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Court : Kerala

Decided On : Oct-28-1991

Reported in : (1994)119CTR(Ker)123; [1994]208ITR602(Ker);
[1994]76TAXMAN204(Ker)

Appeal No. : Criminal Miscellaneous Case No. 1378 of 1990

Appellant : Vanaja Textiles Ltd. and Others

Respondent : inspecting Assistant Commissioner of Income-tax.

Judgement :

B. M. THULASIDAS J. - The petitioners are the accused in C. C. No. 66 of 1988 of the Additional Chief Judicial Magistrate (Economic Offences), Ernakulam. This petition filed under section 482 of the Code of Criminal Procedure is to quash the proceedings in the above case and the order, annexure 'K', passed on October 19, 1990.

The above case arose on a complaint, annexure 'G', filed by the respondent, for offences under sections 276C(1) and 277 of the Income-tax Act and sections 120B, 196, 198, 199, 200, 465, 468, 471, 417 and 511 of the Indian Penal Code. The petitioners had entered appearance before the court below and filed a petition under section 245(2) of the Code of Criminal Procedure seeking discharge, which

the court below dismissed by annexure 'K' order. The case is pending trial.

Petitioners Nos. 4 to 6 earlier filed Criminal Miscellaneous Case No. 882 of 1988 under section 482 of the Code of Criminal Procedure to quash the proceedings in the case which was withdrawn and dismissed by this court by order dated July 20, 1989.

The first petitioner is a company registered under the Indian Companies Act. The second and third petitioners are the managing directors. Petitioners Nos. 4, 5 and 6 are directors. The seventh petitioner is an executive director and the eighth petitioner is the general manager of the company, which has its registered office at Kurichikara, Trichur.

The company is an assessee under the Income-tax Act. During the accounting year 1985-86, the company was managed by two managing directors, who are petitioners Nos. 2 and 3. However, the day-to-day affairs of the company were managed by the seventh petitioner, the executive director, and the eighth petitioner, the general manager. For the accounting year 1986-87, the first petitioner filed a return of income on December 31, 1986, wherein it claimed set off and carry forward of the previous years losses. The return was signed, verified and filed by the seventh petitioner, who was only the executive director and employee of the company.

Under section 140 of the Income-tax Act, the return of income has to be signed by the managing director, and if the managing director is, for any unavoidable reason, not able to sign and verify the return, by any director of the company. The seventh petitioner, who was only an employee, was certainly not entitled or authorised to file the return. In fact, the company and its directors were not aware that the return was so signed, verified and filed by him. On the basis of the invalid return submitted by the seventh petitioner, the respondent initiated proceedings under the Income-tax Act and issued a notice on January 12, 1987, seeking clarification in respect of certain aspects of the return. The seventh petitioner in his reply dated January 21, 1987, gave the details as called for. He also furnished certain annexures along with his letter giving particulars of certain machinery and other information required by the respondent. These were only known to the seventh

petitioner and not to others. While the respondent was seized of the matter, the petitioners realised that the entire proceedings were erroneous in so far as the first petitioner had not filed a valid income-tax return. The respondent proceeded with the assessment on the basis of the invalid return, which was signed, verified and filed by the seventh petitioner. Purportedly acting under section 133A of the Income-tax Act, the respondent sought to make a survey for the limited purpose of verifying the date of installation of the machinery. The survey was conducted on January 29, 1987, on the basis of the return filed by the seventh petitioner on December 31, 1986, and for the sole purpose of verifying the correctness and completeness of the said return, in the course of the survey, the respondent seized and impounded various files and other records found at the premises of the first petitioner under section 131(3) of the Act. Thereafter the first petitioner was required to produce certain documents which direction was arbitrary and without authority. Nevertheless, to purchase peace and to avoid further difficulties, the first petitioner approached the respondent for making an agreed assessment. At about that time, a scheme was introduced by the Central Board of Direct Taxes for voluntary declaration of income and assessment under the Income-tax and Wealth-tax Acts. As per that scheme, the first petitioner had to file a return of income in respect of the assessment year 1986-87, the earlier return which was filed by the seventh petitioner not being valid in law. The first petitioner filed a return which was signed and verified by the second petitioner, who was the managing director of the company on March 11, 1987, in which the first petitioner declared an income of Rs. 25,54,941. After adjusting the investment allowance carried forward from earlier years, a total income of Rs. 7,66,480 was declared. This was the only valid return filed by the first petitioner. It was pleaded that the respondent could act upon that return, which was received by him on March 11, 1987. But, then, summons was received by the second petitioner requiring his attendance on March 16, 1987. The account books of the first petitioner contained certain credit entries totalling Rs. 2,00,000 in the names of nine persons. Those credit entries were found in the books of the first petitioner from the year 1980. Interest was credited on these amounts by the company. But, there was no payment of interest to the respective parties. The company was not aware of the source of the said funds, but had credited the amount in the names of the parties

as per the direction of the managing directors. These amounts were accepted as deposits by the company from the respective parties mentioned by the managing directors. The company had no reason to disbelieve the names suggested by the managing directors. The respondent, however, came to the conclusion that the deposits are nothing but the assessee's money. He suggested prosecution proceedings. To the notice annexure 'A', a reply, annexure 'B', was sent.

On March 31, 1987, the respondent made an order of assessment purporting to be one under section 143(3) of the Income-tax Act. The return filed by the seventh petitioner was taken as the return filed by the petitioners and that filed on March 11, 1987, was taken as the revised return. It was observed that the return filed on March 11, 1987, was not a revised return filed suo motu and voluntarily and hence the said return could not be taken as the basis for making the assessment. The first petitioner was held not to come within the ambit of the amnesty scheme. The return filed on March 11, 1987, was rejected and annexure 'C' assessment was made on the basis of the return submitted by the seventh petitioner on December 31, 1986. Against the said order, an appeal was filed before the Commissioner of Income-tax (Appeals). By annexure 'D' order, he confirmed the assessment. While these proceedings were pending, the respondent initiated action to levy penalty under section 271(1)(c) of the Act. The first petitioner's reply to the show-cause notice for levy of penalty was rejected and the respondent levied a penalty on the first petitioner by annexure 'E' order dated July 28, 1987. An appeal was filed against the said order before the Commissioner of Income-tax (Appeals), Kochi, who by his order dated March 14, 1989, confirmed the levy by annexure 'F' order, against which the first petitioner filed an appeal before the Income-tax Appellate Tribunal. But then the respondent levied the penalty and an appeal was also filed against the said levy before the Commissioner of Income-tax (Appeals). While so, the respondent filed annexure 'G' complaint, before the Magistrate. In the appeal filed by the first petitioner before the Tribunal, it was held that the return filed by the seventh petitioner was not a valid return under section 140(c) of the Act since it was done by an employee of the company not being a managing director or director, and that the only valid return was that which was filed on March 11, 1987. The assessment dated March 31, 1987, on the basis of the return submitted by the seventh petitioner was held not valid in law as per annexure 'H' order. The said

order of the Tribunal has become final. The appeal against the levy of penalty was also allowed by the Tribunal by annexure 'I' order, which has also become final. It is submitted that the complaint, annexure 'G', is not tenable particularly in view of the order of the Income-tax Appellate Tribunal above referred to. It is rested on annexure 'C', the order of assessment dated March 31, 1987, which has been set aside. The very foundation of the complaint has ceased to exist and, therefore, it cannot be proceeded with. The prosecution, it was submitted, is an abuse of the process of the court and, therefore, deserved to be quashed.

Heard counsel for the petitioners and the respondent.

I am unable to hold that the proceedings pending before the court below amount to an abuse of the process of the court. It has been held in *Balakrishnan v. ITO* : [1982]134ITR573(Ker) , that a complaint, which has been laid, has an independent existence and has to be enquired into in the light of the evidence and materials that are placed before the court. It has been held in *P. Jayappan v. S. K. Perumal*, First ITO : [1984]149ITR696(SC) :

'A mere expectation of success in come proceeding in appeal or reference under the Act cannot come in the way of the institution of the criminal proceedings under section 276C 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 an 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.'

The Income-tax Appellate Tribunal, no doubt, has set aside the assessment based upon the return submitted by the seventh petitioner in the appeal filed by the first petitioner. But, the Tribunal did not agree with the contention that the whole of annexure 'C' was invalid. It has also to be noticed that the appeal was allowed only for statistical purposes. Completion of the assessment without issue of notice under sections 142 and 143 of the Act was found to be unjustified. But, that was

treated as an irregularity which could be cured or set right. The matter has been remanded to the assessing authority to complete the assessment according to law. Even the order in regard to levy of penalty would not help to sustain the case of the petitioners. It is too early now to say, as contended, that the charge was groundless. The court below has correctly declined to exercise jurisdiction under section 245(2), Criminal Procedure Code.

The contentions which the petitioners have raised are matters for adjudication. The orders of the Tribunal might perhaps have some relevance in appreciating the case of the respondent, as set out in annexure 'G' complaint. It cannot be readily assumed that the allegations against the petitioners are unsustainable.

Some important questions of law are involved in the case. The factual aspects also call for detailed consideration. Having failed before the court below to get an order of discharge and after having been unsuccessful to get an order from this court to quash the proceedings in Criminal Miscellaneous Case No. 882 of 1988, it is too late for the petitioners now to contend that the proceedings now pending before the court below amounted to an abuse of the process of the court and, therefore, should be quashed. The complaint has to be enquired into and decided on its merits. Interference now under section 482 of the Code of Criminal Procedure would neither be just, legal or proper.

The criminal miscellaneous case is accordingly dismissed.

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