

Commissioner of Income-Tax, Bombay

Vs

Laxmichand Narayandas and Another

Criminal Appeal No. 117 of 1959

(K. Subha Rao, Raghuvar Dayal, S. K. Das JJ)

13.12.1961

JUDGMENT

SUBBA RAO J. –

This appeal by special leave is against the order of the High Court of Judicature at Bombay, rejecting in limine the criminal revision filed by the appellate against the order of the Presidency Magistrate, 19th Court, Bombay, directing the appellant to produce the documents which he admitted to be in his possession by his letter dated March 27, 1958.

The facts are not in dispute and may be briefly stated. The first respondent filed a complaint against the second respondent, his clerk, in the court of the Presidency Magistrate, Bombay, alleging that the latter had committed offences under sections 381 and 385 of the Indian Penal Code. In due course, the Magistrate framed charges against the second respondent under the said sections. Pending the trial, the first respondent applied to the Magistrate to summon the income-tax authorities to produce certain letters alleged to have been written by the second respondent to the said authorities making baseless allegations against the first respondent. On March 27, 1958, the Commissioner of Income-tax wrote a letter to the Magistrate admitting that some letters written by the second respondent were with the income-tax department, but pleaded that they could not be produced in view of the provisions of section 54 of the Indian Income-tax Act, 1922. The Presidency Magistrate, by his order dated May 16, 1958, overruled his objections and directed the Commissioner of Income-tax to produce the documents admitted to be in his possession or in the possession officers subordinate to him. The Commissioner of Income-tax preferred an appeal against the order to the High Court of Judicature at Bombay, but the same was rejected. Hence the present appeal.

Learned counsel for the Commissioner of Income-tax contends that under section 54 (1) of the Indian Income-tax Act, 1922, no court shall be entitled to require the appellant to produce before it the said documents as they formed part of the record of an assessment proceeding taken before the relevant income-tax Act authority.

Learned counsel for the respondents argues that the said prohibition in section 54 of the income-tax Act applies only to returns furnished or accounts or documents produced by an assessee before an income-tax authority and not to documents produced by third parties, and that, in any view, the said prohibition does not override the power given to a criminal court under section 94 of the Code of Criminal Procedure.

The relevant part of section 54 of the Indian Income-tax Act reads :

"(1) All particulars contained.....in any record of any assessment proceeding,..... shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), no court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such..... record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such..... record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine."

The section is in two parts : the first part declares that all particulars contained in the documents described therein shall be treated as confidential, and the second part, save as provided in the Act, debars the court from requiring any public servant to produce in court the said documents. Sub-section (2) makes the disclosure of the contents of the said documents by a public servant an offence. Sub- section (1) and (2) in effect prohibit a public servant from disclosing any particulars contained in any such document in court.

The Presidency Magistrate held that the documents in question formed part of the record of the assessment proceeding : and nothing has been placed before us to displace the said finding. We shall, therefore, proceed on the basis that the condition laid down in the first part of section 54 of the Income-tax Act has been complied with. On the said basis, this appeal is covered by the decision of this court in Charu Chandra Kundu v. Gurupada Ghosh. There, in a suit filed by the respondent for recovery of money, the appellate applied to the court for the issue of a summons against the income-tax authorities to produce a statement made by the respondent and recorded in the proceedings for the respondent was discharged. This court held that in view of section 54 of the Income-tax Act the income-tax authorities could not be required to produce the statement.

But learned counsel for the respondents seeks to distinguish that case on the ground that in the present case the letters sought to be produced were sent to the department by a third party and not by the assessee. But even in the earlier decision of this court the documents sought to be produced were not the documents filed by the assessee but only a statement made by a third party, who was the respondent in the case. The attempted distinction of that case from the present one has neither a legal nor a factual basis. Nor can we accept the argument of learned counsel that the order directing the production of the documents was made under section 94 of the Code of Criminal Procedure and that that section is not hit by the prohibition under section 54 of the Income-tax Act.

This argument is advanced on the basis that the non obstinate clause in sub-section (1) of section 54 of the Income-tax Act only relates to the Indian Evidence Act and not to the Code of Criminal Procedure. The non abstante clause cannot restrict the embargo placed on the court under section 54 of the Income-tax Act : the said clause only operates to make it clear that the said general ban prevails notwithstanding anything to the contrary in the Indian Evidence Act. That apart, section 54 of the Income-tax Act contains in effect an unconditional prohibition against a public servant producing any such document, and that prohibition does not exclude any criminal process from its operation. We, therefore, hold that there are no merits in this contention either.

In the result, we sustain the objections raised by the Commissioner of Income-tax against the production of the said documents. The order of the High Court and that of the Presidency Magistrate are set aside, and the application filed by the first respondent for the production of the originals of the letters from the income-tax department is dismissed.

Appeal allowed.

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