

Before M. M. Punchhi, J.

PREM LATA,—Petitioner.

versus

THE INCOME TAX OFFICER, AMRITSAR,—Respondent.

Cr. Misc. No. 2481-M of 1983.

October 25, 1983.

Income-Tax Act (XLIII of 1961)—Sections 277 and 278-B—Indian Penal Code (XLV of 1860)—Section 193—Constitution of India 1950—Article 20—Return of income filed by one partner on behalf of the firm prior to the coming in force of section 278-B—Return and the verification contained therein alleged to be false—Other partners of the firm—Whether can be proceeded against for the offence under section 277 read with 278-B.

Held. that section 278-B of the Income-tax Act, 1961 was inserted by the Taxation Laws (Amendment) Act, 1975 and where an offence under section 277 is alleged to have been committed prior to the coming in force of section 278-B, the principle enshrined in the said section cannot apply to create *ex-post facto* offences. To do so would tantamount to acting contrary to the clear mandate contained in Article 20 of the Constitution of India.

(Paras 3 and 4).

Petition under Section 482 of the Criminal Procedure Code, praying that the complaint against the petitioner and the consequent charge against her should be quashed. Any other relief may also be granted which this Hon'ble Court may deem fit and proper.

D. N. Awasthy, Sr. Advocate and A. C. Jain, Advocate with him, for the Petitioner.

Ashok Bhan, Sr. Advocate and Ajay Mittal, Advocate with him, for the Respondent.

JUDGMENT

M. M. PUNCHHI, J. (ORAL)

(1) This is a petition under section 482 of the Code of Criminal Procedure, which could well be one under sections 397/401 of the aforesaid Code, for quashing a charge under section 277 of the Income-Tax Act and Section 193, Indian Penal Code, framed against the petitioner by a Judicial Magistrate Ist Class, Amritsar.

The undisputed facts are these:

The petitioner Prem Lata is a partner in a firm. The firm was an assessee under the Income-tax Act for the Assessment Year 1965-66. One of the partners, other than Prem Lata, filed a return. It was signed by that partner and contained the necessary declarations envisaged under the law and the rules. The Income-tax Authorities found the particulars provided in the return as also the declarations to be false. Thereupon, a complaint was filed against the partners of the firm (including Prem Lata) under sections 277/278 of the Income-tax Act as also under various sections of the Indian Penal Code. Along with the partners of the firm were arraigned other persons who were said to have entered into shady deals with the firm. With the latter aspect of the case, this petition has no concern. The learned trial Magistrate, after recording preliminary evidence, framed charges against the three partners of the firm in this manner (1) that during the year 1966, you accused Nos. 1 to 3 filed a false return for the Assessment Year 1965-66 knowing it to be false before the Income-tax Authorities and thereby committed an offence punishable under section 277 of the Income-Tax Act and within my cognizance. (2)..... & (3) thirdly during the same period, you accused Nos. 1 to 3 fabricated false evidence before the Income-tax Authorities in the shape of false return and thereby committed an offence under section 193, Indian Penal Code, because proceedings under the Income-tax Authorities are judicial proceedings within my cognizance.

(2) As is plain from the language of the charges, the third charge is dependent on the first charge. As is also plain from the facts above noted, the petitioner Prem Lata had neither signed the return nor had made any statement or verification so as to come within the grip of section 277 of the Income-tax Act. On these admitted facts, prayer has been made to quash the charges against her.

(3) The learned counsel for the respondent, however, took aid of section 278 B of the Income-tax Act to contend that even a partner of a firm is within the grip of the penal provisions of section

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277 of the said Act and as such Prem Lata had to face the charge in the light thereof. Keeping apart whether Prem Lata could come within the ambit of section 278 B, it is worthy of notice that the return pertained to the Assessment Year 1965-66 and section 278 B was inserted in the Income-tax Act with effect from October 1, 1975 by the Taxation Laws (Amendment) Act, 1975. Patently, it cannot have *ex post facto* application. This is the view of a Division Bench of this Court in (*Commissioner of Income-tax v. Jagdish Lal Behl and others*) (1). Their Lordships observed:

“Since the offences were committed in the years 1965—69, we cannot apply the principle enshrined in this section to create *ex post facto* offences. To do so would tantamount to acting contrary to the clear mandate contained in Article 20 of the Constitution.”

(4) Their Lordships were then referring to section 278 B of the Income-tax Act. Same is the view of the Allahabad High Court reported in (*Rajendra Prasad Agarwal and others v. Income-tax Officers etc.*) (2).

(5) As per the plain language of section 277 of the Act, the petitioner Prem Lata cannot be proceeded against on the admitted facts, as disclosed in the complaint, as also in the preliminary evidence. Thus, the charges against her require to be quashed and are accordingly quashed. The learned Magistrate is however at liberty to proceed with the other accused in accordance with law.

N. K. S.