

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Pronounced on: November 24th, 2020*

+ W.P.(CRL) 3486/2018 & CrI.M.A. 47373/2018

PARAMINDER SINGH KALRA Petitioner

Through: Mr. R.K. Hando, Mr. Aditya
Chaudhary & Mr. Yoginder
Handoo, Advocates

Versus

THE COMMISSIONER, INCOME TAX ... Respondent

Through: Mr. Vibhooti Malhotra &
Mr. Shailendera Singh,
Advocates

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J.

1. The petitioner is said to be the Director/EEO of one M/S Consortium Securities Pvt. Ltd. On 28th July, 2011 the respondent/ department conducted a search on the premises of petitioner on the allegation that an information was received from the Government of France that petitioner is having an account in HSBC Bank, Zurich,

Switzerland with the *mala fide* intention to evade tax and to hide money transactions.

2. The respondent/department preferred a criminal complaint being CC No.511538/16 (Old CC No.131/2014), under Section 276-D of the Income Tax Act on 28th February, 2015 against the petitioner. The respondent/ department also preferred two separate criminal complaints under Section 276-C (1) and Section 277 of the Income Tax Act being CC No. 528982/16 (Old CC No.157/4) and CC No.528983/16 (Old CC No.158/4) on 12th January, 2016. In this petition, the stand of the petitioner is that the respondent/department has preferred these complaints on the very same material, evidence, witnesses and documents and the allegation in all the three complaints are to a large extent word to word same.

3. The petitioner is facing three separate trials in all the three complaints before the same Magistrate for allegedly not declaring the fact of having a foreign account to the Income Tax authorities, though the material and evidence relied upon by the respondent/department is similar in all the three complaints. Petitioner stated that he had filed an application before the learned Magistrate for clubbing of the three

complaints and joint trial, which was rejected by the learned Magistrate on 30th June, 2018 while observing as under:-

“7. Keeping foreign funds for number of years might be part of same transaction but not declaring the same in the Income Tax file for each specific year under prosecution is a distinct offence. Each instance of filing of income tax return without disclosing foreign funds is a separate and different act and same cannot held in part of same transaction.

8. In the present case I am of the opinion that the test of each offences being part of same transaction fails. As in the present case the accusations are for evasion of income tax for the different assessment years or for false statement given on oath before the income tax authorities.

9. Accordingly, in my humble opinion, no prejudice would be caused to the accused if he is tried in the separate complaints.”

4. Vide this petition, petitioner is seeking quashing of the aforesaid order of 30th June, 2018 passed by the learned Magistrate on the ground that petitioner cannot be subjected to several criminal prosecutions for the same offence on the basis of same material, evidence and list of witnesses under the same enactment merely on the basis that the financial years of the complaints are different. It is submitted on behalf of the petitioner that the filing of three different complaints by the respondent/Department is abuse of process of law

and is in contravention of Article 20(2) of the Constitution of India, Section 71 of IPC, Section 300 of Cr.P.C and Section 26 of General Clauses Act.

5. It is averred on behalf of the petitioner that first the existence of the alleged foreign account for funding of amount from India has to be proved and only thereafter the other two complaints, which are based on mere assumption of petitioner having a foreign account funded from India, have to follow. It is stated that such an assumption has to be dealt with in one complaint instead of all the three complaints and in case the respondent/department fails to prove that the petitioner has suppressed holding of a foreign account or the income, the subsequent complaints shall cease to exist, for which petitioner has been forced to undergo trial.

6. It is urged on behalf of the petitioner that the learned trial court in para-7 of the impugned order dated 30th June, 2018 has returned the finding that each instance of filing of income tax return without disclosing foreign funds is a separate and different act and same cannot form part of same transaction, which is an erroneous conclusion inasmuch as that in the very same paragraph the learned trial court has

concluded that keeping of foreign funds for number of years is part of the same transaction. It is stated that filing of income tax returns for each financial year cannot give rise to a separate cause of action for filing prosecution for each financial year, particularly when the core allegation is of keeping a foreign account, which the court itself concluded to be part of the same transaction.

7. It was submitted on behalf of the petitioner that the respondent has not been able to distinguish between 'assessment proceedings' and the 'prosecution proceedings'. The assessment proceedings are conducted by an Assessment Officer as designated under the Income Tax Act while an "offence" is triable by a Court of Law. Assessment proceedings conducted by competent authority known as Assessment Officer as defined u/s 2(7A) is an assessment for the purposes of calculating/assessing any tax or any other sum of money payable under the Income Tax Act, be it interest or penalty. "Tax" is defined u/s 2(43) of Income tax Act to mean as income tax chargeable in any Assessment Year and subsequent years under the provisions of Income Tax Act, which may be of one year or spread over to several years. Such "tax" does not include "interest" or "penalty". Interest is defined

under section 2(28A) of Income Tax. There can be prosecution only for payable interest or penalty or tax, as stipulated u/s 276C of Income Tax Act. Assessment proceedings are dealt under separate chapters of Income Tax Act whereas penalties imposable are dealt under Chapter XXI of Income Tax Act from sections 270 to 275 of the said Act. Learned counsel for the petitioner, therefore, submitted that importing the concept of "Assessment Year" into the definitions of "offences" triable by Special Courts is reading something in the definition which does not exist and which is contrary to constitutional safeguards and criminal jurisprudence.

8. It was submitted on behalf of the petitioner that it is laid down in law that if different cases are filed on same cause of action, 'Doctrine of Issue Estoppel' prevents second prosecution on the same sets of facts for which a person could be prosecuted. The petitioner relied upon decision of Hon'ble Apex Court in State of 'Andhra Pradesh vs. Cheemalapati Ganeswara Rao & Anr., 1964 (3) SCR 297' and a decision dated 9th February, 2016 of a Coordinate Bench Of this Court in 'Chandni Srivastava Vs. CBI & Ors.' to submit that allowing of several complaints on same cause of action would lead to re-

appreciation of evidence several times on one issue of fact which is against the principle of "Doctrine of Issue Estoppel". Hence, dismissal of impugned order of 30th June, 2018 passed by the learned trial court is sought and it is prayed that a common trial in all the three complaints be conducted.

9. On the other hand, respondent /department has alleged that during search proceedings on 28th July, 2011, the petitioner in his statement had admitted of having an undeclared account in HSBC Bank, Zurich, Switzerland and disclosed the entire *modus operandi* of opening the account with the help of an introducer, one Charlie with the *mala fide* intention to evade tax. It is the stand of respondent that during the financial year 2006-07, notices dated 9th May, 2013 and 15th July, 2013, under Sections 142(1) of the Income Tax Act, 1961 (*henceforth referred to as the "Act"*) were issued to the petitioner to furnish the details of the foreign accounts held by him. In addition, he was also asked to provide consent letter to procure details from HSBC bank, Zurich, Switzerland. Since the petitioner failed to respond to the aforesaid, notice under Section 274 r/w Section 271 of the Act was issued for non compliance of Section 142(1) of the Act, which is

punishable with rigorous imprisonment for a term upto one year under section 276D of the Act. It is alleged that the petitioner did not disclose the foreign bank account in return of income and balance appearing in the said foreign account was also not taken into account in his balance sheet and thus, the petitioner made a "willful attempt to evade income tax" thereby committed substantive offence under section 276C(1) of the Act for which the he is liable to be prosecuted u/s 276C(1) of the Income Tax Act for both the assessment years i.e. A.Y. 2006-07 and A.Y. 2007-08. Besides, the petitioner is also alleged to have committed the offence under Section 277 of I.T. Act for making a false statement/ false verification in the respective returns of income for both the assessment years 2006-07 and 2007-08. Resultantly, criminal complaint C.C. No. 511538/16, under Section 276D of the Act for the assessment year 2006-07 was preferred by the respondent/department against the petitioner. In addition, two separate criminal complaints C.C. Nos. 528983/16 and 528982/16 for the assessment years 2006-07 and 2007-08, u/s 276C(1) and 277 of the Act were preferred by the respondent/department.

10. It was further submitted on behalf of respondent/department that no illegality has been committed by the department by filing three different complaints, as the offence committed in each complaint is separate and distinct. Attention of this Court was drawn to the provisions of Sections 276C, 276D and 277 of the Income Tax Act.

11. Learned counsel for respondent/department submitted that every assessment year is separate and distinct year under the provisions of the Income Tax Act. The proceeding under the Act initiates with filing of return by the assessee and culminates at framing of assessment order (including the appellate proceedings) determining the correct tax liability of an assessee and recovery of pursuant demand arising thereto. The offence under Section 276C of the Act can only be in respect of particular assessment year alone as the quantum of sentence depends upon the amount of tax, penalty or interest sought to be evaded. Similarly, the offence under Section 277 of the Act is also assessment year specific, as the misdeclaration or furnishing of false account or statement is assessment year specific and such misdeclaration etc. are committed while the assessee files the return for a particular assessment year or during the course of

assessment proceedings of a particular assessment year. Depending upon the nature of offences committed, there can be more than one offence in respect of any particular assessment year for which separate complaint can be preferred within the same assessment year also.

12. Learned counsel for respondent/department further submitted that Section 276D of the Act provides for punishment for failing to comply with the notice under Section 142(1) of the Act or failing to produce within the time specified such accounts or documents as are referred in the notice under section 142(1) and for each default, a separate complaint can be instituted by the department, which in the instant case was instituted for the assessment year 2006-07. It was further submitted on behalf of respondent that by not taking into account the transactions in the said foreign bank account in his return of income and by not taking into account the balance appearing in the said foreign bank account in his balance sheet, petitioner had committed the offence under section 277 of the Act by making false statement/ false verification in the respective returns of income for both the assessment years 2006-07 and 2007-08. Therefore, separate criminal complaints C.C. Nos. 528982/16 and 528983/16 for

assessment years 2006-07 and 2007-08 u/s 276C(1) and u/s. 277 of the Act was preferred by the Department. Learned counsel pointed out that as per the provisions of Code of Criminal Procedure, the offence under Section 276D of I.T. Act is a summons triable offence and Sections 276C and 277 I.T. Act are warrant triable cases and these cannot be tried together. It is also pointed out that Section 220 Cr. P.C is an exception to section 218 Cr.P.C. which provides for one trial for every such offence if these are a part of the same transaction. It was submitted that offence under Section 276C I.T. Act and Section 277 I.T. Act are premised on different transactions in the said undisclosed foreign account and non disclosure thereof in the income tax returns for different assessment years. It was stated that these transactions are not part of same transaction warranting joint trial under Section 220 Cr.P.C and thus, this petition deserves dismissal.

13. I have heard the rival submissions made by learned counsel for the parties and gone through the material placed on record. The genesis of trial of three petitions before the trial court is the complaint bearing CC No.511538/16 (Old CC No.131/2014), under Section 276-D of the Income Tax Act dated 28th February, 2015 and the other two

complaints rest on the same. Whether the petitioner is holding a foreign account or not is a matter of trial in the first complaint and the assumption that he holds an undisclosed foreign account, which forms basis of other two complaints, is also subject matter of trial.

14. The following chart will reveal that facts and evidence are the same in all the complaints.

S.No.	CC No. 511538/16 (Old No. 131/4)	CC No. 528982/16 (Old No. 157/4)	CC No. 528983/16 (Old No. 158/4)
1.	Information received from the Government of France in 2011 under Double Tax Avoidance Convention with India revealed that certain Indian including accused, held or were beneficial owners of bank account(s) with HSBC, Switzerland.	That information received from the Government of France in 2011 under double tax avoidance convention with India revealed that certain Indians including the accused, held or were beneficial owners of Bank account(s) with HSBC, Switzerland. The information/documents received, contained the personal information of the accused viz. his name, address, nationality, date of birth, place of birth, profession, place of office, passport no. etc. The documents also contained details of the entities which were held by the accused as trustee viz. 'Nine on Ten Foundation' and "Burnfield Invest SA' etc.	That information received from the Government of France in 2011 under double tax avoidance convention with India revealed that certain Indians including the accused, held or were beneficial owners of Bank account(s) with HSBC, Switzerland. The information/documents received, contained the personal information of the accused viz. his name, address, nationality, date of birth, place of birth, profession placed of office, passport no. etc. the documents also contained details of the entities which were held by the accused as trustee viz. "Nine on Ten

			Foundation' and Burnfield Invest SA' etc.
2.	That a search action was carried out on 28.07.2011 at the residence of the accused, A-29 Friends Colony (East), New Delhi.	That a search action was carried out on 28.07.2011 at the residence of the accused, A-29 Friends Colony (East), New Delhi.	That a search action was carried out on 28.07.2011 at the residence of the accused, A-29 Friends Colony (East), New Delhi.
3.	During the search proceedings statement of the accused was recorded on oath, in which he had written all the answers in his own handwriting. On the basis of information received regarding his account with HSBC Bank, Zurich he was questioned about his foreign bank accounts. He admitted that he had opened a bank account with HSBC Bank, Zurich, Switzerland in December 2002, when visited there.He further said that the account is not into existence as on today and should have been	That during the search proceedings statement u/s 132(4) of the I.T. Act dated 28.07.2011 of the accused was recorded on oath, in which he had written answers to question 5 to 34 in his own handwriting. On the basis of information received regarding his account with HSBC Bank, Zurich he was questioned about his foreign bank accounts. He admitted that he had opened a bank account with HSBC Bank, Zurich, Switzerland in 2002 when he visited there.... ...He further said that the account is not into existence as on today and should have been closed. He further stated that the said bank account with HSBC Bank was not disclosed in his return of income.	That during the search proceedings statement u/s 132(4) of the I.T. Act dated 28.07.2011 of the accused was recorded on oath, in which he had written answers to question 5 to 34 in his own handwriting. On the basis of information received regarding his account with HSBC Bank, Zurich he was questioned about his foreign bank accounts. He admitted that he had opened a bank account with HSBC Bank, Zurich, Switzerland in 2002 when he visited there..... ...He further said that the account is not into existence as on today and should have been closed. He further stated that the

	closed. He further stated that the said bank account with HSBC Bank was not disclosed in his return of income. Regarding mode of operation he submitted that he used to give cash on the instruction of the introducer at Delhi, who arrange to deposit the same in his bank account at Zurich. He further stated that he has given at Delhi in the year 2002 amount ranging from Rs. 2-5 crores.	Regarding mode of operation he submitted that he used to give cash on the instruction of the introducer at Delhi, who arrange to deposit the same in his bank account at Zurich/ he has further stated that he had given at Delhi in the year 2002 amount ranging from Rs. 2-5 crores.	said bank account with HSBC Bank was not disclosed in his return of income. Regarding mode of operation he submitted that he used to give cash on the instruction of the introducer at Delhi, who arrange to deposit the same in his bank account at Zurich. He has further stated that he had given at Delhi in the year 2002 amount ranging from Rs. 2-5 Crores.
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15. Perusal of the above table reveals that the respondent has preferred these complaints on the very same material, evidence and documents and allegations in all the three complaints are to a large extent quite same. The petitioner is, thus, facing three separate trials in all the three complaints before the same Magistrate for not declaring the fact of having a foreign account to the Income Tax Authorities.

16. The ingredients of Section 220 of Cr.P.C. have been defined in **Chandni Srivastava Vs. CBI & Ors.** decided on 9th Feb., 2016 in

WP(Crl.) 743/2013 in which it was held that Sec. 220 of the Cr.P.C. permits of one trial even if many offences are committed, if such offences form part of the same transaction, the rationale for such an exception being that in such circumstances, separate trials may lead to conflicting judgments.

17. In '**Mohan Baitha vs. State of Bihar, AIR 2001 SC 1490**', the Supreme Court interpreted Section 220 of the Code and observed as under:-

"It may be noticed that under Section 220 of the Code of Criminal Procedure, offences more than one committed by the same persons could be tried at one trial, if they can be held to be in one series of acts, so as to form the same transaction. The expression "same transaction" from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore, a series of acts whether are so connected together as to

form the same transaction is purely a question of fact to be decided on the aforesaid criteria".

18. The broad test, therefore, for ascertaining whether offences charged form part of the same transaction is whether the other set of offences, even though distinct and separate, have been committed for facilitating the commission of the main offence. If the offences alleged involve similar persons and there is a hint of continuity of action, it is then part of the same transaction. Thus, if the substratum of the series of acts is common, then those acts do constitute same transaction.

19. As discussed above, the three complaints in fact are a part of the same transaction. The first complaint has been filed on the assumption that petitioner is holding an undisclosed foreign account and two subsequent complaints are nothing but to arrive at a figure to meet the ingredients of the first offence. The chart given above reveals that the allegations, documents and nature of evidence are same in all the three complaints. In these circumstances, it will be in the interest of justice to have a common trial for all the three complaints.

20. In view of the above discussion, this petition is allowed. The order dated 30th June, 2018 passed by the Ld. Trial Court rejecting the

application of the petitioner for clubbing of the three complaints and joint trial is set aside. Vide order dated 25th February, 2020, proceedings before the learned Trial Court were directed to be stayed. The stay order stands vacated. It is now directed that common trial in CC No.511538/16 (Old CC No.131/2014), under Section 276-D of the Income Tax Act dated 28th February, 2015; CC No.528982/16 (Old CC No.157/4) and CC No.528983/16 (Old CC No.158/4) dated 12th January, 2016, under Section 276-C (1) and Section 277 of the Income Tax Act shall take place before the court concerned.

21. With aforesaid directions, this petition along with pending application, is disposed of.

22. The order be uploaded on the website of this Court forthwith.

BRIJESH SETHI, J

NOVEMBER 24th, 2020

r/AP