Before A. L. Bahri and S. S. Grewal, JJ.

INCOME-TAX OFFICER, FARIDABAD,—*Applicant.*

versus

KISHAN LAL KATHURIA,—*Respondent.*

Criminal Appeal No. 309-DBA of 1983.

15th May, 1991.

Income-tax Act, 1961—S. 277—Assessee allegedly making false statement in income-tax return—Penalty imposed by I.T.O.—Concealment of income taken as ground for initiating criminal proceedings against the assessee—Tribunal in appeal finding element of concealment missing and quashing penalty—Such finding—Effect of on criminal proceedings—Conviction liable to be set aside.

Held, that orders of the authorities, ultimately which are in favour of the assessee are relevant for consideration by the criminal Court. In case, element of concealment is missing, as held by the Tribunal, it cannot be said that the accused knew the statement in the return and verification to be false or believed it to be so. In such circumstances, it was rightly observed by the Sessions Judge that by simply showing that there was error in the return furnished or there was false avernment, conviction of the accused cannot be maintained. There has to be something more that such an error or omission was false to the knowledge or belief of the accused which was not made out under S. 277.

(Para 4)

Appeal from the order of the Court of Shri Surinder Sarup, Sessions Judge, Faridabad, dated the 4th November, 1982, reversing that the order of Shri L. N. Mittal, Judicial Magistrate, 1st Class Faridabd, dated 4th August, 1981, setting aside the Judgment and acquitting the accused.

Charge : Under Section 277 Income Tax Act 1961.

Order : Acquittal.

Criminal Case No. 128-A/3 of 1978/165/3 of 1981.
Complaint under Section 277 of the Income-tax Act, 1961.

It has been prayed in the grounds of appeal that the appeal be accepted, and judgment of Sessions Judge be set aside and the accused respondent be suitably punished.

A. K. Mittal, Advocate, *for the Appellant.*

Nemo, *for the Respondent.*

Income-tax Officer, Faridabad *v.* Kishan Lal Kathuria
(A. L. Bahri, J.)

JUDGMENT

A. L. Bahri, J.

(1) Krishan Lal Kathuria was prosecuted under Section 277 Indian Income Tax Act. Judicial Magistrate 1st Class, Faridabad on August 4, 1981 convicted him and sentenced him to rigorous imprisonment for 3 months and to pay a fine of Rs. 3,000 in default of payment of fine he was to further undergo rigorous imprisonment for six months. This order was successfully challenged before Sessions Judge, Faridabad who,—*vide* his order, dated November 4, 1982 set aside the conviction and sentence. This appeal is by the Income Tax Officer.

(2) A criminal complaint was filed by the Income Tax Officer against Krishan Lal Kathuria, under Section 277 of the Act. The accused Krishan Lal Kathuria was carrying on business of manufacturing cast iron under the name and style of M/s Indian Castings, Faridabad. Krishan Lal is the Proprietor. He had submitted Income Tax Return on July 29, 1972 for the Assessment Year 1972-73, accounting year 1971-72. Along with the return, balance sheet, profit and loss account, list of sundry creditors and debitors were furnished. The return was verified by Krishan Lal. The Income Tax Officer directed the assessee to file copies of closing stock and certificate from the bank showing details of stocks pledged and hypothecated and certain other documents. On October 30, 1974, these documents were furnished. According to the statement of closing stocks furnished, 22 tonnes Pig Iron valuing Rs. 12,000 and 2 tonnes of Cast Iron Scrap valuing Rs. 960 and consumable store valuing Rs. 525 i.e. goods worth Rs. 12,485 were shown in stock on March 31, 1972. The Income Tax Officer also secured certain records from the bank. There were discrepancies and after giving notice to the assessee, he added a sum of Rs. 12,000 towards the income of the assessee as un-disclosed income. The assessment order was made on December 31, 1974. The appeal of the assessee was dismissed on January 28, 1976 by the Assistant Appellate Commissioner and the second appeal was dismissed by the Income Tax Appellate Tribunal on November 17, 1976. It was, thereafter, that the Income Tax Officer started penalty proceedings for concealing the aforesaid income of Rs. 12,000 and as per order dated March 30, 1977, the Income Tax Officer imposed penalty of Rs. 12,000 holding that the assessee had made a false statement in the verification of return. This was false and the assessee knew it to be false. Proceedings under Section 277 of the Income Tax Act were started by filing criminal complaint.

(3) The complainant examined P.W. 1, V. R. Rishi, Income Tax Officer, P.W. 2, L. R. Dhingra, Assistant Director, P.W. 3, Miss Anita, Clerk from the office of the Income Tax Officer and P.W. 4, Shri M. L. Gari, Assistant in the State Bank of India. The accused while making statement under Section 313 Cr. P.C. admitted being Proprietor of the firm and having filed the return and other documents. He however, denied for want of knowledge that any information was sought by the Income Tax Officer directly from the bank. He further asserted that the penalty of Rs. 12,000 imposed by the Income Tax Officer was ultimately set aside by the Income Tax Appellate Tribunal in appeal. He pleaded false implication. In defence, he produced five witnesses.

(4) Shri A. K. Mittal, Advocate appeared on behalf of the appellant has argued that the approach of the learned Sessions Judge to set aside the order of conviction primarily basing the decision, on the order of the Tribunal, whereby the penalty of Rs. 12,000 was set aside is erroneous in law. According to the counsel, the criminal court was not bound by the decision of the authorities under the Income Tax Act and was required to take an independent decision in the Criminal case. The Judicial Magistrate after referring to the evidence produced in the case had rightly come to the conclusion that the verification of the Income Tax Return was false and this was to the knowledge of the accused. Before I refer to the authorities cited on the subject as well as relied upon by the Sessions Judge, it would be necessary to refer to the order of the Appellate Tribunal whereby penalty of Rs. 12,000 was set aside, in order to find out as to whether any finding was recorded by the Tribunal, as to whether, it was a case of concealment or not. If it was a case of concealment, it may be pointed out that knowledge could also be attributed to the accused that the particulars given in the return and its verification regarding false entries was with his knowledge. Section 277 of the Income Tax Act reads as under:—

> "277. If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable:—
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> (i) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand

rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine:

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine."

The aforesaid provision contemplates two things. Firstly, that a person in his statement in any verification or in any accounts had made a false statement and secondly that he knew or believed that the same was false, or he did not believe it to be true. It is on proof of these ingredients that it can be said that he had committed the offence and could be punished as mentioned therein. Ex. DA is the order of the Tribunal. The operative portion reads as under:—

"After hearing both the parties, I am of the view that the penalty is not exigible on facts. The Appellate Assistant Commissioner found discrepancies in the stock book as mentioned by the assessee and the figures given to the bank for non-explanation of the presumption of the stock, the Income-tax Officer presumed some sales. Unfortunately the assessee failed even in the second appeal stage. But the sole question before me is whether such an addition so confirmed by itself singly establish concealment or not. I am of the view that it does not. The Income-tax authorities in order to justify the penalty have to establish something more than what they have done in their orders and that something being patently establishing concealment on the part of the assessee. Therefore, the assessee's case squarely falls within the ratio of the decisions of their Lordships of the Supreme Court in 76 I.T.R. 693 and 83 I.T.R. 369."

A perusal of the aforesaid order leaves no manner of doubt that a specific finding was recorded by the Tribunal that it was not a case of concealment and on that score penalty of Rs. 12,000 was set aside. Learned counsel for the appellant has referred to the decision of the Kerala High Court in *C. G. Balakrishnan and others* vs. *Income Tax Officer* (1), in support of his contention that the proceedings under Section 277 of the Act are independent and simply because

(1) 171 I.T.R. 1.

assessment proceedings were set aside was no ground to set aside the conviction. A perusal of the judgment shows that the decision of the Supreme Court in *P. Jayappan* vs. *S. K. Perumal* (2), was relied upon and the following passage was quoted therefrom:—

> "In the criminal case all the ingredients of the offence in question have to be established in order to secure the conviction of the accused. The criminal court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and in an appropriate case it may drop the proceedings in the light of an order passed under the Act. It does not, however, mean that the result of a proceeding under the Income-tax Act would be binding on the criminal court. The criminal court has to judge the case independently on the evidence placed before it."

It may be noticed that the Supreme Court in Jayappan's case had held that though the proceedings in the criminal case under Section 277 of the Act were independent, however, in a given case those proceedings could be dropped on the basis of orders passed by the authorities. Further reference may be made to the decision of this court in *Parkash Chand* vs. *Income Tax Officer* (3). It was held that in view of the finding of the Tribunal that there was no concealment and no inaccurate accounts were filed by the petitioners, the Criminal proceedings against the assessee could not continue and were liable to be quashed. The ratio of the decision of the Supreme Court in *Uttam Chand* vs. *Income Tax Officer* (4), was applied. It was observed by the Supreme Court as under :—

> "In view of the finding recorded by the Income-tax Appellate Tribunal that it was clear on the appraisal of the entire material on the record that Shrimati Janak Rani was a partner of the asessee firm and that the firm was a genuine firm, we do not see how the assessee can be prosecuted for filing false returns. We, accordingly, allow this appeal and quash the prosecution."

Reference has been made to the decision of Harbans Singh Rai, J. in *Sant Parkash* vs. *Commissioner of Income Tax* (5). In

(2) 149 I.T.R. 696.
(3) 134 I.T.R. 8.
(4) 133 I.T.R. 909.
(5) 188 I.T.R. 732.

this case, the Magistrate has summoned the accused and thereafter, the authorities under the Income-Tax Act had set aside the assessment proceedings. It was held that the complaint could still proceed and the prosecution could not be quashed. It may be stated that the ratio of the decision cannot be applied to the case in hand as the prosecution was not required to be quashed at the initial stage. Accused has already been tried and the trial had completed. Now the question is as to what value if any can be attached to the order of the Tribunal. This matter was further considered by S. S. Kang, J. in *D. N. Bhasin and another* vs. *Union of India* (6). After criminal prosecution was launched, the Commissioner Appeals deleted the additions to the income and accepted the original return filed by the assessee. It was held that on that account criminal proceedings were liable to be quashed. Reference was made to the decision of the Supreme Court in *Uttam Chand* and *P. Jayappan's case*. It was held as under:—

> "If the Commissioner (Appeals) came to the conclusion that the additions made to the income of the assessees were not justified and ordered the same to be deleted, it could no longer be pleaded that the assessees tried to evade tax or had made false statements in the verifications of their returns. There was no case left for prosecuting the assessees in a criminal court for filing false returns or attempting to evade tax. The criminal complaints were liable to be quashed."

The position of law as depicted from the ratio of the decision aforesaid is quite clear that orders of the authorities, ultimately which are in favour of the assessee are relevant for consideration by the criminal court. In case element of concealment is missing, as held by the Tribunal, it cannot be said that the accused knew the statement in the return and verification to be false or believed it to be so. There is no force in the contention of learned counsel for the appellant that factum of concealment has nothing to do with false averment or believing the same to be so. In such circumstances, it was not necessary for the Sessions Judge to deal in detail the evidence produced to come to the same conclusion. It was rightly observed by the Sessions Judge that by simply showing that there was error in the return furnished or there was false averment,

(6) 171 I.T.R. 7.

conviction of the accused cannot be maintained. There has to be something more that such an error or omission was false to the knowledge or belief of the accused. No doubt, the second ingredient is to be proved by raising inference from a given set of circumstances in a particular case and there may not be any direct evidence as has been argued by counsel for the appellant. However, in the present case when such a finding has been recorded by the Tribunal in the order Ex. DA, which was passed during the pendency of the present criminal proceedings, the same being relevant was rightly taken into consideration in coming to the conclusion that the second ingredient of Section 277 was not made out. Finding no merit in the appeal, the same is dismissed.

R.N.R.

Before A. L. Bahri and S. S. Grewal, JJ.

STATE OF PUNJAB,—*Appellant.*

versus

BHAJAN SINGH,—*Respondent.*

Criminal Appeal No. 272-DBA of 1983.

29th May, 1991.

Prevention of Food Adulteration Act, 1954—Ss. 7, 16(1) (a) (i) & (ii)—Sample of milk—Analysis at different laboratories—Varying reports—Report of Director, Central Food Laboratory supersedes that of Public Analyst.

Held, that when the samples of milk have been analysed first by the Public Analyst and then by the Director, Central Food Laboratory, the reports of the latter are final and conclusive proof of the contents. These reports supersede the reports of the Public Analyst. Since the Director had found the samples of milk deficient in milk solids not fat, the samples are, therefore, held to be adulterated and both the accused in these cases are held guilty of commission of offence under S. 16(1) (a) (i) read with S. 7 of the Prevention of Food Adulteration Act. (Para 4)

Appeal from the order of the Court of Shri R. L. Anand, PCS, Addl. Chief Judicial Magistrate, Kapurthala, dated the 17th November, 1983.

Acquitting the accused.