

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-A-452-MA-2011

Date of decision :08.08.2017

Assistant Director of Income Tax (Inv.) Hissar

..... Applicant

Versus

Dr. Kaushal Goyal

..... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. Rajesh Sethi, Senior Standing Counsel,
for the applicant.

Mr. N.S. Shekhawat, Advocate
for the respondent.

H.S. MADAAN, J.

Assistant Director Income Tax (Inv.) Hissar had filed a complaint under Section 181 of Indian Penal Code (for short – IPC) against accused Dr. Kaushal Goyal son of Sh. Jai Narain Goyal, resident of Model Town, Rewari in the Court of Additional Chief Judicial Magistrate, Rewari on the allegations that Income Tax Department had conducted search and seizure operation in the premises of accused on 24.08.2006 and during the verification so conducted by the department, the accused had made statement having glaring contradiction with regard to existence of locker No.152 with State Bank of Indore, Rewari held in the joint name of the accused and his wife. The accused had made a statement on oath denying knowledge of existence of any such locker which was proved to be a false

statement purposely made before a Public Servant since this locker was actually found to be there in the name of the accused and his wife. After the complaint was filed, the accused was summoned by the Court and he put in appearance.

During evidence of complainant four witnesses were examined and thereafter chargesheet was served upon accused for commission of offence under section 181 IPC.

To prove its case, the complainant had examined four witnesses as per details below:-

PW-1 Sh. R.P. Dhanda posted as Deputy Commissioner, Income Tax Department, Sirsa appeared and deposed that accused was duty bound to disclose bank account number, lockers etc. but he made statement on oath deliberately withholding information which he was bound to disclose to a public servant and he had given false statement that he did not possess any locker in any bank in his own name or in the name of his wife.

PW-2 Sh. Satish Chander, Income Tax Officer stated that he had recorded statement of accused under the instructions of Sh. R.P. Dhanda, Additional Deputy Director of Income Tax, Hissar. The statement was recorded over a period of 4 to 5 hours.

PW-3 Ms.Harbans Kaur, Income Tax Inspector proved the sanctioned order by Director of Income Tax, Chandigarh for the purpose of launching prosecution against accused Dr. Kaushal Goyal stating that necessary approval for launch of prosecution was obtained from Director of Prosecution, Chandigarh.

PW-4 Mahesh Kumar Deputy Manager, State Bank of India

stated that Dr. Kaushal Goyal (accused) was having locker in State Bank of Indore, which was operated on 13.04.2006.

With that, the evidence of complainant was closed.

Statement of accused was recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against him submitted that he was innocent and had been falsely involved in the case.

After hearing arguments learned Additional Chief Judicial Magistrate, Rewari dismissed the complaint.

Feeling aggrieved, the complainant has approached this Court moving an application under Section 378(4) of Code of Criminal Procedure seeking grant of Special Leave to appeal from order of acquittal dated 01.11.2010 passed by learned Additional Chief Judicial Magistrate, Rewari in complaint No.40 titled as Deputy Director of Income Tax (Inv.) Hissar vs. Dr. Kaushal Goyal.

On notice, the respondent put in appearance through counsel.

I have heard learned counsel for the parties and have gone through the record.

I conclude that no ground is made out to grant special leave to appeal. The judgment passed by the trial Court is well reasoned one and does not suffer from any illegality or infirmity. It comes out to be a result of due application of mind and there is no defect apparent on the face of it. The trial Court came to the conclusion that:

1. No offence against the accused stood proved since provisions of Oath Act, 1969 have not been complied with

inasmuch statement of accused was recorded in parts after taking breaks and oath was not administered to him by Deputy Director of Income Tax regarding his statement after every break.

2. The sanction to prosecute the accused as required under Section 181 IPC has not been properly proved.

3. It has been established on record that accused was hypertensive and undergoing regular treatment at the time of search and seizure and he could be perplexed at that time in view of his medical condition and as admitted by PW1 in his cross-examination that accused was in nervous state of mind while making statement, as such it cannot be said that it was a deliberate case of falsehood on a matter of substance.

4. There was no *mens rea* on the part of the accused to commit an offence.

5. There is no material on record to show that due application of mind on the part of complainant to conclude that it was in the interest of justice to file a complaint.

Furthermore, it has been contended on behalf of the accused and not refuted by counsel for the complainant that Income Tax Appellate Tribunal vide order dated 16.1.2013 has come to the conclusion that addition of ₹15.5 lacs was not sustainable in the hands of the assessee and he has explained the sources. Accordingly, the appeal of assessee (Dr.Kaushal Goyal) was allowed and addition was deleted. Thus it comes out that it was not a case of concealment of income.

Learned counsel for the respondent has referred to citation *M/s Shastri Sales Corporation and others Versus Income Tax Officer, Ward No.3(3), 1996 Cr.Law Journal 449* by Nagpur Bench of Hon'ble High Court of Bombay wherein penalty proceedings had been initiated under provisions of Income Tax Act, however, the criminal complaint was filed on same facts during pendency of such proceedings. The penalty order was quashed by final authority. It was held that continuation of criminal proceedings thereafter were not permissible and accused was entitled to discharge.

Learned counsel for the respondent has further pressed into service authority *Mahendra Pratap Singh Versus State of Uttar Pradesh, 2009(11) SCC 334* by Hon'ble Apex Court wherein it was held that when the trial Court had acquitted the accused and appeal was filed against that order, in that eventuality unless the conclusion of the trial Court drawn on the evidence on record is found to be unreasonable and perverse or unsustainable, the High Court should not interfere with the order of acquittal.

On the other hand, learned counsel for the applicant has also referred to various citations as under:

1. *T.S. Baliah Versus T.S. Rangachari, Income Tax Officer, 72 ITR 787.*
2. *Hazari Lal Versus Emperor, 5 ITR 610.*
3. *P.D. Patel Versus Emperor, 1 IRT 363.*
4. *State of Maharashtra Versus Sujay Mangesh Poyarekar, 2008(4) R.C.R.(Criminal) 555.*
5. *Kishan Singh (D) through LRs. Versus Gurpal*

Singh and others, 2010 Crl.Law Journal 4710.

6. *Syed Askari Hadi Ali Augustine Imam and another
Versus State (Delhi Admn.) and another, 2009 AIR (SC)
3232.*

But those are not helpful to the applicant due to different facts and circumstances and the context in which such observations have been made.

Thus no ground is made out to grant special leave to appeal in this case. The application is, therefore dismissed accordingly.

08.08.2017

Gaurav Sorot /Brij

**(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No /Yes**

2. Whether speaking / reasoned? **No / Yes**