IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.2445 of 2007.
Decided on:-28.11.2015.

M/s Bharat Medical Hall and another

.........Petitioners.

Versus

R.K. Tanwar and another

.........Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Keshav Pratap Singh, Advocate for
Mr. Karan Singh, Advocate
for the petitioners.

None for respondent No.1.

Mr. Manish Bansal, DAG, Haryana
for respondent No.2-State.

HARI PAL VERMA, J.

M/s Bharat Medical Hall and another have filed the present revision petition against the judgment dated 7.12.2007 passed by learned Additional Sessions Judge (Fast Track Court), Bhiwani whereby their appeal against the judgment of conviction dated 17.4.2002 and order of sentence dated 18.4.2002 passed by learned Chief Judicial Magistrate, Bhiwani, was dismissed.

Learned trial Court vide judgment of conviction dated

17.4.2002 and order of sentence dated 18.4.2002 convicted and sentenced both the petitioners, namely, M/s Bharat Medical Hall and its partner Madan Mohan Lal as under:

Petitioner No.1 (M/s Bharat Medical Hall)

Under Section 193 IPC	To pay a fine of Rs.500/-.
Under Section 196 IPC	To pay a fine of Rs.500/-.

Petitioner No.2 (Madan Mohan Lal)

Under Section 277 of the Income Tax Act, 1961.	Rigorous imprisonment for a period of six months.
Under Section 193 IPC.	Rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- and in default of payment of fine, to undergo simple imprisonment for one month.
Under Section 196 IPC.	Rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- and in default of payment of fine, to undergo simple imprisonment for one month.

However, all the substantive sentences were ordered to be run concurrently.

Briefly stated, a complaint under Section 277 and 278-B of the Income Tax Act, 1961 (hereinafter mentioned as 'the Income Tax Act') along with Sections 193 and 196 read with Section 34 IPC was filed by the complainant i.e. Income Tax Officer, Bhiwani. As per allegations, the petitioner No.2 and Laxmi Narain were the partner of petitioner No.1 firm having equal share in the profit and loss, submitted return of the income tax for the assessment year 1975-76 showing an income of Rs.33,570/- which was signed and verified by petitioner No.2. The said return was filed by petitioner No.2 on behalf of himself, the firm and the other partner of the firm on 12.7.1975. The petitioners submitted credit for an amount of Rs.7,000/-. However, neither in the credit nor in the debit entries, there was any narration of the person in whose account the money was deposited and to whom it was paid. The statement of petitioner No.2 was recorded by the Income Tax Officer on 1.10.1977 wherein he did not give any information with regard to the above entries and, rather, admitted that the books of account of the firm were written and maintained by him which showed that it was done by petitioner No.2 dishonestly. The Income Tax Officer also noticed that petitioner No.2-accused had introduced cash credits in the name of various persons as detailed in the complaint. The Income Tax Officer gave an opportunity to the accused to prove genuineness of these credits and further asked the accused to produce these persons before him. However, the assessee failed to produce any of them. The Income Tax Officer, therefore, called Atma Ram, Om Parkash and Charanjit Singh who supported the fact of advancing the amount, but their capacity to advance the money was found doubtful. Notices were also sent to other persons through registered post which include Jugal Kishore, Satpal, Bhagwant Rai and Gurditta Mal and it was reported that no person of those names was residing on the address given by the accused. Thus, the cash credits introduced by the accused were false and fabricated and, as such, an addition of Rs.28,100/- towards income of the accused was made.

Similarly, the accused had been dealing with M/s P.N. Aghi and Company, Rohtak and had shown payment of Rs.1,000/- on 3.8.1974, whereas the Rohtak firm had received the amount on 19.7.1974. The accused had no cash balance available with them. On the basis of the assessment of the accused firm, which was completed on 31.1.1978, total income of Rs.68,140/- instead of declared income of Rs.33,570/- was noticed. It was alleged that the accused made false verification in the statement of account in the income tax returns and thus, had committed the offence under Section 277 read with Section 278-B of the Income Tax Act. The accused had fabricated the books of account meant to be produced before the income tax authorities.

The learned trial Court vide judgment of conviction dated 17.4.2002 and order of sentence dated 18.4.2002 had convicted and sentenced both the petitioner-accused in the manner as mentioned above. The appeal filed by the petitioner against the judgment and order of the trial Court was dismissed by learned Additional Sessions Judge (Fast Track Court), Bhiwani vide judgment dated 7.12.2007. It is in these circumstances, the petitioners have filed the present revision petition.

Learned counsel for the petitioners has fairly confined his argument that the petitioner No.2 was convicted and sentenced for a period of six months and he would be satisfied if the sentence awarded to the petitioner No.2 is reduced to the period already undergone by him. He has also submitted that the petitioner No.2 is suffering the agony of trial since long i.e. the year 1982 when the complaint was filed. The petitioner No.2 is more than 75 years of age and there is no other case against him. The offence in the case was technical in nature.

Learned State counsel has filed the custody certificate of petitioner No.2 whereby it is duly established that the petitioner is about 77 years of age and as against the awarded sentence of six months, he has remained in custody for about 1¾ month. As per the custody certificate, fine has already been paid.

I have heard learned counsel for the parties.

The petitioner No.2 has been convicted for the offences punishable under Section 277 of the Income Tax Act as well as Sections 193 and 196 IPC and was sentenced for six months along with fine. In fact, the offence under Section 277 of the Income Tax Act is technical in nature. The petitioner No.2 may not be well equipped with the intricacies of the Income Tax Act. The facts reveal that he is not a very big businessman and at the most, it can be considered as an irregularity while submitting the income tax return. For the persons like the petitioner, who is running a small medical shop, it may not be feasible to maintain day to day record. Further more, as against the awarded sentence of six months, the petitioner No.2 remained in custody for about 1¾ month and is suffering the agony of trial since 1982 i.e. about 33 years. Therefore, I am of the considered view that the ends of justice would be met if the conviction of both the petitioners is maintained and sentence of imprisonment of the petitioner No.2 is reduced to the period already undergone by him.

Accordingly, the conviction of both the petitioners, as ordered by the trial Court and affirmed by the first appellate Court, is upheld. The sentence of fine awarded to the petitioner No.1 is also upheld. However, the sentence awarded to the petitioner No.2, namely, Madan Mohan Lal is reduced to the period already undergone by him.

With the aforesaid modification in the sentence awarded to the petitioner No.2, the instant revision petition stands dismissed.

(HARI PAL VERMA)
November 28, 2015 **JUDGE**
Yag Dutt