Banwari and ors. Vs. Income Tax Officer and anr.

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SooperKanoon Citation : sooperkanoon.com/662976

Court : Supreme Court of India

Decided On : Mar-25-1992

Reported in : [1992]195ITR651(SC); 1993Supp(1)SCC619

Judge : A.M. Ahmadi and; K. Jayachandra Reddy, JJ.

Acts : Indian Penal Code (IPC), 1860 - 420; Code of Criminal Procedure (CrPC) , 1973 - Sections 245(2) and 482; Income Tax Act - Sections 277;

Appellant : Banwari and ors.

Respondent : income Tax Officer and anr.

Judgement :

ORDER

1. These three appeals arise out of a common order dated March 14, 1980, 1980, of the High Court of Bombay, Nagpur Bench, Nagpur, reversing the order of discharge passed by the learned Judicial Magistrate, Ist Class, 6th Court, Nagpur. Briefly stated, the facts are that the appellants were running a partnership concern known as Lolya Brothers at Kamptee, Nagpur. This registered partnership firm was carrying on business in the manufacture of 'bidis' in the relevant assessment years. It had ceased to do business with effect from December 31, 1972, but, in their returns for the years in question, they had mentioned the date of cessation of business as December 31, 1969. These returns were filed on August 16, 1973, and as, soon as the mistake was noticed on August 17, 1974, it was corrected on August 26, 1974. The Income-tax Officer, however, filed three complaints in respect of the statements made by one of the partners on November 23, 1973, and August 17, 1974, alleging that accused No. 2, a partner of the firm, had made false statements on verification which was punishable under Section 277 of the Income-tax Act and Section 420 of the Indian Penal Code, 1860. When these three complaints were taken up for hearing, a preliminary objection was raised that, on the face of the complaint, no charge was made out and hence they were entitled to be discharged under Section 245(2) of the CrPC, 1973., The learned Magistrate, after perusing the averments in the complaint and the supporting documents, came to the conclusion that the date of cessation of business mentioned as December 31,1969, was merely a bona fide mistake and no mens rea could be culled out and, accordingly, directed discharge of the accused persons. Against the said order passed in the three complaints, three revision petitions were carried to the High Court. The High Court, by an elaborate judgment, came to the conclusion that, without recording evidence, it was not open to the learned Magistrate to discharge the accused on the plea that the mistake was a bona fide one. It also took the view that all of them could be dealt with with the aid of Section 34, Indian Penal Code. In this view that the High Court took, it allowed the revision applications, set aside the order of the learned Magistrate and remitted the complaints to the learned Magistrate to be dealt with in accordance with law. It is against the said order passed by the High Court that the present three appeals have been preferred on a certificate granted by the High Court.

2. This court admitted the appeals and granted an interim stay of further proceedings in the trial court. Therefore, for more than a decade now, the proceedings have been pending in the trial court. We do not see

that any useful purpose will be served by proceeding with the complaint after such a long lapse of time. It seems that, after the returns were filed on August 16, 1973, one of the partners, i.e., accused No. 2., was examined by the Department on August 17, 1974. On that occasion, he stated that the business had been discontinued with effect from December 31, 1969, but within 10 days thereafter on August 26; 1973, he intimated that he had committed a mistake and the correct date of cessation of business was December 31, 1972. Taking these facts into consideration, the learned Magistrate came to the conclusion that a bona fide mistake was committed in mentioning the date of cessation of business as December 31, 1969, instead of December 31, 1972. We think that, having regard to the facts and circumstances of the case, the learned Magistrate could not be said to have been grossly wrong in inferring that it was merely a bona fide mistake. Be that as it may, after this long lapse of time, we see no reason for the continuance of the proceedings of 1977, which have become totally stale now. In the result, we allow these appeals, set aside the order of the High Court and restore the order of the learned Magistrate discharging the appellants before us.