SUREME COURT OF INDIA

Balwant Singh

Vs.

L.C. Bharupal, Income-Tax Officer, New Delhi

(J Shelat, K Hedge and S Sikri JJ.)

27.11.1967

JUDGMENT

SHELAT J.

1. Between June 16, 1962, and May 4, 1964, respondent No. 1 was the Income-tax Officer for Additional B-X VIII District, New Delhi. The appellants have, at all material times, been carrying on business in partnership in the name of M/s. Balwant Singh Santok Singh within the said Additional B-VIII (Income-tax) District. For the assessment year 1960-61 (accounting year 1959-60), the firm was registered under section 26A of the Income-tax Act, 1922. During the assessment proceedings for the assessment year 1961-62 (accounting year 1960-61), respondent No. 1 noticed that the firm had not applied for renewal of registration. The firm was, therefore, liable to be assessed as an unregistered firm. At that stage, appellant No. 1, Balwant Singh, represented to respondent No. 1 that the firm had filed an application for renewal for the assessment year 1961-62 within the prescribed period, and therefore, its registration should be renewed. Respondent No. 1 adjourned the case to May 27, 1963, and called upon appellant No. 1 to produce evidence to show that such an application was made. On May 27, 1963, appellant No. 1 appeared before respondent No. 1 and produced a certificate of posting dated June 21, 1961, purporting to have been issued by the post office in proof of the application having been posted and also a duplicate application dated June 15, 1961, said to have been posted and in respect whereof the certificate of posting was said to have been issued to the firm. Respondent No. 1, however, noticed that the form of the certificate said to have been issued on June 21, 1961, was actually printed in 1962. This aroused his suspicion about the genuineness of the certificate. He, therefore, recorded the statement of appellant No. 1 on oath. In that statement, Appellant No. 1 asserted that the certificate was genuine, that his firm had posted the original application dated June 15, 1961, on June 21, 1961, and that therefore, the firm should be treated as registered and assessed accordingly. Respondent No. 1 rejected the appellants claim for renewal and assessed the firm on the footing of an unregistered firm. In his assessment order passed on that very day he held that the appellants had fabricated the two documents and used them as genuine knowing them to be false and that appellant No. 1 had given false evidence on oath before him. But he did not pass an order in the said assessment order that they should be prosecuted. At the foot of the order, however, there was a separate note to the effect that the appellants should be prosecuted. On October 26, 1964 i.e., after respondent No. 1 was said to have ceased to be the Income-tax Officer of the Additional B-XVIII District, he lodged a complaint before the Magistrate alleging that the said certificate of posting and the said duplicate application in the proceedings before him under section 26A of the Income-tax Act as genuine knowing them to be forged, that the statement on oath of appellant No. 1 was false and that, therefore, the appellants were liable for

offences under sections 193 and 196 of the Penal Code.

2. The appellants filed an application before the High Court of Punjab (Circuit Bench, New Delhi) under section 561A of the Code of Criminal Procedure for quashing the said complaint. The High Court reject the application. The appellants obtained special leave from this court and filed this appeal.

3. Two contentions were urged in support of the said application before the High Court and the same were canvassed by Mr. Gupte before us. These were : (1) that the Income-tax Officer while acting under section 26A of the Income-tax Act, 1922, was a court and that that being so, it was incumbent on him follow the procedure laid down in sections 476 and 479A of the Code of Criminal Procedure, before he could validly file a complaint for offences under sections 193 and 196 of the Penal Code, and (2) that in any event, respondent No. 1 had ceased to hold the charge of the post of Income-tax Officer for Additional B-XVIII District, on the date of the filing of the said complaint and, therefore, the complaint was filed without jurisdiction and the Magistrate could not take cognizance of such an illegal complaint.

4. Before we proceed further, it is necessary to read the relevant provisions of the Penal Code and the Code of Criminal Procedure. Sections 193 and 196 of the Penal Code provide for punishment for intentionally given false evidence in judicial proceeding or for fabricating false evidence for the purpose of being used in such judicial proceeding and for using or attempting to use as true or genuine any evidence which an accused knows to be false or fabricated. Section 195(1)(b) of the Code of Criminal Procedure provides that no court shall take cognizance of any fence punishable under sections 193 to 196, 199, 200, 205 to 211 and 228 when such of fence is held to have been committed in or in relation to, any proceeding in any court, except on the complaint in writing of such court of some other court to which such court is subordinate Clause (c) provides that no court shall take cognizance of any offence described in section 463 or punishable under section 471, 475, or 476 of the Penal Code when such offence is alleged to have been committed by a party to any proceeding in any court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such court, etc. Sub-section (2) 195 provides that the term "court " in clauses (b) and (c) of sub-section (1) includes a civil, revenue or a criminal court, but does not include a registrar or sub-registrar under the Indian Registration Act, 1878. The word "includes" was substituted for the word "means" by the Code of Criminal Procedure (Amendment) Act of 1923 (18 of 1923). The language of section 195 shows that its provisions are mandatory and a court has, therefore, no jurisdiction to take cognizance of any of the offences enumerated therein unless the complaint is in conformity with its requirements. Section 476 deals with the procedure in cases mentioned in section 195 and provides that when any civil, revenue or criminal court is, whether an application is made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an enquiry should be made into any offence referred to in section 195, sub-section (1), clause (b) or clause (c) which appears to have been committed in or in relation to a proceeding in that court, such court may after such preliminary enquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint in writing signed by the presiding officer of the court. Section 479A was inserted in the code by Amendment Act No. 26 of 1955 and deals specifically with offences of giving and fabricating false evidence. Sub-section (1) provides that, notwithstanding anything contained in sections 476 to 479 inclusive, when a civil revenue or criminal court is of opinion that any person appearing before it as a withness has intentionally given false evidence in any stage of the judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding, and that, for the eradication of

the evils of perjury and fabrication of false evidence and in the interests of justice, it is expedient that such a withness should be prosecuted for the offence which appears to have been committed by him, the court shall at the time of the delivery of the judgment or final order disposing of such proceeding, record a finding to that effect stating its reasons therefore and may, if it thinks so fit, after giving the withness an opportunity of being heard, make a complaint thereof in writing signed by the presiding officer of the court. Sub-section (6) provides that no proceeding shall taken under sections 476 to 479 inclusive for the prosecution of a person for giving or fabricating false evidence if in relation to such person proceedings may be taken under this section.

5. The question, therefore, is : whether section 476, or section 479A of the Code applies to the instant complaint. It will be observed that whereas section 195 uses the expression "court" sections 476 and 479A use the expression "any civil, revenue or criminal court". It is, therefore, manifest that the procedure provided in these two section applies to a court which is either a civil or a revenue or a criminal court and not to a court which does not fall in any one of those categories of courts.

6. It appears that at one time the High Court of Bombay took the view that an Income-tax Officer under the Income-tax Act and a Sales Tax Officer under the Bombay Sales Tax Act, 1953 was a revenue court. (Cf. In re Poonamchand Maneklal and State v. Nemchand Pashvir Patel). This view, however, was not approved by this court in Jagannath Prasad v. State of Uttar Pradesh. The view country to the Bombay view was first taken in Ujjam Bai v. State of Utter Pradesh, we here at page 878 and also at page 892 it is observed in clear terms that Sales Tax Officer is not a court even though he may have many trappings of court including the power to summon witness, receive evidence on oath, and make judicial determinations and that in the strict sense of the term such an officer is not a court exercising judicial power. In Jagannath Prasad's case, the question once again arose whether a Sales Tax Officer, under the U. P. Sales Tax Act, 1948 (15 of 1948), was a court within the meaning of section 195 (1) (b) of the Code of Criminal Procedure and whether it was his complaint only which a court can take cognizance of for an offence under section 471 of the Penal Code. The court held that notwithstanding the enlargement of the definition of "court" in section 195 of the Code by the Amendment Act of 1923, the Sales Tax Officer was not a court, that he was merely an instrumentality of the State for purposes of assessment and collection of tax and even if he was required to perform certain quasi-judicial function, he was not part of the judiciary. It was also observed that the nature of the functions of Sales Tax Officer was not a court, that he was merely an instrumentality of the State for purposes of assessment and collection of tax and even if he was required to perform certain quasi-judicial functions, he was not part of the judiciary. It was also observed that the nature of the functions of a Sales Tax Officer and the manner prescribed for their performance indicated that he could not be equate with a court. But in a subsequent decision in Lalji Haridas v. State of Maharashtra the majority took the view that in view of section 37 of the Income-tax Act, 1922, when an Income-tax Officer exercises power under that section, the proceedings held by him are judicial proceedings for the purposes of sections 193, 196 and 228 of the Penal Code Section 37 of the Income-tax Act, 1922, inter alia, provides that the Income-tax Officer shall, for the purpose of the Act, have the same powers as are vested in court under the Code of Civil Procedure when trying a suit in respect of discovery and inspection and enforcing the attendance of any person, including any officer of a banking company and examining him on oath, etc. Sub-section (4) provides that any proceeding before an Income-tax Officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Penal Code. In view of these provisions the majority view was that proceedings before the Income-tax Officer are judicial proceedings for the purposes of sections 193, 196, and 228 of the

Penal Code and though the court did not go into the general question whether the officer is a court or not held that those proceedings must be treated as proceedings in a court for the purposes of section 195 (1) (b) of the Code of Criminal Procedure. They, therefore, held that the condition precedent prescribed by those provisions had not been complied with as a complaint in that case was not filed by the Income-tax Officer. The court also observed that though the said proceedings are to be treated as proceedings in court, the Income-tax Officer was not a revenue court.

7. That being the position, the proceedings under section 26A before respondent No. 1 must be treated as proceedings in court for the purposes of section 195 (1) (b) of the Code of Criminal Procedure. The Income-tax Officer, however, cannot be treated as a revenue court. Though, therefore, proceedings before the Income-tax Officer are judicial proceedings in a court and section 195 (1) (b) applies, neither section 476 nor section 479A of the Code would be applicable. It was, therefore, not incumbent upon respondent No. 1 to follow the procedure laid down in either of these two sections. The first contention of Mr. Gupta, therefore, must fail.

8. As regards his second contention, the question raised by him would be one of evidence. It may well be that, though respondent No. 1 might have been posted to another income-tax district and did not hold the charge of the post of Income-tax Officer in Additional B-XVIII District when the complaint was filed, it is possible that the Commissioner in exercise of powers reserved to him under the Income- tax Act may have allotted or transferred or directed him to continue to deal with certain cases including cases pending before him at the time of his transfer. If that were to be so, the contention that he was no longer the court for the purposes of section 195 (1) (b) of the Code with reference to the present case would not prevail. The question being one of evidence the appellant can raise it before the Magistrate trying the complaint. We, therefore, decline to go into that question.

9. The appeal is dismissed.

10. Appeal dismissed.