IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRM-M-1893-2009

S.K. Bajaj

.....Petitioner

Versus

Income Tax Officer-III (2)

.....Respondent

2. CRR-3419-2010 (O&M)

S.K. Bajaj

.....Petitioner

Versus

Income Tax Officer-III (2)

.....Respondent

3. CRM-M-5013-2012 (O&M)

Yashpal Khanna

.....Petitioner

Versus

State of Punjab and another

.....Respondent

4. CRM-M-21521-2013 (O&M)

Anil Bhasin

.....Petitioner

Versus

Income Tax Officer-III (2)

.....Respondent

5. CRM-M-13105-2012 (O&M)

Income Tax Officer-III (2)

.....Petitioner

Versus

Yash Pal Khanna and others

.....Respondents

Date of Decision : 29.01.2016

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. **Whether reporters of local newspaper may be allowed to see judgment?**
2. **To be referred to reporters or not?**
3. **Whether the judgment should be reported in the digest?**

Present: Mr. Rohit Sood, Advocate
for the petitioner (in CRM-M-1893-2009,
CRR-3419-2010, CRM-M-5013-2012 and
CRM-M-21521-2013) and
for the respondents (in CRM-M-13105-2012)
Mr. C.S. Brar, Deputy Advocate General, Punjab
for respondent No.1 (in CRM-M-5013-2012).

Mr. Rajesh Katoch, Advocate
for the respondent. (in CRM-M-1893-2009,
CRR-3419-2010 and CRM-M-21521-2013),
for respondent No.2 (in CRM-M-5013-2012) and
for the petitioner (in CRM-M-13105-2012)

FATEH DEEP SINGH, J.

The four petitions detailed above having been filed under Section 482 Cr.P.C. and one criminal revision though pertain to different Criminal Complaints preferred by the Income Tax Officer against different accused/respondents but having regard to the common facts and that similar questions of law are involved and therefore are being disposed off together for the prevention of prolixity.

Petitions bearing Nos.CRM-M-1893-2009, CRR-3419-2010, CRM-M-5013-2012, CRM-M-21521-2013 except CRM-M-13105-2012 are by the private individuals who happens to be accused in criminal complaints preferred by the Income Tax Officer under Sections 277 and 278 of the Income Tax Act, 1961 and Sections 193, 196, 197, 199, 200, 465, 467 and 471 read with Section 120-B of the IPC wherein vide summoning orders dated 24.03.2006 passed by the Court of learned Chief Judicial Magistrate, Jalandhar these petitioners/accused have been summoned to face trial under these provisions of law as well as challenge has been made to orders dated 23.12.2011 declining stay on the application of the present petitioners the then accused.

The allegations of the complainant are precisely that the petitioners/accused are carrying on business of sale and purchase of cloth and had filed Income Tax Returns declaring the net income and, thereafter, the Assessing Officer proceeded against them in terms of Section 143 (1) of the Income Tax Act, 1961 and the case was selected for scrutiny and the assessment was framed in terms of Section 143 (3) of the Income Tax Act, 1961 which was subsequently cancelled by the Commissioner of Income Tax vide his orders passed under Section 263 of the Income Tax Act, 1961 with the direction for framing assessment *de novo*. The Competent Authority *de novo* assessed and framed the income under Section 143 of the Income Tax Act, 1961 and, thus, a demand was raised. It is during the course of events, the accused Yashpal Khanna claimed to have received gifts aggregating Rs.9,00,000/- from one Gurdev Singh and his son Nishan Singh by way of two demand drafts each amounting to Rs.4,50,000/- regarding which the assessee had filed affidavit dated 09.01.2001 and which assessment was set aside by the Commissioner of Income Tax by exercise of his powers under Section 263 of the Income Tax Act, 1961.

During the reassessment proceedings, on asking of the Authorities, the accused furnished fresh affidavit dated

18.02.2005 and a gift deed dated 19.02.2005 and after necessary formalities, the alleged donor-Gurdev Singh denied having made any such gift to the assessee or ever having signed the alleged affidavits dated 09.01.2002, 18.02.2005 as well as the gift deed in question as a witness and even denied the documents by way of photographs of marriage of the son of Gurdev Singh namely Nishan Singh and it is during the proceedings Gurdev Singh above said made a statement before the Authority on 12.01.2006 which belied the stand of the assessee and therefore, the Authorities discovered that the affidavits and the gift deed so relied upon by the assessee were forged and fabricated documents so as to mislead the Income Tax Authorities which led to the filing of the complaints in question.

In the Criminal petition *CRM-M-13105-2012* the Income Tax Officer/complainant in the complaints has challenged the observations dated 27.10.2010 passed by the learned Chief Judicial Magistrate, Jalandhar during the cross-examination of CW5- Abhimanyu Kumar (Annexure P6) whereby the opportunity of cross-examination of this witness by one of the accused was deferred after lunch.

Heard Sh. Rohit Sood, Advocate for the petitioners, Mr. C.S. Brar, Deputy Advocate General, Punjab for the State and Mr. Rajesh Katoch, Advocate for the Income Tax Department and perused the records of the case. Admittedly, the petitioners/assessee who were accused did not invoke the jurisdiction of the learned Magistrate for their discharge in terms of Section 245 Cr.P.C. Since they all have challenged the summoning orders summoning them as accused and which were amenable to revision and which arguments could not be displaced by the counsel for the petitioners and the respondents and who choose not to file any revision and therefore, in view of the law laid down in "**Mohit @ Sonu and another Vs. State of U.P. and others, 2013 (3) RCR Crl.673**", when there is a statutory provision provided under the Statute, then it is undesirable to have recourse to the proceedings under Section 482 Cr.P.C. for the exercise of inherent powers of this Court. Moreso, it has been well laid down in the case of "**State of Haryana and others Vs. Ch. Bhajan Lal and others, 1992 AIR (SC) 604**", that provisions of Section 482 Cr.P.C. is something of a rarity to be exercised very sparingly in the rarest of the rare cases where the ends of justice so demand and none of these eventualities could be satisfactorily spelled out by the counsel representing the accused/petitioners, thus, the question of maintainability of petitions bearing Nos.CRM-M-1893-2009, CRR-3419-2010, CRM-M-5013-2012, CRM-M-21521-2013 is not there.

The moot point that has further crystallized out of the arguments addressed by the two sides is over the very legality of continuation of the prosecution proceedings in view of "**Commissioner of Income Tax Vs. Bhupen Champaklal Dalal & Anr. (2001) 167 CTR (SC) 283**", to hammer home the point that the very ultimate result of the proceedings before the Appellate Authorities have definite bearing on the cases so opened by the Income Tax Authorities alleged to be against the accused and that it would not be in the interest of justice to prosecute them till this very factum of assessment has attained finality. It has been rightly contended on behalf of the respondent/complainant that the facts in the cited ratios are at much disparity from the case before this Court as the said complaints in the cited ratios are purely arising under the Income Tax Act, 1961 which is not so in the present case where there are definite allegations made by the complainant of fraud and deception by forging and fabricating documents and filing them before the authorities to take undue pecuniary advantage by the accused. Even in "**Commissioner of Income Tax, Mumbai Vs. Bhupen Champak Lal Dalal 2001 AIR (SC) 1096",** their Lordships of Hon'ble Apex Court were of the view that the prosecution in a criminal law and proceedings arising under the Act are undoubtedly independent proceedings and therefore there is no impediment in law for the criminal proceedings to proceed even during the pendency of the proceedings under the Act. In the present case and even in "**Bhupen Champaklal Dalal vs. Sandeep Kapoor and another**, **(2001) 167 CTR (Bom) 281**", it was held by their Lordships of the High Court of Bombay that where an assessee is being prosecuted in terms of Section 276 (C), 277 and 278 (B) of the Income Tax Act, 1961 even if the appeals are dismissed the criminal prosecutions are to proceed. Certainly, the accused in this case are under the expectancy of a favourable finding of the assessment/reassessment proceedings pending before the Appellate Authority. However, the present prosecution by the complainant is not only under the Income Tax Act, 1961 but also under the relevant provisions of the Indian Penal Code, a quite distinct offence which has not much relevance with the findings of the Appellate Authority under the Income Tax Act, 1961. The Hon'ble Apex court had considered at length such a position in "**P. Jayappan Vs. S.K. Perumal, First Income-tax Officer, Tuticorin, 1984 AIR (SC) 1693**", where their Lordships were of the view that pendency of reassessment proceedings cannot act as a bar to the institution of criminal prosecution even for offences punishable under the Income Tax Act, 1961 and in the cases before this Court, it is the institution of criminal proceedings even under the IPC, which are under consideration and have upheld earlier judgment of this Court in "**Telu Ram Raunqi Ram vs. Income-tax Officer, 'A' Ward, Hoshiarpur, (1984) 145 ITR 111**", where it was addressed by their Lordships that a criminal Court has to adjudge the case independently on evidence placed before it, else there is a danger of contention to thwart such proceedings. In the *prima facie* allegations in the case before this Court, there are serious allegations of not only of making of false assessment statement to this effect but also trying to mislead the Income Tax Authorities by filing false, forged and fabricated documents and which criminal act by the assessee is quite independent of what is sought to be prosecuted under the Income Tax Act, 1961 by the Income Tax Appellate Authority. Thus, it would be highly preposterous to withhold the proceedings which have already been initiated before the trial Court.

Thus, in the totality of what has been detailed and discussed above, there is no merit in the petition Nos. CRM-M-1893-2009, CRR-3419-2010, CRM-M-5013-2012, CRM-M-21521-2013 which as such are hereby dismissed.

Mr. Rajesh Katoch, counsel for the complainant/petitioner in CRM-M-13105-2012 has fairly conceded that the very order under challenge has been passed by the learned trial Court purely with a view to afford an opportunity of cross-examination by the accused side and has only deferred part of the cross-examination for a particular accused to cross-examine CW5 post lunch and which orders (Annexure P6) to the mind of this Court is purely an interim order neither causing any prejudice to the extent of the petitioner much less the rights of the parties in any manner. Even the learned counsel for the petitioner could not convince this Court how it would in any manner affect the evidence which is there before the Court and is already on the file or which is to come subsequent thereto after the examination of this witness. To the mind of this Court, it is purely a misuse of the process of the Court by the complainant and does not merits any indulgence by this Court. Finding this petition bearing CRM-

M No.13105-2012 be wholly without merit, the same stands declined and dismissed.

Keeping in view the inordinate delay that has already been occasioned, necessary directions are issued to the learned trial Court to speedily dispose off these matters by affording short adjournments not more than 10 days at one stretch.

(FATEH DEEP SINGH)
JUDGE

January 29, 2016
Dpr