

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.10.2015

DELIVERED ON : 05.11.2015

CORAM

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.O.P.Nos.Nos.22572 and 22582 of 2015

and

M.P.Nos.1 and 2 of 2015

Samuel James Fredrick .. Petitioner in both Crl.OPs/
2nd Respondent /2nd Accused..

vs.

The Assistant Commissioner of Income Tax
Central Circle-II
Income Tax Department
Chennai - 34.

.. Respondent in both Crl.OPs./
Petitioner/Complainant

Criminal Original Petitions filed under Section 482 Cr.P.C.
praying to call for the records in Crl.M.P.Nos.1015 and 1016 of 2014
and the memo in E.O.C.C.Nos.181 and 182 of 1991 on the file of the
Additional Chief Metropolitan Magistrate [E.O.I], Egmore, Chennai and
set aside the common order dated 14th August 2014.

For Petitioner : Mr.Pari Ramaiah

For Respondent : Mr.K.Ramasamy
Spl.Public Prosecutor [Income Tax]

C O M M O N O R D E R

These petitions have been filed to call for the records in
Crl.M.P.Nos.1015 and 1016 of 2014 and the memo in E.O.C.C.Nos.181 and
182 of 1991 on the file of the Additional Chief Metropolitan
Magistrate [E.O.I], Egmore, Chennai and set aside the common order
dated 14th August 2014.

2. For the sake of convenience, the parties will be referred
to as the complainant and accused.

3. The Income Tax Department [complainant herein], launched
two prosecutions against the accused in E.O.C.C.No.181 of 1991 and
E.O.C.C.No.182 of 1991. The allegations in E.O.C.C.No.181 of 1991 is
that, for the assessment year 1983-84, for which the accounting year
ending is 30.06.1982, the accused filed false Income Tax Returns by
fabricating bogus accounts showing that they had incurred an expense
of Rs.59,88,893/- for Research and Development work and therefore,
they are liable to be punished for offences under Sections 120B r/w

193, 196, 420 r/w 511 IPC and 276 C(1), 277 and 278 B of the Income Tax Act, 1961. In E.O.C.C.No.182 of 1991, the allegation is that, for the assessment year 1984-85, for which the accounting year ending is 30.06.1983, the accused filed false Income Tax Returns by fabricating bogus accounts showing that they had incurred an expense of Rs.14,91,500/- for Research and Development work and therefore, they are liable to be punished for offences under Sections 120B r/w 193, 196, 420 r/w 511 IPC and 276 C(1), 277 and 278 B of the Income Tax Act, 1961.

4. The Court took cognizance of the offences in two private complaints and issued process. These complaints were filed before the learned Additional Chief Metropolitan Magistrate, E.O.1, Egmore, Chennai and after taking cognizance of the offences set out in the two complaints, the Court issued process to the accused for their appearance. Since it is a private complaint procedure, the accused appeared and were furnished with the copies of the complaints. It is seen that the accused filed Crl.M.P.No.23 of 1993 under Section 218 Cr.P.C. on 28.01.1993 for clubbing E.O.C.C.No.181 of 1991 and E.O.C.C.No.182 of 1991. Notice was ordered on the Special Public Prosecutor for Income Tax. The Special Public Prosecutor endorsed "No objection" in the petition. The learned Magistrate passed the following order:

"Notice given to Special Public Prosecutor.
No objection endorsed. Heard, in the interest of justice, permitted to club and to record evidence in EOCC No.181 of 1991 for EOCC 182 of 1991 also."

5. Based on the endorsement, the Department examined its witnesses and common evidence was recorded in both the cases. After recording of pre-charge framing evidence under Section 244 of the Code, charges were framed on 02.09.2006. Seven heads of charges for two counts each were framed against the accused on 02.09.2006 and the accused pleaded not guilty. Thereafter, post-charge evidence was recorded and the accused were questioned under Section 313 Cr.P.C.

6. The complainant filed Crl.M.P.No.1015 of 2014 in EOCC No.181 of 1991 and Crl.M.P.No.1016 of 2014 in EOCC No.182 of 1991 contending that, the two cases ought not to have been clubbed, as that would cause serious prejudice to the case of the complainant and therefore, the charges should be altered under Section 216 Cr.P.C. This was strongly resisted by the accused, but eventually the trial Court allowed the petitions by order dated 14.08.2014 challenging which the accused is before this Court.

7. Heard the learned counsel for the accused and the learned Special Public Prosecutor for the complainant.

8. It is contended by the learned counsel for the accused that, the prosecution was filed in the year 1991 and the first accused is a septuagenarian and that when the petition for clubbing was filed by the prosecution reporting no objection and after the entire evidence was over, the present petition to once again alter the charge should not be permitted, as that is a ruse to further prolong the trial.

9. In response to this contention, learned Special Public Prosecutor submitted that, the clubbing of two cases is impermissible and there is a possibility of the accused claiming prejudice on account of such clubbing and therefore, the complainant felt that the charges require to be altered. Learned Special Public Prosecutor relied upon the provisions of Section 212 Cr.P.C. in order to support his plea.

10. On the contrary, learned counsel for accused submitted that even before Magistrate, the accused have categorically stated that they will never raise the issue of prejudice in relation to the framing of charges and in any event, by virtue of Section 465 Cr.P.C., unless prejudice is shown to have been caused, an error in framing of charge can in no way vitiate the prosecution. In this regard, the learned counsel for accused brought to the notice of this Court the undertaking given by the accused, which finds place in the impugned order, which is as follows:

"Whereas the learned defence counsel files a memo stating that he has not having any objection for clubbing the cases and also would not raise or challenge the same in future."

There appears to be some force in the submission of the learned counsel for the accused. However, this Court is aware that, unlike civil cases, there cannot be clubbing of criminal cases, as there is no provision for that in the Code.

11. This Court carefully perused the charges that were framed by the trial Court on 02.09.2006 and found that the trial Court has actually not clubbed both the cases, but has put both the accusations in both the complaints under one heading. For example, I am extracting the second charge for better appreciation of the case.

"Secondly, that you A1, 2 & 4 along with the other accused (A3 & 5 dead) during the above period and during the course of same transaction for the purpose of using as genuine evidence in the Income-Tax Assessment proceedings of the first accused before the Income Tax Officer for the assessment year 1984-85 and 1983-84 and intentionally fabricated false books of account of the first accused containing false particulars of claim of Rs.59,88,893/- and Rs.14,91,500/- under Section 35 (1)(iv) towards the expenses incurred for Research and Development work respectively and thereby committed an offence punishable u/s 193 of IPC r/w 136 of the Income Tax Act, 1961 (2 counts)."

12. On a reading of the above, the Magistrate has clearly stated that the accused have made a false claim of Rs.59,88,893/- for the assessment year 1983-84 and a false claim of Rs.14,91,500/- has been made for the year 1984-85 and that is why the learned Magistrate has put two counts in brackets at the end of the charge. Had the Magistrate referred to the period as 1983-85 and the alleged

false claim had been shown as Rs.74,80,393 [Rs.59,88,893 + Rs.14,91,500 = Rs.74,80,393], then there is sufficient force in the learned Special public Prosecutor's argument that he has clubbed the charges, which is not legally correct. In the considered opinion of this Court, the Magistrate has not clubbed the charges, but had combined the accusations in respect of 1983-84 and 1984-85. The accused also has understood the allegations and has participated in the trial.

13. The prayer made by the complainant for alteration of charges under Section 216 Cr.P.C. appear to be misnomer. What the complainant now wants is, not alteration of charges, but separation of charges, which is not impermissible.

14. It was brought to the notice of this Court that, after the passing of the final order on 14.08.2014, the Magistrate has re-framed the charges and therefore, this Court called for the charges of the trial Court and carefully perused the same. What the Magistrate has now done is, he has separated the charges which were earlier combined under each head as two counts and has now made them distinct and separate. For example, the second charge which has been extracted above, at present reads thus:

"For EOCC No.181/1991:

Secondly, that you A1, A2 & A4 along with the other accused (A3 & A5 dead) during the above period and during the course of same transaction for the purpose of using as genuine evidence in the Income-Tax Assessment proceedings of the first accused before the Income Tax Officer for the assessment year 1983-84 and intentionally fabricated false books of account of the first accused containing false particulars of claim of Rs.59,88,893/- under Section 35(1)(iv) towards the expenses incurred for Research and Development work respectively and thereby committed an offence punishable u/s 193 of IPC r/w 136 of the Income Tax Act, 1961).

For EOCC No.182/1992:

"Secondly, that you A1, A2 & A4 along with the other accused (A3 & A5 dead) during the above period and during the course of same transaction for the purpose of using as genuine evidence in the Income-Tax Assessment proceedings of the first accused before the Income Tax Officer for the assessment year 1984-85 and intentionally fabricated false books of account of the first accused containing false particulars of claim of Rs.14,91,500/- under Section 35(1)(iv) towards the expenses incurred for Research and Development work respectively and thereby committed an offence punishable u/s 193 of IPC r/w 136 of the Income Tax Act, 1961."

15. The accused were questioned by the Magistrate separately in EOCC No.181/91 and EOCC No.182/91 on 11.12.2014 and their plea of "not guilty" has been recorded. Therefore, this Court does not find any infirmity in the charges framed by the trial Court on 11.12.2014.

In the result these petitions are devoid of merits and the same are dismissed. Consequently, connected miscellaneous petitions are closed.

-sd/-

ASSISTANT REGISTRAR

/ TRUE COPY /

Sub-Assistant Registrar

gms

To

1.The Assistant Commissioner of Income Tax
Central Circle-II
Income Tax Department
Chennai - 34.

2. Additional Chief Metropolitan Magistrate [E.O.I],
Egmore, Chennai .

3. MR.K.RAMASAMY, SPECIAL PUBLIC PROSECUTOR]INCOME TAX]
High Court,Madras.

+2 TO MR.PARIRAMAIASH, ADVOCATE SR.NO. 612567,61257

BVR[CO]

SD 14/12/2015

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Pre-delivery order in

Cr1.O.P.Nos.Nos.22572 and 22582 of 2015