

Rohit Kumar Vs. The State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Jul-28-2015

Appellant : Rohit Kumar

Respondent : The State of Jharkhand and Anr

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(Cr.) No. 170 of 2015
Rohit Kumar Son of Late Dr. R.N.Singh, resident of Sati Mandir Road, Ratu Road,
P.O.,G.P.O. and PS Sukhdeo Nagar, District- Ranchi . . Petitioner --Versus-- 1.
State of Jharkhand 2. Union of India, through Income Tax Department, Central
Circle, Ranchi . . Respondents For the petitioner : M/s Praveen Kumar & Sekhar
Sinha, Advocates For the State : Mr. Ram Nivas Roy, A.P.P. For the respondent
no.2: Mr. Deepak Roshan, Advocate CORAM: HONBLE MR. JUSTICE RAVI
NATH VERMA ----- C.A.V. ON:

14. 07/2015 PRONOUNCED ON-../07/2015 The sole petitioner by invoking the
extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India
has prayed for quashing of the entire criminal proceeding of Complaint Case no.
C- 25 of 2001, pending in the Court of learned Special Judge, Economic Offences,
Ranchi, order taking cognizance of offence under Sections 276 (c) and 277 of the
Income Tax Act, 1961 and also the order dated 13.02.2015 whereby and
whereunder non-bailable warrant of arrest has been issued.

2. The Facts of the case in nutshell, which is relevant for determination of the issue involved in this case, is that a complaint was filed by respondent no.2- the Union of India through Income Tax Department, Central Circle, Ranchi before the Special Judge, Economic Offences, Ranchi alleging therein that this petitioner received a sum of Rs.5,47,950/- from Animal Husbandry Department whereafter a notice under Section 142 (1) of the Income Tax Act (in short the Act) was issued directing him to file return of the income but the petitioner filed a return showing only an income of Rs.15,460/- on 23.10.1996. Again a notice under Section 143(2) of the said Act was filed and in reply to that, the petitioner filed an affidavit stating therein that he did not carry any business either in his name or on behalf of any firm and that since the accused is a minor, it was not possible for him to undertake any contract or work or supply any material to Animal Husbandry Department. The entire income should have been assessed in the name of his mother Pranti Singh, Proprietor of Agrovvet Industries, but as the payments were shown in the name of Rohit Kumar, the present petitioner, the assessment has been done in his name and penalty proceeding under Section 271(1)(b) and 271(1)(c) was initiated by the Assessing Officer. The petitioner went in appeal against the assessment order, but the same was dismissed by C.I.T. (Appeals) on 15.12.1999 holding that the total amount, which has to be paid by the petitioner, comes to Rs.3,55,384/- and the petitioner has committed offence under Section 276(c) of the Act by willfully and deliberately concealing the income to avoid payment of tax. Against the said order of Assessing Authority, the petitioner filed an appeal before the Appellate Tribunal, Patna vide M.A.Appeal No. 7/Pat/2002 and during pendency of the said appeal, the complainant- Union of India also filed one complaint case no. C-25 of 2001 before the Special Judge, Economic Offences alleging there in that the petitioner concealed the income with a view to evade the payment of income tax and the court of Special Judge, Economic Offences vide order dated 29.06.2001 took cognizance of the offence under Section 276(c) and 277 of the Act.

3. Learned counsel for the petitioner submitted that the appeal filed before the Tribunal by the petitioner was allowed by order dated 16.10.2012 holding that the penalty being protective will not stand for legal scrutiny. Hence, they are liable to be canceled by allowing the appeals of assessee and the penalties levied under Section 271(A), 271(1) (c) and 271 (1)(b) of the Act were cancelled. It was also

submitted that since the income tax Appellate Tribunal has set aside the order of penalty passed by Assessing Authority as well as by Appellate Authority, the prosecution launched against the petitioner under Section 276(c) and 277 of the Act before the Special Judge, Economic Offences, Ranchi are liable to be quashed. In support of his contention, the learned counsel relied on a judgment of the Honble Supreme Court in the case of K.C. Builders and Another Vs. Assistant Commissioner of Income Tax reported in (2004) 2 SCC731 and another judgment of this Court dated 22.03.2013 passed in W.P.(Cr.) No. 205 of 2001; M/S. Bhalotia Engineering Works Ltd. & Others Vs. the State of Jharkhand and others. Hence the entire criminal proceeding against the petitioner including the order taking cognizance and all other subsequent orders of the said court are fit to be quashed in view of the ratio decided in the above cases.

4. Mr. Deepak Roshan, learned counsel appearing for respondent no.2- Union of India through Income Tax Department, Central Circle, Ranchi fairly submitted that though the cognizance has been taken and subsequent orders have been issued by the said court of Special Judge, Economic Offences but as the Tribunal has already set aside the order of penalty, now there is no dispute.

5. Having heard the submissions of both the counsels and after going through the record of the case, it is amply clear that the petitioner had filed an appeal against the order passed by C.I.T.(Appeals), Jamshedpur against imposition of penalty and the Appellate Tribunal has set aside the order of Assessing Authority and Appellate Authority by coming to the conclusion that the petitioner has not concealed any fact from the Assessing Authority. The Honble Supreme Court in K.C. Builders and Another (supra) has decided the ratio that if the Income Tax Appellate Tribunal has cancelled the penalty levied under Section 271(1) (c) of the said Act, the prosecution launched against the assessee under Section 276 (1)(c) of the Act is liable to be quashed automatically because it is settled law that the levy of penalty and prosecution under Section 276(c) of the Act are simultaneous.

6. Accordingly, this Writ Petition (Cr.) is, hereby, allowed. The entire criminal proceeding including the order taking cognizance and subsequent orders passed against the petitioner in connection with Complaint Case no. 25 of 2001 are,

hereby, quashed. (R.N. Verma, J.) Jharkhand High Court, Ranchi Dated, July, 2015 Ritesh/N.A.F.R.

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