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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-280-SBA of 2006
Date of decision: September 29, 2017

Inspecting Assistant Commissioner of Income Tax
(Asstt.) Patiala

......Appellant

Versus

Bhagwan Dass

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: None.

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A.B. CHAUDHARI, J (Oral)

The present appeal was filed by the Inspecting Assistant Commissioner of Income Tax-appellant against the judgment dated 02.02.1999 passed by the additional Sessions Judge, Patiala, by which the lower Appellate Court accepted the appeal preferred by the respondent and acquitted him of the charge under Section 276-CC of the Income Tax Act, 1995 (for short ' Income Tax Act').

None appeared on behalf of the appellant.

I have perused the entire record including the judgment and order recorded by the learned trial Court. Respondent was prosecuted by the appellant-Department for not filing returns in proper time and rather for violation of the provisions of Income Tax Act.

It was the case of the respondent-accused that as a matter of fact, he had been penalized by the Income Tax Department by recovery of interest on the tax due and accordingly, he had paid

₹21,178/- plus ₹3,816/- plus ₹4,964/- as interest on the income tax and thus, it was all recovered. It was the case of the respondent-accused that there was no willful default proved by the Department and as such, he could not be convicted. He was however, convicted by the trial Court and sentenced to undergo Rigorous Imprisonment for 3 years so also the fine imposed. The lower Appellate Court acquitted him. Hence, this appeal.

I have perused the reasons recorded by the learned lower Appellate Court. The learned lower Appellate Court found that the trial Court had income put the burden of proof on the accused and that the trial Court forgot the fact that *mens rea* was *sine qua non* even for the offences under the Income Tax Act. The trial Court ought to have drawn adverse inference against Income Tax Department rather than the respondent. The learned lower Appellate Court has recorded the reasons in Para 12 of its judgment. Instead of repeating the same, I quote the same as under:-

> *"........for the purpose of launching the proceedings for the recovery of penalty under section 271(1) of the Act prior to the year 1986, the Income-tax Officer was required to satisfy that any person had without reasonable cause failed to furnish the return of total income but in the case of launching the prosecution under section 276CC of the Act, it is necessary for the Income-tax Department to allege and prove that there was willful default on the part of the defaulter in the matter of filing the Income-Tax return. Thus, it was for the complainant to establish that fault of the accused/appellant was willful in the matter of*

not filing the return within the prescribed time limit as provided under section 139(1) of the Act. Interestingly complainant D.S. Sidhu, who was authorised to launch the prosecution against the accused by the commissioner, did not appear as a witness without any just and reasonable excuse. The authorisation order passed by Sh. S.C. Prashar, Income-Tax commissioner, Patiala in this case is dated 28.03.1985 (Ex.PD). The name of Joginder Singh Inspector who appeared as PW1 does not find mention anywhere in the complaint. In his cross-examination he categorically admitted that there was no written authorisation by the Commissioner of by A.A.C. Sh. D.S. Sidhu. He further stated that he has no personal knowledge about the filing of the present return not it was filed in his presence. He further stated that he was not posted in the same office but he had been auditing the files of Sh. B.P. Sharma, I.T.O. when he used to visit Sangrur in order to audit. Joginder Singh no where tried to explain that fault of Bhagwan Dass in not filing the Income-tax return was willful."

Upon perusal of the above reasons, I am inclined to agree with the above reasons recorded by the lower Appellate Court that the burden of proof was on Income Tax Department who was the prosecuting agency and it could not be thrown on respondent-accused. Similarly, the prosecution did not examine any concerned persons to prove the authorisation as well as any record to show that return would not infact have been filed between stipulated time. That apart, the element of *mens rea* is *sine qua non* for conviction of a person. For that purpose, the lower Appellate Court relied upon several decisions of the High Court and Supreme Court which have been quoted so by the learned lower Appellate Court right after Para 9 in its judgment.

In my view, therefore, the learned lower Appellate Court was right in applying the first principle of criminal law regarding burden of proof resting on the Income Tax Department who was requested to prove its own case. The findings of facts recorded by learned lower Appellate Court are based on evidence. No second view is possible.

Dismissed.

(A.B. CHAUDHARI)
JUDGE

September 29, 2017
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No