

CALCUTTA HIGH COURT

Jyoti Prakash Mitter

Vs

Haramohan Chowdhury

(N.C. Talukdar and A Banerjee, JJ.)

30.07.1975

JUDGMENT

N.C. Talukdar, J.

1. These two rules, which are at the instance of the same petitioner, relating to two different periods of assessment, are taken up together for disposal as they involve the same points for consideration. The rules are directed against two orders dated the 27th January, 1975, passed by Sri D. C. Chakravarthi, Chief Metropolitan Magistrate, Calcutta, issuing process against the petitioner under Section 277 of the Income-tax Act, 1961, in Cases Nos. C/72/75 and C/73/75 pending before him.

2. The facts leading on to the two rules can be put in a short compass. Two petitions of complaint were filed by the Union of India, on the complaint of Sri Haramohan Chowdhury, Income-tax Officer, " F " Ward, District-III(1), Calcutta, under Section 277 of the Income-tax Act, 1961, for the assessment years 1967-68 and 1968-69. The case as made out in the petition of complaint, inter alia, is that after the retirement of the petitioner, on or about the 27th December, 1961, he has been in extensive legal practice and had large amount of consultation work and chamber practice in addition to his pension; that he acquired large amount of wealth by way of immovable properties, fixed deposits and moneys in banks but was systematically concealing his professional income by filing false returns with a view to defraud the Government of its legitimate dues; that on October 6, 1971, the petitioner delivered two duly verified returns of income-tax for the assessment years 1967-68 and 1968-69 along with three other years disclosing, inter alia, income from pension only but not including his income from professional or other sources; that on searches being conducted and upon enquiry and investigation by the income-tax department there was a disclosure that for the two assessment years, the accused had failed to disclose substantial amount as income ; that the petitioner made a verification in the returns of income to the effect that the numbers shown therein are correct although he knew or

had reason to believe that the returns and particulars furnished by him were totally false ; and that thereby the petitioner committed an offence punishable under Section 277 of the Income-tax Act, 1961. The learned Chief Metropolitan Magistrate by his order of the same date took cognizance and issued summons for appearance of the accused. The petitioner appeared on February 28, 1975, and was granted a bail of Rs. 2,000 in default, to jail custody, and the said amount of P. R. bond was subsequently reduced to Rs. 500 on prayer made by the petitioner. The proceedings were impugned by the petitioner and two rules were issued along with an ad-interim stay of all further proceedings if prayed for. Two affidavits-in-opposition on behalf of the opposite party No. I, Sri Haramohan Chowdhury, affirmed on June 4, 1975, and June 5, 1975, respectively, and a supplementary affidavit on behalf of the petitioner, affirmed on the 13th June, 1975, were thereafter filed.

3. The submissions of Mr. J. P. Mitter, who appeared in person, are of five dimensions. Firstly, that the present proceedings based on the complaints filed on January 27, 1975, are premature and contrary to the principles of natural justice in view of the notice dated January 15, 1975, issued by the Inspecting Assistant Commissioner, Range-III, Calcutta, and served on the petitioner calling upon him to appear before him on February 26, 1975, and show cause as to why a penalty should not be imposed on him under Section 271(1)(c) of the Act; secondly, that neither any prosecution under Section 277 nor any penalty proceedings under Section 271(1)(c) of the Act is maintainable because the assessment for the relevant periods were not completed until then and even now ; thirdly, that the subject-matter of the assessment is barred by limitation in view of the provisions of Sections 153(1)(a)(i) and 139(4)(b)(i) and (5) of the Income-tax Act, 1961; fourthly, that in view of the provisions of Section 139(5) of the Income-tax Act, 1961, for filing the revised return of income at any time before the assessment is completed and also the provisions that even after an ex parte assessment is made, which, however, is not the case here, such ex parte assessment is liable to be set aside under Section 146 of the Income-tax Act and an appeal, thereafter, lies under Section 246 of the Act, the present proceedings are bad in law and improper; and fifthly and lastly, on merits, inasmuch as, in any event, the income from the investments of the petitioner's wife having already been held to be separate, by the Appellate Assistant Commissioner and also by the Commissioner in his order, the same has been wrongly included in the order of assessment against the petitioner to form the basis of the present prosecution. In support of his contentions Mr. Mitter referred to the relevant provisions of the Income-tax Act and also to several cases : Commissioner of Income-tax v. Muthukaruppan Chettiar , T. S. Baliah v. T. S. Rangachari, Income-tax Officer , Assistant Collector of Customs v. L. R. Melwani, . Mr. Balai Lal Pal, Senior Advocate (with Messrs. Biswaranjan Ghoshal and Ajit Kumar Sengupta, Advocates), appearing on behalf of the complainant-opposite party No. 1, Sri Hara-mohan Chowdhury, in both the rules joined issue on all the contentions raised by Mr. Mitter and in support of his submissions he relied on the relevant provisions of the Income-tax Act,

1961, as bearing on his submissions and referred to a long catena of judicial decisions in (*Anadi Nath Chakraborty v. Commissioner of Income-tax*¹); (*T. S. Baliah v. T. S. Rangachari, Income-tax Officer*); (*Commissioner of Income-tax v. Anwar Ali*); (*Jain Brothers v. Union of India*²) ; (*Chatrapat Singh Dugar v. Kharag Singh Lachmiram*) ; (*Commissioner of Income-tax v. S. Teja Singh*); (*R. P. Kapur v. State of Punjab*) and (*Jehan Singh v. Delhi Administration*). He also distinguished the principles laid down in the case (*Commissioner of Income-tax v. Muthukaruppan Chetliar*), which was cited by Mr. J. P. Mitter. Mr. Pal in his reply to the first dimension of Mr. Mitter's contentions submitted that the proceedings are neither premature nor opposed to the principles of natural justice being within the ambit of Section 277 of the Income-tax Act, 1961, and as such the prosecution is independent of any other proceedings for penalty, etc., that may be started. As to the second branch of Mr. Mitter's submissions, Mr. Pal relied on the provisions of Section 277 and submitted that even a mere statement in the verification will do. As to the third dimension of Mr. Mitter's submissions, Mr. Pal contended that the subject-matter of assessment is not barred by limitation in view of the provisions of Section 153(1)(b) of the Income-tax Act, 1961, providing for the expiry of 8 years from the end of the assessment years. Mr. Pal next proceeded to submit that the fourth branch of Mr. Mitter's contentions is not warranted in law as the facts referred to are not on the record and as such the point at issue cannot be determined at this stage.

4. We take the first contention raised by Mr. Mitter as it goes to the very root of the matter, affecting the maintainability of the proceedings under Section 277 of the Income-tax Act, 1961. The steps of Mr. Mitter's reasoning in this behalf are that he was directed to show cause on February 26, 1975, by a relevant notice dated January 15, 1975, sent by the Inspecting Assistant Commissioner of Income-tax, Range III, Calcutta. The said notice is attached to the supplementary affidavit as annexure "A". Mr. Mitter contended that the complaints thereafter filed on January 27, 1975, are not only unwarranted and untenable but also premature, and are contrary to the principles of natural justice. Mr. Pal submitted, however, that this notice is in a different context for imposing penalty under Section 271(1)(c) as enjoined in Chapter XXI and not relevant for the purpose of a prosecution under Section 277 in Chapter XXII of the Act. It is difficult to agree with Mr. Pal's submissions. The provisions of Section 279(1A) of the Income-tax Act, 1961, are material and the same brings to light a link between Sections 271 and 277 of the Income-tax Act, 1961, appearing in the same statute though in different Chapters. Otherwise, if the assessee be prosecuted first and then penalty proceedings are started, the assessee is deprived of the benefit of Section 279(1A) of the Income-tax Act, 1961. Apart from the same, the principles of natural justice have to be construed properly. Natural justice is not merely a part of the natural law or justice natural but as was observed by H. H. Marshall in his "Natural Justice", it is "that part of natural law which relates to the administration of justice". In the facts and circumstances of the present case, we hold that there has been a contravention of the redeeming

principles of natural justice which run like a golden thread through the web of our system of justice. The procedure adopted accordingly is not in conformance to that established by law and as such the present proceedings are premature and contrary to the principles of natural justice. The first dimension of Mr. Mitter's contention accordingly succeeds.

5. The second dimension of Mr. Mitter's submission relates to the non-completion of the assessment. Mr. Mitter has contended that it clearly appears from the affidavits and also the materials on the record that the assessments have not been completed. As to the assessment year 1967-68 there has been no assessment of income ex parte or otherwise and as such there cannot be any finding either on facts or in law on which to found the complaint. The confusion, according to him, is worse confounded in view of the provision of a revised return as enjoined under Section 139(5) before such assessment is made and the provisions of Section 146 of the Act wherein such ex parte assessment can be set aside and also the provisions for an appeal under Section 246 of the Income-tax Act, 1961. Mr. Pal contended that on a proper interpretation of the provisions of Section 277 of the Income-tax Act, 1961, the cloud, if any, would be lifted. The language of Section 277 clearly refers to " a statement in any verification under this Act " and as Such a mere statement in the verification will even do. Such a prosecution, according to Mr. Pal, may be made at any stage of the assessment proceedings and there should be no confusion between a penalty and a prosecution. Mr. Mitter in his reply submitted that Mr. Pal's contentions are de hors the provisions of the Act and based on a non-consideration of the apparent prejudice of the assessee. We have given our anxious consideration to the contentions, and we hold ultimately that the assessment should be completed before the proceedings, either by way of a penalty or a prosecution under Chapter XXI and Chapter XXII of the Income-tax Act, 1961, respectively, can be instituted and that although the findings in either of the said proceedings may not be binding on the other, it does not rule out the necessity of completing the assessment which is the sine qua non for instituting either of the proceedings. The second dimension also of Mr. Mitter's contentions, therefore, succeeds.

6. In view of the findings already arrived at by us in the context of the first two dimensions of Mr. Mitter's contention we do not consider it necessary to enter into and decide the other branches of Mr. Mitter's submissions, which were strongly contested by Mr. Balai Lal Pal as being unwarranted and untenable and a number of cases were referred that any such consideration is neither expedient nor necessary in the facts and circumstances of the case and the findings already arrived at.

7. One other point raised by Mr. Pal now abides our consideration, viz., the point of maintainability of the present applications as being premature. Mr. Pal relied in this context on the case of *R. P. Kapur v. State of Punjab*^{3R}. He referred to the observations of Mr. Justice

Gajendragadkar (as his Lordship then was) who delivered the judgment of the court, at page 869, that :

" Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the code and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage."

8. It was, however, observed earlier thus (page 869) :

" It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice."

9. It proceeded to observe further thus (page 869) :

" It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction....."

There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing the impugned proceedings would secure the ends of justice."

10. We respectfully agree and we hold that, in view of the defects pointed out in this case, a continuance of the present proceedings is not maintainable in law and for securing the ends of justice the same should be quashed.

11. Before we part with the cases, we must make it clear that we have not made any observations on the merits but leave the same open for being decided at the proper stage.

12. In the result, we quash the orders dated January 27, 1975, passed by Sri D. C. Chakraborty, Chief Metropolitan Magistrate, Calcutta, in case Nos. C/72/75 and C/73/75 pending before him under Section 277 of the Income-tax Act, 1961, and the proceedings based thereupon, on the ground that the said proceedings are premature and contrary to the principle of natural justice.

13. The rules are disposed of accordingly.

A.N. Banerjee, J.

14. I agree.

Cases Referred.

1[1967] 64 ITR 456 (Cal)

2[1971] 79 ITR 117 (sic) ; [1917] LR 44 IA 11 ; 39 IC 788 (PC)

3 A.I.R 1960 SC 866