

K. Inbasakaran Vs. Assistant Commissioner of Income-tax

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Court : Chennai

Decided On : Nov-19-1999

Reported in : [2001]247ITR528(Mad)

Judge : A. Raman, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 218, 219, 220, 221, 222, 223 and 248(2); Income-tax Act, 1961 - Sections 139(1),142(1), 148 and 276CC

Appeal No. : Crl. R.C. No. 386 of 1998 and Crl. R.P. No. 386 of 1998

Appellant : K. Inbasakaran

Respondent : Assistant Commissioner of Income-tax

Advocate for Def. : T. Sivanandham, Adv.

Advocate for Pet/Ap. : Party in person

Judgement :

A. Raman, J.

1. The accused is the petitioner herein.

2. This revision is directed against the order passed by the Principal Sessions Judge, City Civil Court, dated April 17, 1998, rendered in C. A. No. 34 of 1997,

whereby he confirmed the conviction and sentence passed by the Additional Chief Metropolitan Magistrate, E. O. II, Egmore, Madras-8, in E.O.C.C. No. 73 of 1995.

3. The accused/petitioner is a senior I. A. S. Officer, belonging to the Tamil Nadu cadre. The case was argued by the petitioner himself.

4. The facts leading to the case, are as follows :

For the assessment year 1991-92, the accused has failed to submit his return of income on or before June 30, 1991. Notice under Section 148 of the Income-tax Act was issued, requiring him to file the return of income within 30 days from the date of receipt of a notice. The accused, who received the notice, failed to submit the return within the prescribed time. Therefore, the Department issued a notice under Section 142(1) of the Income-tax Act. In spite of it, the accused failed to comply with the same. For the assessment years 1992-93 and 1993-94, the accused failed to submit his return of income on or before June 30, 1992, and June 30, 1993, respectively. Hence, notice under Section 148 was issued calling upon him to file his returns of income within 30 days from the date of receipt of the notices. As the accused did not file the returns as required, notice under Section 142(1) of the Income-tax Act was served upon the accused. He sent a reply on December 9, 1994, stating that his main source of income was salary on which tax was deducted, that he had to travel in the performance of his official duties, and that on account of the search effected, some of the records were dislocated and hence the delay. The returns were filed on December 9, 1994, by the accused showing an income of Rs. 1,14,690. A return of income was filed on the same day for the year 1992-93, showing an income of Rs. 1,24,560 along with a statement of total income showing income under the head 'Salary' as Rs. 1,26,859. For the assessment year 1993-94, on the same day a statement was filed, showing an income of Rs. 1,64,750 along with a statement of total income showing income under the head 'Salary' as Rs. 1,40,224. The assessments were completed accepting the income returned and showing the tax as 'nil'. The accused wilfully and deliberately delayed the filing of his return of income for 41 months, 30 months and 17 months, respectively, from June 30, 1991, June 30, 1992, and June 30, 1993 to December 9, 1994. Hence, a show-cause notice was issued

questioning him as to why prosecution should not be launched against him under Section 276CC of the Income-tax Act for wilful failure in filing the return of income. A reply was issued by the accused. Thus, the accused wilfully and deliberately failed to file the returns of income for the assessment years 1991-92, 1992-93, and 1993-94 within due time and in spite of repeated statutory notices and, therefore, the accused is liable to be proceeded against under Section 276CC of the Income-tax Act, 1961. Though there were three cases taken cognizance of by the magistrate in C.C. No. 71 of 1995, C. C. No. 72 of 1995 and C. C. No. 73 of 1995, for the offences alleged to have been committed by the accused in failing to furnish income return for the years 1992-93, 1993-94 and 1994-95, the complaints were never marked. The case in C. C. No. 73 of 1995, relates to failure to furnish return in time for the assessment year 1991-92. This revision is directed against the very disposal in C. C. No. 73 of 1995.

5. On behalf of the complainant four witnesses were examined and exhibits P-I to P-16 were marked. The accused did not examine any witness, but three documents were marked on his side as exhibits D-1 to D-3. The learned Additional Chief Metropolitan Magistrate, E. O. II, found the accused guilty under Section 276CC of the Income-tax Act on three counts and sentenced him to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs. 1,000 under each count and had directed that the sentences should run concurrently. As pointed out already, the appeal preferred by the accused against the same to the Principal Sessions Judge in C. A. No. 34 of 1997, was dismissed, confirming the conviction and sentence and, thus, the petitioner is before this court.

6. The point for consideration is :

'Whether the conviction and sentence passed by the Additional Chief Metropolitan Magistrate E. O. II, Egmore, and as confirmed by the Principal Sessions Judge, City Civil Court, Madras, is liable to be interfered with ?'

7. The point: The petitioner would contend that the conditions necessary to invoke Section 276CC are singularly absent in this case. According to him, there must be a statutory and punishable delay. The delay must be wilful. There must be evasion of tax by the assessee. The exemption indicated in the proviso has to be

scrupulously adhered to by the officers of the Income-tax Department. Hence, he would submit that the Department has failed to prove that there has been a wilful and punishable delay within the meaning of Section 276CC of the Income-tax Act. It is further submitted by the petitioner that the Department has issued certain guidelines and those guidelines are binding upon the Income-tax Officer. The circular containing such guidelines are executive in character and concessional in nature. The Income-tax Officer concerned failed to implement the circular and, hence, the prosecution is not maintainable. It is also submitted by the petitioner that the income-tax authorities have not exhausted the statutory facilities before resorting to prosecution. He would also submit that there has been failure to follow the procedure and discretion to resort to prosecution, which is colourable in nature, and, therefore, the proceeding against the petitioner has to be set aside. But, in my view, it is not necessary to go into the merits of the case. For, I am satisfied that a serious flaw and grave error have been committed by the trial magistrate. In my opinion, it goes to the root of the matter and affects the entire edifice.

8. It is better to preface the discussion after setting out the relevant section, viz., Section 276CC, which runs as follows :

'If a person wilfully fails to furnish in due time the return of income which he is required to furnish under Sub-section (1) of Section 139 or by notice given under Clause (i) of Sub-section (1) of Section 142 or Section 148, he shall be punishable,-

(i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, 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 imprisonment for a term which shall not be less than three months but which may extend to three years and with fine :

Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of income under Subsection (1) of Section 139-

- (i) for any assessment year commencing prior to the 1st day of April, 1975 ; or
- (ii) for any assessment year commencing on or after the 1st day of April, 1975, if-
 - (a) the return is furnished by him before the expiry of the assessment year ; or
 - (b) the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source, does not exceed three thousand rupees.'

9. The allegation is that the accused wilfully and deliberately failed to furnish the return of income for the years 1991-92, 1992-93 and 1993-94 and has thus committed an offence punishable under Section 276CC of the Income-tax Act.

10. It is said that there are three separate complaints as against the accused/petitioner. But, the complaints are not marked. Only one of the complaints is found on the record. The other complaints are not there. The three separate complaints are said to be with regard to the delay in filing of the returns for the years 1991-92, 1992-93 and 1993-94. There are three separate orders sanctioning prosecution, relatable to the three assessment years 1991-92, 1992-93 and 1993-94, respectively. Of course, even that complaint relating to 1991-92 has not been marked in this case. Section 276CC of the Income-tax Act, as extracted above makes the failure to furnish in due time the return of income by a person, who is required to furnish under Section 139 or by a notice given under clause (i) of Sub-section (1) of Section 142 or Section 148, punishable in cases where the amount of tax which would have been evaded, if the failure had not been discovered, 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 ; and in any other case, it shall not be less than three months, but which may extend to three years and with fine. Therefore, the failure to furnish the return of income in due time, is made punishable under Section 276CC. Thus, it is a distinct offence.

11. The apex court has held that the word 'distinct' means not identical. The word 'distinct' thus characterises that the two offences would be distinct if they are not in

any way inter-related. It would mean that two things are not the same. The offences for which the accused is sought to be made guilty are distinct offences in this case. The wilful failure to furnish in due time, the return of income for the year 1991-92 is a distinct offence. The wilful failure to furnish return of income in due time for the assessment year 1992-93 is a separate offence. Similarly, the wilful failure to furnish in due time the return of income for the assessment year 1993-94 is a distinct and separate offence. These offences are not one and the same. Each failure is liable for punishment under Section 276CC of the Income-tax Act. Though the offences fall under the same section of the Income-tax Act, yet, they are not the same. They are not inter-related. They are distinct and specific. Therefore, when the offences with which the accused was charged are distinct or separate and not in any way interrelated, and when each offence has no connection with the other, the joinder of charges will become bad in law.

12. Section 218 of the Code of Criminal Procedure clearly specifies that for every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately. The exception to the rule is found in the proviso, which empowers the magistrate to try together all or any number of the charges framed against such person, in a single trial, if the accused person makes an application in writing, desiring so, and the magistrate is of the opinion that such person is not likely to be prejudiced thereby. Section 219 of the Criminal Procedure Code empowers the magistrate to try an accused for any number of offences, not exceeding three, which are of the same kind, committed within the space of twelve months from the first to the last of such offences. Section 220 of the Criminal Procedure Code provides that if, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for every such offence.

13. Section 221 of the Criminal Procedure Code is to the effect that if a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any such offence, and any number of such charges may be tried at once ; or he may be charged in the alternative with having committed some of

the said offences. Section 222 of the Criminal Procedure Code provides that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. Section 223 of the Criminal Procedure Code sets out conditions, where persons may be charged and tried together. Thus, Section 218 of the Criminal Procedure Code clearly lays down that for every distinct offence of which any person is accused, there shall be a separate charge and every such charge shall be tried separately.

14. I have referred to the other sections with a view to emphasise upon the scheme and object of Section 218 of the Criminal Procedure Code. This section applies not only to warrant cases, but also to summons cases, though it is not necessary to frame charge in summons cases. The apex court has held in *Suraj Pal v. State of Uttar Pradesh*, : 1955 CriLJ1004 that infringement of Section 218 of the Criminal Procedure Code would constitute illegality as distinct from irregularity. For the general rule of trial is that for every distinct offence, there shall be a separate charge and every such charge shall be tried separately except in specified cases referred to in Sections 219, 220, 221 and 223 of the Criminal Procedure Code. Framing of one charge in respect of every distinct offence, cannot be considered as a mere irregularity, but the same has to be construed as an illegality. Thus, misjoinder of charges is a defect in the procedure. A joint trial or a single charge having two offences not committed in the course of the same transaction is an illegality. The objection to the legality of the trial can be taken at any stage, even if it was not raised before the trial court or the appellate court. It is open to the accused to raise it in the appellate stage.

15. Here, the allegation is that the accused had committed distinct and separate offences. He wilfully failed to submit within due time the return of income for the assessment year 1991-92. This became a distinct and separate offence under Section 276CC of the Income-tax Act. If the offence is made out, he is liable to be punished for this wilful failure. The accused, according to the complainant, had failed wilfully to submit the return of income in due time for the assessment year 1992-93. Thus, the offence committed is distinct and separate and was not

committed in the course of the same year, but in the next year. The accused is liable to be proceeded against for the said offence, and if proved, is liable to be proceeded against for the same accordingly, under Section 276CC of the Income-tax Act. Thirdly, the accused is said to have wilfully defaulted to file a return of income in time for the assessment year 1993-94. It is an offence committed not during 1991-92 or 1991 to 1993, but during 1993-94. It is a distinct offence. It is a separate offence. Though it arises under the same provision of the Act, it is not in any way related to the other two offences. This offence is also punishable under Section 276CC of the Income-tax Act, without reference to the earlier offences.

16. I have already pointed out that it is not a case, where the accused filed any application under Section 218 for joint trial. Nor is there any order to the effect, passed by the magistrate holding that he is of the opinion that the accused is not likely to be prejudiced by joint trial. The three offences were distinct and different and not related to each other and not committed within a space of 12 months from the first offence to the last offence, and therefore, there cannot be joint trial also. The object of Section 218 of the Criminal Procedure Code is to save the accused from embarrassment and avoid prejudice to the accused. Therefore, it is essential under Section 218 of the Criminal Procedure Code that there must be specific and distinct charge in respect of every distinct head as the criminal liability constituting an offence, is the foundation for a conviction and sentence therefor.

17. It is to be pointed out that separate trial indicates that the evidence recorded in one trial cannot be used in the other. This is not a case, which would fall under any of the exceptional provisions of the Criminal Procedure Code. The apex court has held in the decision reported in Willie (William) Staney v. State of Madhya Pradesh, : 1956 CriLJ291 that a joinder of charges would not vitiate the trial unless such misjoinder has occasioned a failure of justice.

18. There is only a single charge framed which reads as follows :

'That you wilfully and deliberately failed to furnish in due time the return of income for the assessment years 1991-92, 1992-93 and 1993-94 which was required to be furnished under Sub-section (1) of Section 139 and by the notice issued under Sections 142(1) and 148 and thereby committed an offence punishable under

Section 276CC of the Income-tax Act, 1961, and within my cognizance.'

19. Thus, a single charge is framed in respect of three distinct and different offences. The charge reads that the accused has committed an offence, i.e., single offence. It does not say that he has committed offences. Therefore, according to the charge for the failure to furnish returns in due time for all the three years, it was treated as a single offence and a single charge is framed. Assuming the court treated it only as single offence, how can it convict for three counts, when the charge itself does not say three counts.

20. Let us see how the trial court has proceeded in the matter. The maximum punishment provided for the offence is more than two years. Therefore, the warrant procedure has to be adopted. In this case, there is no petition filed by the accused, requesting the court for any joint trial or for the clubbing of the cases together. The cases have been taken on file by the magistrate in E. O. C. C. Nos. 71 of 1995, 72 of 1995 and 73 of 1995. It is seen that the judgment is rendered in E. O. C. C. No. 73 of 1995. The judgment of the trial court does not give any reasons for a joint trial. It simply reads as follows :

'The complainant had filed three complaints against the accused under Section 276CC of the Income-tax Act for wilful failure in filing the returns of income for the assessment years 1991-92 to 1993-94 in E. O. C. C. Nos. 71 and 73 of 1995. At request of both sides, E. O. C. C. Nos. 71 and 72 of 1995 were clubbed with E. O. C. C. No. 73 of 1995 and common evidence has been recorded in E. O. C. C. No. 73 of 1995.'

21. The docket sheet in the three cases does not contain any note recording that any such request was made by both sides to have common trial. There is no separate order, directing the clubbing of these two cases and the holding of joint trial. Needless to point out that there is nothing to show that the request emanated from the accused. Even assuming that there can be a single trial, it does not follow that there can be a single judgment. On the other hand, the judgment must be common, stating so clearly or there must be necessarily conviction in each case with separate sentence though the discussion is common. That the magistrate intended to dispose of and did dispose of only C. C. No. 73 of 1995, is further

evident from the fact that though the complaint relates to 1992-93 and 1993-94, the complaints are not found among the records submitted to this court, in connection with the revision. Further, the charge reads the failure to furnish in due time for all the three years put together as a single offence and therefore framed only a single charge without mentioning the counts. Therefore, it is clear that the court was trying only one offence and one C. C. only. While so, how can it pass a sentence on these counts and in three cases without recording a finding of guilt and conviction in all the cases separately.

22. It is to be pointed out that though a single trial can be held, there must be distinct and separate charges, for each accounting year or assessment year. I have already pointed out that there is no such distinct and separate charge with reference to each assessment year. Section 218 of the Criminal Procedure Code clearly lays down that for every distinct offence, there shall be a different charge. Section 219 of the Criminal Procedure Code which is in the nature of exception would clearly lay down that if the offence is committed within the space of twelve months from the first to the last of such offences, which are of the same kind, the magistrate concerned can try at one trial, the offence of the same kind. Here, admittedly, there was only one trial. The offences were not committed within the same year, but in three different assessment years. Therefore, Section 219 of the Criminal Procedure Code would preclude the magistrate from resorting to such procedure of having a single trial.

23. Above all, there is yet another important circumstance to be pointed out. Three complaints were laid against the accused, all of similar offence, but relating to three different assessment years. The complaints are under Section 276CC of the Income-tax Act. According to the complainant, the accused wilfully and deliberately failed to file the returns of income for the assessment years 1991-92, 1992-93 and 1993-94 within due time and in spite of repeated statutory notices and, therefore, he has committed specific offences and is liable to be proceeded for each offence under Section 276CC of the Income-tax Act, 1961.

24. In fact, the three complaints were taken on file by the magistrate and assigned three different case numbers, viz., CCs. They were numbered as C. C. No. 71 of

1995, C. C. No. 72 of 1995 and C. C. No. 73 of 1995. Apparently, for the offence committed relating to the failure to furnish return of income within due time for the assessment year 1991-92, the complaint was taken cognizance in C. C. No. 71 of 1995. The complaint in respect of failure to furnish income returns in due time for the year 1992-93 was taken on file as C. C. No. 72 of 1995, C. C. No. 73 of 1995 relates to the failure to furnish return of income in due time in respect of the assessment year 1993-94. Three different and distinct complaints were thus laid before the Additional Chief Metropolitan Magistrate (Economic Offences-II), against the accused for three distinct offences committed during the years 1991-92, 1992-93 and 1993-94, respectively. The three complaints were taken on file and numbered as C. C. Nos. 71 of 1995, 72 of 1995 and 73 of 1995. The judgment is rendered only in C. C. No. 73 of 1995. There is no separate finding or conviction with reference to C. C. Nos. 71 of 1995 and 72 of 1995. The preamble of the judgment simply states as follows :

'E. O. C. C. No. 73 of 1995.

(E. O. C. C. Nos. 71 and 72 of 1995 clubbed with E. O. C. C. No. 73 of 1995).'

25. In the cause-title, in the array of E. O. C. C. Nos. 71 of 1995 and 72 of 1995 are not mentioned. The operative portion of the judgment also does not make mention of E. O. C. C. Nos. 71 of 1995 and 72 of 1995. There was also no separate questioning of the accused in C. C. No. 71 of 1995 and C. C. No. 72 of 1995 with regard to sentence. The concluding paragraph of the judgment runs thus :

'Hence, for the reasons stated above, the accused is found guilty under Section 276CC (three counts) of the Income-tax Act. The accused, was asked under Section 248(2) of the Criminal Procedure Code to state in respect of the sentence that would be passed against him. The accused has stated that he has nothing to say. Hence, considering the tax amount for the said assessment years and also considering the nature of the case, I sentence the accused to undergo R. I. for three months (three counts) and to pay a fine of Rs. 1,000 (rupees one thousand only) in default to undergo R. I. for two months for each of the three counts and the sentence is ordered to run concurrently.'

26. Here, as already pointed out, the offences are distinct and different, each having taken place, according to the complainant in different assessment years. There is no commission of any offence involving three counts in the same assessment year. Nor is there any such complaint. Thus, a reading of the judgment of the trial court would only show that there is conviction only in C. C. No. 73 of 1995 alone, and that conviction is on three counts. There was a single charge only. The charge relating to an offence in C. C. No. 73 of 1995 is for the offence relating to the assessment year 1993-94. There was no accusation against the accused, stating that he has committed more than one offence, in that assessment year, viz., 1993-94. One other thing to be pointed out is that this judgment does not make mention of C. C. Nos. 71 of 1995 and 72 of 1995 anywhere except to mention clubbing of C. C. Nos. 71 and 72 of 1995 in the preamble. The clubbing referred to is only for the purpose of joint trial. There is no recording of guilt against the accused, relating to the other two C. Cs. either finding the accused guilty in respect of that offence covered in that C. C. or sentencing him to any punishment with reference to that offence in that particular C. C. Nor was there any questioning with reference to C. C. No. 71 of 1995 and C. C. No. 72 of 1995 on the question of sentence. In other words, the judgment is rendered only in E. O. C. C. No. 73 of 1995. Hence, there is only one offence concerned in E. O. C. C. No. 73 of 1995. The finding of guilt is only with reference to E. O. C. C. No. 73 of 1995, and the sentence must be regarded as only with regard to the offence committed during the assessment year 1993-94, which was the subject-matter of E. O. C. C. No. 73 of 1995. As to what happened to the other two C. Cs., there is no observation or finding or conclusion in the course of the judgment. It is not known whether it should be taken that the two C. Cs. are deemed to be pending, or deemed to have been disposed of along with C. C. No. 73 of 1995. In this connection, it is to be pointed out that the complaints are not marked. The complaints are in the nature of F. I. R. on the basis of which the penal proceedings are set in motion against the accused. For, it is only on the complaint, the endorsement of cognizance and further steps as to issue of proceedings is made. Not only that, in the records of the lower court the complaint relating to 1991-92 alone is found. The other complaints relating to 1992-93 and 1993-94 are not found. Therefore, there is nothing to show that there were two

other complaints and that they were taken on file and further proceeding was ordered. When it is so, how any conviction can be made for the alleged offences for the years 1992-93 and 1993-94.

27. It is to be pointed out that as a result of this, if it is to be taken that this is a common judgment rendered in all these three C. Cs. finding the accused guilty in each of the C. Cs., then the position is that there is no separate judgment or finding in C. C. Nos. 71 and 72 of 1995. Nor is there any complaint relating to those years, which can be challenged by the accused. In other words, the accused is placed in such a position that he is unable to prefer any appeal against C. C. Nos. 71 and 72 of 1995 as there is no separate finding or judgment. If this is taken as a common judgment, then definitely by reason of absence of specific findings and conviction and sentence in those C. Cs., the right of the accused to prefer an appeal in those C. Cs. is thus nullified, with the result that a prejudice is definitely caused to the accused. If it is taken that it related to C. C. No. 73 of 1995, then finding the accused guilty on three counts is unlawful.

28. It is also to be pointed out that nowhere in the course of the judgment, the magistrate has observed that the judgment is a common judgment rendered in all the three cases, and the discussion would dispose of all the three cases. On the other hand, both in the preamble as well as in para. 8, he has simply stated that the three cases were clubbed together and common evidence has been recorded. He has neither indicated in the preamble of the judgment or in the course of discussion or in the course of the operative portion of the judgment that the common judgment is rendered to dispose of all the three C. Cs. and the conviction and sentence are in respect of all the three C. Cs. and would take effect accordingly. Even conceding that the discussion and the reasoning can be common, the conviction and sentence must be distinct and separate.

29. This is a very grave error committed by the magistrate, on account of which, I am of the view that definitely prejudice has been caused to the accused. Therefore, in that view of the matter, I have to hold that the revision has to be accepted, setting aside the conviction. It is not purely a question of technicality, but one of prejudice and procedure as well. Further, we have to take into

consideration certain circumstances as well. In respect of the assessment year 1991-92, the tax assessable was less than Rs. 5,000, and in view of the very Departmental instructions and circular, the complaint ought not to have been laid with reference to the said default. Nor should the sanction have been given. The circulars are binding upon the income-tax authorities. The apex court has so held in the decision reported in K.P. Varghese v. ITO : [1981]131ITR597(SC) . Moreover, in all the three cases though there was delay, subsequently, returns were filed, the same were accepted by the Department as correct and the tax was also remitted. Therefore, strictly speaking, there is no loss caused to the State. Nor is there any ultimate evasion of tax as such. It is only stated that there is a failure to furnish the return of income in due time which is thus technical in nature. When we are ignoring the fact of acceptance of returns and remittance of tax and rely upon the failure to submit the return in time, which is purely a technical default, equally, the benefit of the mistakes committed in the procedure which is in a way technical in nature should go to the accused.

30. Therefore, in that view of the matter, I am constrained to hold that for the reasons stated above, as the framing of the charge is defective and violative of Sections 218 and 219 of the Criminal Procedure Code and as the judgment has been rendered only in a single case and there is no finding of guilt recorded as regards the two other cases as there is no charge of more than one count relating to the complaint in C. C. No. 73 of 1995, the error committed by the trial court is of such grave nature that it has caused prejudice to the accused and, therefore, in that view of the matter, I have to hold that the conviction and sentence passed by the lower court has to be set aside.

31. In the result, this revision is allowed, setting aside the conviction and sentence passed by the Additional Chief Metropolitan Magistrate (Economic Offences-II) in C. C. No. 73 of 1995 as confirmed by the appellate court in C. A. No. 34 of 1997. Consequently, the accused is acquitted of the charges. The fine amount, if any paid by the accused, shall be refunded to him. The bail bonds shall stand cancelled.