P. Jayappan

Vs

S. K. Perumal, First Income-Tax Officer, Tuticorin

Petition for Special Leave to Appeal (Criminal) No. 1923 of 1984

(O. Chinnappa Reddy, A. P. Sen, E. S. Venkataramiah JJ)

17.08.1984

ORDER

VENKATARAMIAH, J. –

1. The petitioner is the proprietor of M/s Ratnam Food Stuff Co., Tuticorin. He is an assessee under the Income-tax Act, 1961 (hereinafter called 'the Act'). For the assessment year 1977-78, he filed his return under the Act on January 20, 1978 disclosing an income of Rs 13,380 along with the profit and loss account, trial balance, income tax adjustment statement and a copy of the capital account. The return was accepted. On August 20 and 21, 1981, a search was conducted at the residence of the petitioner under Section 132 of the Act which resulted in the seizure of several documents and account books which reveled the suppression of purchase of chicory seeds, the existence of several bank accounts, fixed deposits, investments in the names of his wife an daughters and several bank accounts not disclosed in the statements filed along with the return. The trading and profit and loss account for the assessment year 1977-78 filed along with the return showed that he had purchased chicory seeds of the value of Rs 65,797 as against Rs 2,15,729 as per the seized accounts. There were several other wrong statements in the accounts. On the basis of the allegation that the petitioner had deliberately filed a false return and had kept false accounts with the intention of using them as genuine evidence in the assessment proceedings, a complaint was filed against him in the Court of the Additional Chief Judicial Magistrate (Economic Offences), Madurai for taking action against him for offences punishable under Section 276-C and Section 277 of the Act and under Section 193 and 196 of the Indian Penal Code. Similarly three other complaints were filed against the petitioner for the same offences said to have been committed by him in respect of three succeeding assessment years 1978-79, 1979-80 and 1980-81 before the same Magistrate. The petitioner thereupon filed four petitions under Section 482 of the Code of Criminal Procedure before the High Court of Madras requesting it to quash the said proceedings contending that the launching of the prosecution in each of the four cases was a premature one on the ground that the reassessment proceedings started against him under the Act had not been completed.

2. All the four petitions were dismissed by the High Court by four separate orders dated June 19, 1984. The petitioner has filed this petition before this Court under Article 136 of the Constitution for leave to appeal against the above said four orders of the High Court.

3. The only point which arises for consideration in this case is whether prosecutions for offences punishable under Section 276-C and Section 277 of the Act and under Sections 193 and 196 of the Indian Penal Code instituted by the Department while the reassessment proceedings under the Act are pending are liable to be quashed on the ground that they were not maintainable. The material parts of Section 276-C and 277 of the Act read as follows :

276-C. Wilful attempt to evade tax, etc. - (1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable, -

(i) in a case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three moths but which may extend to three years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

#Explanation. - * * *##

277. False statement in verification etc. - If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable, -

(i) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

4. The relevant parts of Sections 193 and 196 of the Indian Penal Code read thus :

193. Punishment for false evidence. - Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

#Explanation. - * * *##

196. Using evidence known to be false. - Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

5. At the outset it has to be stated that there is no provision in law which provides that a prosecution for the offences in question cannot be launched until reassessment proceedings initiated against the assessee are completed. Section 279 of the Act provides that a person shall not be proceeded against for an offence punishable under Section 276-C or Section 277 of the Act except at the instance of the Commissioner. It further provides that a person shall not be proceeded against for an offence punishable under those provisions in relation to the assessment for an assessment year in respect of which penalty is imposed or imposable on him under clause (iii) of sub-section (1) of Section 271 has been reduced or waived by an order under Section 273-A. The Commissioner has the power either before or after the institution of proceedings to compound any such offence. In this case it is not claimed that the Commissioner has not initiated the proceedings for the instituting the complaints. No other legal bar for the institution of the proceedings is urged except stating that in the event of the petitioner being exonerated in the reassessment proceedings, the prosecutions may have to be dropped. It is true that as observed by this Court in Uttam Chand v. I.T.O. ((1982) 133 ITR 909 : (1982) 2 SCC 543 : 1982 SCC (Tax) 150), the prosecution once initiated may be quashed in the light of a finding favourable to the assessee recorded by an authority under the Act subsequently in respect of the relevant assessment proceedings but that decision is no authority for the proposition that no proceedings can be initiated at all under Section 276-C and Section 277 as long as some proceeding under the Act in which there is a chance of success of the assessee is pending. A mere expectation of success in some proceeding in appeal or reference under the Act cannot come in the way of the institution of the criminal proceedings under Section 276-C and Section 277 and Section 277 of the Act. In the criminal case all the ingredients of the offence in question have to be established in order to secure the conviction of the accused. The criminal court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and in a appropriate case it may drop the proceedings in the light of an order passed under the Act. It does not, however, mean that the result of a proceeding under the Act would be binding on the criminal court. The criminal court has to judge the case independently on the evidence placed before it. Otherwise there is a danger of a contention being advanced that whenever the assessee or any other person liable under the Act has failed to convince the authorities in the proceedings under the Act that he has not deliberately made any false statement or that he has not fabricated any material evidence, the conviction of such person should invariably follow in the criminal court. The High Court of Punjab and Haryana has correctly applied the rule regarding the maintainability of prosecution in such circumstances in Telu Ram Raunqi Ram v. I.T.O. ((1984) 145 ITR 111 (P & H)) We do not, however agree with the view expressed by the High Court of Calcutta in Jyoti Prakash Mitter v. Haramohan Chowdhury ((1978) 112 ITR 384 (Cal)). In that case on a complaint made against the assessee for an offence punishable under Section 277 of the Act, the Chief Metropolitan Magistrate issued process. Thereupon the assessee questioned the validity of the initiation of the criminal proceedings before the High Court of Calcutta on the ground that until the penalty proceedings initiated in respect of the same period under Section 271(1)(c) of the Act were finally disposed of, no complaint could be filed. The contention of the assessee was that the prosecution was opposed to the principles of natural justice as he would be deprived of the benefit of a finding which was likely to be recorded in his favour in the penalty proceedings. It was urged on behalf of the Department that the penalty proceedings under Section 271(1)(c) had no direct bearing on the maintainability of a prosecution launched under Chapter XXII of the Act. The High Court took the view which according to us is an erroneous one that the provisions of Section 279(1-A) of the Act established the necessity for the completion of the penalty proceedings before the institution of the prosecution and therefore as long as the penalty proceedings were pending the criminal proceedings could not be instituted. Section 279(1-A) of the Act merely states that a person shall not be proceeded against for an offence under Section 276-C or Section 277 in relation to the

assessment for an assessment year in respect of which the penalty imposed or imposable on him under clause (iii) of sub-section (1) of Section 271 has been reduced or waived by an order under Section 273-A. Section 273-A(1)(ii) provides that notwithstanding anything contained in the Act, the Commissioner may, in his discretion, whether on his own motion or otherwise, reduce or waive the penalty if the conditions mentioned therein are satisfied. The power conferred on the commissioner under Section 273-A is an overriding power which he may exercise at his discretion. It is only where the Commissioner reduces or waives the penalty imposed or imposable under Section 271(1)(iii) of the Act in exercise of his discretion under Section 273-A, Section 279(1-A) comes into operation and acts as a statutory bar for proceeding with the prosecution under Section 276-C or Section 277. It does not, however, provide that merely because there is a possibility of the Commissioner passing an order under Section 273-A, the prosecution shall not be instituted. The reason given by the High Court of Calcutta, therefore, does not appeal to us.

6. It may be that in an appropriate case the criminal court may adjourn or postpone the hearing of a criminal case in exercise of its discretionary power under Section 309 of the Code of Criminal Procedure if the disposal of any proceeding under the Act which has a bearing on the proceedings before it is imminent so that it may take also into consideration the order to be passed therein. Even here the discretion should be exercised judicially and in such a way as not to frustrate the object of the criminal proceedings. There is no rigid rule which makes it necessary for a criminal court to adjourn or postpone the hearing of a case before it indefinitely or for an unduly long period only because some proceeding which may have some bearing on it is pending elsewhere. But this, however, has no relevance to the question of maintainability of the prosecution. The prosecution in those circumstances cannot be quashed on the ground that it is a premature one.

7. On a careful consideration of the relevant provisions of the Act, we are of the view that the pendency of the reassessment proceedings cannot act as a bar to the institution of the criminal prosecution for offences punishable under Section 276-C or Section 277 of the Act. The institution of the criminal proceedings cannot in the circumstances also amount to an abuse of the process of the court. The High Court was, therefore, right in refusing to quash the prosecution proceedings in the four cases instituted against the petitioner under Section 482 of the Code of Criminal Procedure.

8. The special leave petition is, therefore, dismissed.

</html