

Madhya Pradesh High Court

Badri Prasad And Anr. vs Union Of India (Uoi) on 17 July, 1997

Equivalent citations: 1998 234 ITR 136 MP

Author: N Jain

Bench: N Jain

JUDGMENT N.K. Jain, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure seeking quashment of Criminal Case No. 58 of 1987 instituted in the court of A. C. J. M. (Economic Offences), Indore, on a complaint lodged by the respondent under Sections 276C and 277 of the Income-tax Act (for short "the Act").

2. The facts material for the purpose of this order are that the applicants at the material time were the partners of Badri Prasad Rameshwar Prasad carrying on business at Gol Bazar, Katni. The firm was an assessee under the Act. The relevant assessment year is 1974-75. The assessee-firm filed a return showing income of Rs. 38,680. The Income-tax Officer assessed the income at Rs. 39,830. Accordingly, a revised return of income was filed by the assessee-firm showing income at Rs. 39,830. The firm was accordingly assessed vide order dated October 30, 1975. However, a survey was conducted on January 15, 1974, in the business premises of the assessee. On the basis of information collected in the survey, the Income-tax Officer came to the conclusion that the income of the assessee-firm for the relevant year comes to Rs. 65,974 being the unexplained money in terms of Section 69A. He, therefore, issued notice under Section 148 on March 23, 1979. In compliance with this notice, the assessee filed the return on April 27, 1979. The Income-tax Officer assessed the firm at Rs. 3,38,604 i.e., for Rs. 4,98,774 over and above the amount of Rs. 39,830 assessed originally. On the assessee's appeal, the learned Commissioner of Income-tax (Appeals) reduced the addition by Rs. 2,37,436. Thus finally the addition made on account of income from undisclosed sources came to Rs. 2,61,338. During these assessment proceedings, penalty proceedings under Section 271(1)(c) were also initiated by the Income-tax Officer. The matter was examined by the Inspecting Assistant Commissioner of Income-tax, Jabalpur, who, vide his report dated March 21, 1983, advised the Income-tax Officer to drop the penalty proceedings. The learned Inspecting Assistant Commissioner, inter alia, observed :

"Keeping in view the facts and circumstances of the case and the ratio of the above decisions, I am of the opinion that it would not be a fit case to levy penalty under Section 271(1)(c). Accordingly, you are advised to drop the penalty proceedings. It is made clear here that dropping of penalty proceedings is not to be interpreted as if the additions made and confirmed by the Commissioner of Income-tax are not justified. It has been held in many cases that even where additions are justified, the penalty may not be levied."

3. Pursuant to the aforesaid recommendations of the Inspecting Assistant Commissioner, the learned Income-tax Officer vide his order dated March 25, 1983 (annexure-C), dropped the penalty proceedings.

4. The Income-tax Officer has filed the complaint before the court below against the applicants alleging commission of offence under Sections 276C and 277 of the Act. It is alleged that the accused applicants have wilfully and knowingly made false verification in the return of income and also attempted to evade the tax. The learned A. C. J. M. after recording evidence before charge has framed charges for the aforesaid offences overruling the applicants' objection for dropping of the proceedings on the ground of penalty proceedings against them having been dropped.

5. I have heard Shri S.C. Bagdia, senior counsel, with Shri Pankaj Bagdia, for the applicants, and Shri P.K. Saxena, senior counsel, with Shri P.K. Jain for the respondent-Department.

6. In the instant case proceedings for imposition of penalty were initiated under Section 271(1)(c) of the Act while the complaint in the court below is filed alleging commission of offences under Sections 276C and 277 of the Act. Section 271(1)(c) provides :

"271. (1) If the Assessing Officer or the Deputy Commissioner (Appeals) or the Commissioner (Appeals) in the course of any proceedings under this Act, is satisfied that any person-- . .

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty-- . . ."

7. Section 276C provides for punishment of a person who wilfully attempts to evade tax, penalty or interest chargeable or imposable under the Act, while Section 277 punishes a person who makes a statement in any verification under the Act or rules made thereunder or delivers a statement or an account which is false and which he either knows or believes to be false, or does not believe to be true.

8. A close look at the aforesaid provisions would reveal that the basis for imposing penalty under Section 271(1)(c) and punishing a person under Section 276C or 277 is wilful concealment of income in order to evade tax. Wilful attempt to evade tax is the "sine qua non" for imposing penalty as also for holding a person guilty under the aforesaid provisions. Under the circumstances, if no case for imposing penalty is made out, I am afraid the wind is also taken out of the sails of the prosecution case.

9. In Uttam Chand's case [1982] 133 ITR 909, the Supreme Court in a case of criminal prosecution for filing false returns, where the Tribunal had exonerated the assessee, held (page 910) :

"In view of the finding recorded by the Income-tax Appellate Tribunal that it was clear on the appraisal of the entire material on the record that Shrimati Janak Rani was a partner of the assessee-firm and that the firm was a genuine firm, we do not see how the assessee can be prosecuted for filing false returns, We, accordingly, allow this appeal and quash the prosecution."

10. Following the ratio in Uttam Chand's case [1982] 133 ITR 909 (SC), the High Court of Punjab and Haryana in Kanshi Ram's case [1984] 145 ITR 109 held (headnote) :

"Held, if there was no case for sustenance of penalty, it equally would not be a case for criminal prosecution. Therefore, the criminal complaint filed against the assessee was liable to be quashed."

11. The Patna and Bombay High Courts have also taken similar views (see *Banwarilal Satyanarain v. State of Bihar* [1989] 179 ITR 387 and *Shashichand Jain v. Union of India* [1995] 213 ITR 184).

12. Learned counsel for the respondent Department has, however, contended strenuously that mere dropping of penalty proceedings would not automatically wipe out the criminal prosecution against the applicants. It is submitted that there is no rigid rule which makes it necessary for a criminal court to drop the criminal proceedings only because some departmental proceedings in the matter have ended in favour of the assessee. Reliance has been placed on a Supreme Court decision in *P. Jayappan's case* [1984] 149 ITR 696 (SC). I am not persuaded by the arguments and the ratio in *P. Jayappan's case* [1984] 149 ITR 696 (SC), I am afraid, is not available to the respondent in the instant case. That decision deals with a situation where departmental proceeding's and criminal prosecution are launched side by side. The question before their Lordships was whether in such a situation the prosecution is maintainable. It was held that the pendency of departmental proceedings cannot act as bar to the institution of criminal prosecution for an offence punishable under the Act. In the instant case, however, the situation is different and the applicants stand exonerated by the department from the charge of wilful concealment inasmuch as the penalty proceedings instituted on that ground stand quashed. Under the circumstances as held in *Uttam Chand's case* [1982] 133 ITR 909 (SC), the applicants-assessees cannot be prosecuted for filing false returns,

13. I thus allow this petition and quash the prosecution against the applicants.