

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 15166/2020

(Arising out of impugned final judgment and order dated 05-08-2019 in CRLM No. 42017/2019 passed by the High Court Of Judicature At Patna)

UNION OF INDIA

Petitioner(s)

VERSUS

PRABIR KUMAR SHAW & ANR.

Respondent(s)

(FOR I.R. and IA No.84779/2020-CONDONATION OF DELAY IN FILING and IA No.84781/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 20-11-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE R. SUBHASH REDDY
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s)

Mr. N. Venkataraman, ASG
Ms. Sairica Raju, Adv.
Mr. V. Chandrashekhar, Adv.
Mr. Manish Pushkarna, Adv.
Mrs. Anil Katiyar, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Learned counsel for the petitioner contends that merely because the penalty and tax have been paid, the prosecution under Sections 276C, 277 and 278B of the Income Tax Act could not have been quashed. He further submits that similar issues are already under consideration by this Court in SLP (Cr1) D. No. 7377/2019.

Issue notice on the special leave petition as well as on the application for condonation of delay.

Tag with SLP (Cr1) D. No. 7377/2019.

(MEENAKSHI KOHLI)
ASTT. REGISTRAR-cum-PS(RENU KAPOOR)
COURT MASTER

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.42017 of 2019

Arising Out of PS. Case No.-247 Year-2008 Thana- GOVERNMENT OFFICIAL COMP.

District- Patna

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1. Prabir Kumar Shaw @ Sri. Prabir Kumar Shaw, aged about 67 years, male, Son of Late Madan Mohan Shaw, Resident of Flat No.601 Grand Shere Apartment, Exhibition Road, P.S.-Gandhi Maidan, District-Patna-800001.
 2. Provat Kumar Shaw @ Sri. Pravat Kumar Shaw, aged about 69 years, male, Son of Late Madan Mohan Shaw, Resident of Flat No.701 Grand Shere Apartment, Exhibition Road, P.S.-Gandhi Maidan, District-Patna-800001.

... .. Petitioner/s

Versus

The Union of India through Assistant Commissioner of Income Tax, Circle-5, Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. P.K. Shahi, Sr. Adv.
Mr. Satyabir Bharti, Adv.
Mr. Alok Chandra, Adv.
Mr. Prince Kumar Mishra, Adv.
For the Opposite Party/s : Mr. Rishi Raj Sinha, SC

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

2 05-08-2019 Heard Mr. P.K. Shahi, learned Senior Advocate for the petitioners and Mr. Rishi Raj Sinha, learned Standing Counsel, Income Tax.

2. The petitioners seek quashing of the entire



prosecution arising out of Complaint Case No. 247-C of 2008 and particularly the order dated 25.07.2008 passed by the learned Presiding Officer, Special Court, Economic Offences, Patna, whereby cognizance has been taken against them for the offences under Sections 276C, 277 and 278B of the Income Tax Act, 1961.

3. From the perusal of the complaint, it appears that with respect to the Assessment Year 1994-95 (Financial Year 1993-94), lesser tax liability was shown by the petitioners and, therefore, a prosecution has been launched against them by the Income Tax Department.

4. It has been submitted on behalf of the petitioners, without going into the details of the complaint, that the penalty which was imposed upon the petitioners was paid along with the entire tax liability. It has been submitted that at the pre-charge stage, the case continued and only adjournments were granted on several dates. It has further been submitted that the provisions of the Income Tax Act, 1961 (*in short the Act*) though provide for criminal prosecution for wrong information or concealment of



information with respect to tax liability and the punishment is on the criminal mental culpability, but no useful purpose would be served in allowing the prosecution to continue at this stage when the complaint is of the year 2008 with respect to some anomaly in the disclosure of the petitioners for the Assessment Year 1994-95 (Financial Year 1993-94) and also when all the tax liabilities fixed on the petitioners have been paid.

5. It has further been submitted on behalf of the petitioners that the main accused person of this case has died and it has not been shown in the complaint petition nor at any stage of the prosecution that the petitioners were directly responsible for furnishing of such statement which could have attracted the Penal provisions under the Act, especially Sections 276C, 277 and 278B.

6. As opposed to the aforesaid contentions, Mr. Rishi Raj Sinha, learned Advocate for the Income Tax, has submitted that it matters not if the tax liability and the penalty have been paid. Offence does not get liquidated by payment of fine or tax liability. The punishment is to



prevent any further false disclosure in the circumstance when self-certification is the basis for fixing tax liability. In such a situation even the delay in concluding the prosecution should not come to the avail of the petitioners and the case be allowed to be proceeded further.

7. It has further been submitted by Mr. Sinha, learned Advocate, that in a summons case which is tried in accordance with the provisions contained in Chapter-XX of the Code of Criminal Procedure, 1973 (*in short the Cr.P.C.*), there is no provision for discharge at any early stage and after the substance of the accusation is stated to the accused persons, it is open for them to plead guilty. In that event, a conviction is to be recorded. In case, plea of guilt is not taken by the accused person, the Magistrate has to proceed to hear the prosecution and take all evidence as may be produced in support of the prosecution and hear the accused and take all such evidence as is produced in his defense. The only stage where a Magistrate is required to stop the proceedings midway is at the stage of Section 258 Cr.P.C. where a Magistrate may, for the reasons to be recorded by



him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceeding is made after the evidence of the principal witness has been recorded, a judgment of acquittal is required to be pronounced and in which case, the accused persons are required to be released, which release has the effect of discharge.

8. It has thus been urged on behalf of the Income Tax Department that if the Magistrate is of the view that the proceedings be stopped, nothing prevents the Magistrate from passing such an order and it would be open for the petitioners to approach the Magistrate on such grounds of delay in conclusion of the proceeding or of the petitioners having paid their tax liability along with the penalty to the satisfaction of the Income Tax Department for stoppage of proceedings.

9. After hearing the learned counsel for the parties, this Court is of the view that no useful purpose would be served in allowing this prosecution to be continued any further. Even if the prosecution is taken to be for the



purposes of retribution, sufficient penalty has been imposed upon the petitioners, which, on litigation also, has remained inviolate and the same has been paid. The tax liability also is stated to have been paid, which statement has not been disputed by the learned counsel for the Income Tax Department. In fact, it has been admitted in the counter affidavit that a "No Dues Certificate" has been given to the petitioners by the Department.

10. Without going into the merits of the complaint with respect to the complaint being silent about the specific role played by the petitioners and the inference of culpable mental state of the petitioners in their capacity as partners of the firm, this Court, taking into account the year in which the offence was committed and the tax liability having been paid along with penalty, deems it appropriate to quash the proceedings and all such orders arising from the complaint and the order of cognizance.

11. This Court, in a number of cases, has defined the scope and ambit of the powers under Section 482 Cr.P.C. A High Court, exercising its power under the



aforesaid section, has an inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent the abuse of the process of the Court. It has been clarified that the inherent powers of the Court under Section 482 Cr.P.C. can be exercised to give an effect to an order under the Cr.P.C., to prevent the abuse of the process of the Court and to otherwise secure the ends of justice. No doubt, a caution has been laid that such powers are to be exercised sparingly, carefully and with much circumspection, but in a case of this kind, where the entire liability has been paid to the Government and there has not been any loss to the public exchequer, allowing this case to be continued after eleven years would only be an abuse of the process of the Court.

12. In ***State of Karnataka Vs. L. Muniswamy & Ors.; (1977) 2 SCC 699***, the Supreme Court has observed that the wholesome powers under Section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the same to continue would be an abuse of the process of Court or that the ends of



justice require that the proceeding ought to be quashed. Such inherent powers are necessarily to be exercised when no useful purpose appears to be served by continuing with such prosecution.

13. The offences against the petitioners are pertaining to wrong disclosure with respect to their income. Though criminal prosecution has been provided for in the Act; nonetheless the elements of the offence veer around civil liability/liability attracting penalty of tax. Under such circumstance, when the petitioners have been paying income tax on an yearly basis and have not been prosecuted for any false disclosure either earlier to this prosecution or thereafter, it would only be in the nature of harassment to the petitioners if this case is allowed to be continued.

14. The provision contained in Section 482 Cr.P.C. stands tall amongst all provisions of the Code and non-exercise of the same also, where it is needed, results in miscarriage of justice.

15. For the reasons aforesaid, viz., finding no good ground for allowing the prosecution to continue, this



Court deems it appropriate to quash the order of cognizance dated 25.07.2008 and all the criminal prosecution arising out of the same.

16. The petition stands allowed accordingly.

(Ashutosh Kumar, J)

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