

Dr. N. Kannan Vs. Ito

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Court : Chennai

Decided On : Mar-28-2001

Reported in : [2002]253ITR626(Mad)

Appeal No. : Crl. O. P. Nos. 10424, 11339 to 11365 of 2000 and Crl. M. P. Nos. 3050, 3051 and 3473 to 3526 of 200

Appellant : Dr. N. Kannan

Respondent : ito

Advocate for Pet/Ap. : Vikram Ramachandran, *for the Assessee* Ramaswamy K, Special Public Prosecutor, *for the Revenue*

Judgement :

M. Karpagavinayagam, J.

Since the issue involved in all these petitions is one and the same, a common order is passed in all these petitions.

The Income Tax Officer, Special Ward, Tambaram, Chennai, has filed a complaint against Dr. Vishwar Banu and Dr. N. Kannan, the petitioner herein for the offences under sections 276C(2), 278 read with section 276C(2) of the Income Tax Act, 1961, and under sections 120B and 420 of the Indian Penal Code. Seeking to quash the above proceedings, the petitioner/the second accused, Dr. N. Karnnan,

has filed the above petitions.

The following is the contention claiming that the proceedings as against the petitioner are liable to be quashed : .

'The petitioner being a doctor is alleged to have issued a false certificate in favour of the first accused in order to abet the offence committed by the first accused for making an attempt to evade tax by giving false medical certificate. This allegation contained in the complaint would not constitute an offence, because the averments in the complaint are very general in nature and prosecution case as against the petitioner on the basis of vague allegation that the D.D.O. originally failed to deduct a sum of Rs. 3,000, which was subsequently deducted and paid to the government, cannot sustain the complaint. Moreover, the prosecution as against the petitioner/the second accused was mainly based upon the statement given by the first accused stating that he did not get any information from the second petitioner and he obtained false certificate from him in order to make an attempt to evade tax. The confession of the co-accused cannot be said to be substantive evidence and, as such, the proceedings as against the petitioner are not maintainable. Furthermore, as per section 278 of the Income Tax Act, only a person who induces another person to make and deliver a statement or declaration relating to any income chargeable to tax, which is false, is punishable. In the instant case, it is the case of the complainant that the main accused has not filed any account or statement relating to any income chargeable to tax. The only allegation is that the Disbursing Officer has deducted the lower tax. Deduction of tax is not an assessment. Under those circumstances, section 278 of the Income Tax Act cannot be invoked against the petitioner even on the very allegations contained in the complaint.'

In elaboration of the above point, Mr. Vikram Ramachandran, learned counsel for the petitioner, argued at length and contended that the petitioner cannot be asked to face criminal proceedings especially when there is no material against him.

He would also cite a judgment rendered in ITO v. J. Chitra : [2001]247ITR497(Mad) , wherein it is held that a statement given by the co-accused cannot be treated as substantial evidence against other accused nor

could it form the basis for conviction.

On the other hand, Mr. Ramasamy, learned Special Public Prosecutor appearing for the respondent, cited the following authorities:

(1) Chinni Mohan Rao v. ITO : [1996]217ITR269(Mad)

(2) C. Surendran v. T. Ravindran : [1996]217ITR368(Mad)

(3) A. Y. Prabhakar (HUF) v. Assistant CIT : [1996]217ITR253(Mad) .

He contended that there are allegations constituting offence alleged against the petitioner and, as such, the proceedings are not liable to be quashed. It is further contended that when there are clear averments in the complaint regarding the issuance of a false certificate abetting the main offence committed by the first accused, the same cannot be quashed at the threshold.

I have carefully considered the submissions made on either side.

It is true, as correctly submitted by learned counsel for the petitioner, that the statement of the co-accused alone is not sufficient to base the conviction. The judgment cited by learned counsel for the petitioner is a case, which ended in conviction after trial. Therefore, though the principle as laid down in the said decision is correct, at this stage, it cannot be said that it is a ground for quashing. On going through the complaint, it is clear that there are specific averments made against both the accused.

According to the complaint, the first accused on behalf of the institution did not file the annual return under section 206 of the Income Tax Act and during inspection, it was found that the first accused claimed deduction of Rs. 15,000 under section 80DDB on the basis of the certificate issued by the petitioner, the second accused and thereby induced the person responsible for deducting the tax at source to deduct the tax lower than the tax, which the first accused is obliged to have paid on his salary income.

It is also alleged in the complaint that on verification, the Income Tax Officer learned that the claim made by the first accused before the D. D. O. was false, as

the person in whose name the medical certificate to claim deduction was obtained did not suffer from such disease as mentioned in the certificate.

Further, as stated above, the Income Tax Officer obtained a statement from the first accused under section 131 of the Income Tax Act that he did not suffer from such disease. It is also specifically alleged in the complaint that the second accused by issuing knowingly a false certificate has actively abetted in enabling the first accused to get tax deduction benefit and thereby to reduce the tax liability on his salary income, the tax for which is deducted at source, thereby through his fraudulent claim, the first accused abetted by the second accused, had a wrong benefit to the extent of a sum of Rs. 3,000.

There are specific allegations in the complaint as contained in paragraphs 11 and 12 that the materials collected by the Income Tax Officer during the enquiry revealed that accused Nos. 1 and 2 conspired together to cheat the Income Tax Department by furnishing false medical certificate and claiming tax benefits illegally. The second accused knew fully well that the certificate issued by him was false and thus actively abetting the first accused in evading payment of tax by the first accused.

It cannot now be contended that the allegations contained in the complaint are false and the statement of the co-accused alone is not sufficient. When this is the case of the complainant, it cannot be held that the complaint as against the second accused/the petitioner herein is not maintainable. The petitioner is at liberty to raise all these points before the trial court at the appropriate stage.

Under those circumstances, I do not find any merit in the above petitions. Therefore, the criminal original petitions are dismissed. Consequently, connected C. M. Ps. are also dismissed.