Rs. 29, 19, 000	
Total	1,60,00,000

During the course of the search, petitioner surrendered an income of Rs. 1,60,00,000 as his income for the current year. In his statement, he claimed that the said income was earned out of his commission and trading business in clothes, gold and silver ornaments. He also claimed undisclosed income for the year 1991-92, and stated that he would explain his assets and income of Rs. 29,58,280 subsequently as he did not remember the details. However, in subsequent letters to the Income Tax Department he opted to change the above surrendered income from Rs. 1,60,00,000 to Rs. 1,30,00,000 claiming that the amount of Rs. 29,50,200 was included in the earlier disclosure statement. In each of his subsequent communications dated 23-4-1991, 13-3-1992 and 17-3-1992, petitioner took different stands. His statements u/s 131 of Income Tax Act were recorded in accordance with the procedure. It is alleged that these statements are contrary to each other. The assessment was completed and an income of Rs. 1,34,16,173 was assessed by the assessing officer vide order dated 23-3-1993. Thus, it was alleged that the petitioner/accused made statements knowing them to be false or having reasons to believe that the same were false. The petitioner was summoned. The petitioner moved an application u/s 245(2) for recalling the order of summoning and for discharge, inter alia, pleading that earlier petitioner took time to submit the details, as he was not sure of the factual position, and that subsequently he realised that amount of Rs. 29 lakhs was surrendered in excess and the amount of Rs. 1.3 crores covered the entire amount. Thus the petitioner sought to revise the surrendered income to Rs. 1.3 crores by his letter dated 9-3-1991, and 25-3-1991. The Additional Chief Metropolitan Magistrate vide impugned order dated 27-10-1998, rejected the contentions of the petitioner observing that it is a warrant trial case and that witnesses have yet not been examined and, Therefore, the application for discharge was not maintainable.

3. I have heard the learned counsel for the parties and have been taken through the record.

4. Learned counsel for the petitioner vehemently argued that the prosecution in this case is not for concealment or evasion of tax but only on the ground that the

accused made false statements before the Income Tax authority which are contradictory in material particulars. section 277 of the Act cannot be invoked in a case, where the accused gives incorrect statement first, which he did not know to be false or where it was not given to deceive or mislead. It was further argued that initially at the time of search, in the first statement, petitioner disclosed his income of X+Y and in respect of "Y" income, it was stated that details would be submitted later but after verifying the details, he stated that income "Y" is also included in the disclosure of income "X". Learned counsel for the revenue argued to the contrary.

5. Admittedly, it is a warrant case and after the petitioner was summoned, no witness has been examined.

The law with regard to quashing of the criminal proceedings arising out of FIR and criminal complaint is well-settled. Quashing is permissible in terms of principle laid down in the State of Haryana v. Bhajan Lal AIR 1992 SC 604 and several subsequent judgments. Evidence at this stage cannot be appreciated. Section 278E of the Act provides that for prosecution of the offence under the Act which requires culpable state of mind on the part of accused, the court shall presume the existence of such mental state. It reads :

Section 279(E). Presumption as to culpable mental state.-(1) in any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation : In this sub-section, "culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reasons to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability."

The rule of evidence thus, stands changed by the above section. In the prosecution for an offence under the Act it is for the accused to prove his defense, which he can do by cross-examining the prosecution witnesses or by leading defense evidence.

6. I have been taken through the allegations made in the complaint and the supporting documents. At this stage taking the allegations made in the complaint on their face value and accepting the same in entirety, it cannot be said that, *prima facie*, the offence alleged is not made out against the petitioners. The detailed examination of the allegations and the documents is being avoided, as the trial is yet to commence.

For the forgoing reasons, I find no merit in the petition and the same is dismissed. Trial court record be sent back forthwith. Any observations made herein shall not affect the merits of the case.

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