IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No. M-37047 of 2013
Date of Decision: 09.02.2015.

Nagesh Aggarwal ....Petitioner

Vs.

Deputy Director of Income Tax (Investigation) ......Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sanjeeva Gupta, Advocate for the petitioner.

Mr. Rajesh Sethi, Advocate for the respondent.

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SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of criminal complaint No. 139 dated 31.3.2000 (Annexure P-1) and orders dated 14.12.2011 (Annexure P-2) and 13.9.2013 (Annexure P-3) and all the subsequent proceedings arising therefrom.

Case of the complainant, as per the complaint (Annexure P-1), in brief, is that on 24.6.1999, the residential and business premises of the petitioners, were searched. Petitioner was legally bound to make a statement on oath but he intentionally made a false statement with regard to disclosure of lockers. Petitioner intentionally withheld the information regarding locker No. 8 in Bank of Baroda, Pakhowal Road Branch, Ludhiana in his name. Petitioner submitted an application dated 25.6.1999 to the Manager of the bank disclosing that he had lost the key of the locker which had been recovered from his briefcase during the course of search at business premises of M/s Neeraj Aggarwal and Company from room No. 331 at Ludhiana Stock Exchange, Ludhiana. In order to evade tax, petitioner had fraudulently removed the contents of locker No. 8. Petitioner was issued a show cause notice on 6.1.2000 to explain his position with regard to making a false statement and making an attempt to willfully evade tax.

Learned counsel for the petitioner has submitted that petitioner had opted for settlement. Income of the petitioner was settled at ₹ 3,80,000/- including ₹ 25,000/- offered before the Assessing Officer. The Settlement Commission, however, declined to grant immunity to the petitioner from penalty and prosecution vide order dated 22.1.2008. The Income Tax Tribunal vide order dated 22.3.2011 (Annexure P-4) cancelled the penalty levied by the Assessing Officer and confirmed by the Commissioner Income Tax (Appeals). Hence, the criminal proceedings qua the same proceedings, were liable to be quashed. In support of his arguments, learned counsel for the petitioner has placed reliance on '***K.C.Builders and another versus Assistant Commissioner of Income-tax, Income Tax Reporters (Vol. 265) 562.*** The Apex Court has held as under:-

> *"In our view, once the finding of concealment and subsequent levy of penalties under section 27(1)(c) of the Act has been struck down by the Tribunal, the Assessing Officer has no other alternative except to correct his order under section 154 of the Act as per*

the directions of the Tribunal. As already notices, the subject matter of the complaint before this court is concealment of income arrived at on the basis of the finding of the Assissing Officer. If the Tribunal has set aside the order of concealment and penalties, there is no concealment in the eyes of law and, therefore, the prosecution cannot be proceeded with by the complaint and further proceedings will be illegal and without jurisdiction. The Assistant Commissioner of Income-tax cannot proceed with the prosecution even after the order of concealment has been set aside by the Tribunal. When the Tribunal has set aside the levy of penalty, the criminal proceedings against the appellants cannot survive for further consideration. In our view, the High Court has taken the view that the charges have been framed and the matter is in the stage of further cross-examination and, therefore, the prosecution may proceed with the trial. In our opinion, the view taken by the learned magistrate and the High Court is fallacious. In our view, if the trial is allowed to proceed further after the order of the Tribunal and the consequent cancellation of penalty, it will be an idle and empty formality to require the appellants to have the order of the Tribunal exhibited as a defence document inasmuch as the passing of the order as aforementioned is unsustainable and unquestionable."

Learned counsel has also placed reliance on '**Gupta Constructions Co. and others *versus Income-Tax Officer and others, 2003 (Vol. 260) Income Tax Reports 415 (P&H)***, *wherein* it was held as under:-

> *"In view of the judgment of the Supreme Court, mentioned above, wherein, it has been held that if the penalty proceedings have been set aside in the deparmental proceedings then the very basis of launching of the prosecution against the assessee stands knocked down. In such facts, the Supreme Court had quashed the proceedings initiated under the Income-tax Act against the assessee. In view of the said judgment, I find that the prosecution against the petitioner is an abuse of the process of law. The very basis of penalty has been struck down by the authorities under the Act."*

Learned counsel for the respondent, on the other hand, has opposed the petition and has submitted that petitioner had made a false statement during the search and seizure operation. Hence, criminal proceedings against the petitioner are liable to continue.

In the case of **State of Haryana** vs. **Bhajan Lal,, 1992 Supp(1) Supreme Court Cases 335**, the Apex Court has held as under:-

> "The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. Can be exercised by the High

Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently chennelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

(1) Where the allegations made in the first information report or the complainant/respondent No.2, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1)of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do no disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is

permitted by a Police Officer without an order of Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted)to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or

> otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

The facts in the present case are not in dispute. Admittedly, the residential and business premises of the petitioner were searched on 24.6.1999. Thereafter, notice was also issued to the petitioner on 6.1.2000 to explain his position with regard to making a false statement and for making an attempt to evade tax etc. Petitioner filed his reply to the show cause notice. However, the reply submitted by the petitioner was found to be unsatisfactory. During the pendency of the assessment proceedings before the Assessment Officer, petitioner filed an application for settlement before the Income Tax Settlement Commission and offered undisclosed income of ₹ 3,55,000/- for settlement in addition to undisclosed income of ₹ 25,000/- offered in the block return filed before the Assessing Officer. Application moved by the petitioner was accepted and the income of the petitioner was settled at ₹ 3,80,000/- including ₹ 25,000/- offered before the Assessing Officer vide order dated 20.1.2008. However, by passing the order dated 22.1.2008, Income Tax Settlement Commission declined to grant immunity to the petitioner from penalty and prosecution. The said order was upheld in an appeal by the Commissioner, Income Tax (Appeals). Petitioner approached the Income Tax Appellate Tribunal. Vide order dated 22.3.2011 (Annexure P-4), the penalty levied by the Assessing Officer and confirmed by the Commissioner, Income Tax (Appeals), was set aside and it was observed as under:-

> *"In the present case, the assessee has returned undisclosed income of Rs. 25,000/-. He realized that the income returned by him was on lower side. He therefore, approached the Settlement Commission for settlement and in that process offered additional sum of Rs. 3,55,000/- for settlement which was also accepted by the Settlement Commission. The case of the assessee is squarely covered by the judgment dated 12.11.2008 rendered by the Hon'ble Delhi High Court in CIT Vs. Harkaran Das v. Ved Pal, ITA No. 1005/2007 (supra), cited by the ld. Counsel for the assessee. On the facts of the case as they exist on record, we are also satisfied that this is a case where the assessee has acted bona-fide and has concealed nothing, which evident from the fact that the Settlement Commission has also accepted the income offered by the assessee for settlement. In this view of the matter, we cancel the penalty levied by the Assessing Officer and confirmed by the CIR (A)."*

Admittedly, Annexure P-4 has gained finality. Since in the assessment proceedings, the penalty levied against the petitioner, has been set aside by the Income Tax Appellate Tribunal, continuation of criminal proceedings against the petitioner in relation to the same proceedings, would be nothing but an abuse of process of law.

Accordingly, this petition is allowed. Criminal complaint No. 139 dated 31.3.2000 (Annexure P-1) and orders dated 14.12.2011 (Annexure P-2) and 13.9.2013 (Annexure P-3) and all the consequential proceedings, arising therefrom, are quashed.

(SABINA)
JUDGE

February 09, 2015
Gurpreet