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TIWARI KANAHAIYALAL ETC.

v.

THE COMMISSIONER OF INCOME TAX, DELHI

March 13, 1975

[A. ALAGIRISWAMI AND N. L. UNTWALIA, JJ.]

B *Income-tax Act* (11 *of* 1922), *ss.* 28 *and* 52, *Income-tax Act* (43 *of* 1961), *ss.* 271, 277 *and* 297 *and General Clauses Act* (10 *of* 1897) *s.* 6 (*c*)—*False declaration filed by assessee under* 1922 *Act—Penalty imposed under* 1961 *Act—Prosecution for false declaration under s.* 52 *of* 1922 *Act—If valid.*

Section 297(2)(f) of the Indian Income-tax Act, 1961, provides that notwithstanding the repeal of the Income-tax Act, 1922, any proceeding for the imposition of a penalty in respect of any assessment completed before April 1, 1962, may be initiated as if the 1961 Act had not been passed; and Clause (g) C provides that any proceeding for the imposition of a penalty in respect of any assessment for the year ending March 31, 1962, or any earlier year, which was completed *on or after* April 1, 1962 may be initiated under the 1961 Act. Section 28(4) of the 1922 Act provides that no prosecution for an offence against the 1922 Act shall be instituted in respect of the same facts on which a penalty has been imposed under the section.

The appellant, filed returns under s. 22(2), Income-tax Act, 1922, the last of the D returns being for the assessment year 1959-60. In 1964, he filed revised returns for the same assessment years showing a larger income. The income-tax was assessed under the 1961 Act on the revised returns and penalty proceedings were instituted and penalty was levied under s. 271 of the 1961 Act. The respondent, thereafter, filed complaints for offences under s. 277 of the 1961 Act. By way of abundant caution he also filed complaints on the same facts for offences under s. 52 of the 1922 Act. The trial court held that the launching of prosecution was illegal in view of s. 28(4) of the 1922-Act and Art. 20(1) of the Constitution. The High Court, in appeal, held that since no penalty was imposed under s. 28 E of the 1922 Act, s. 28(4) was not a bar to the institution of prosecution nor was it hit by Art. 20(1), and directed the trial court to proceed with the trial.

Dismissing the appeal to this Court,

HELD : (1) All the assessments although they related to the years earlier than the year ending on March 31, 1962, and were completed *after* the coming into force of the 1961-Act. (April, 1962). Hence the proceeding for the imposition of penalty had to be and was initiated under the 1961 Act under s. 297(g). F Therefore, s. 28(4) of the 1922 Act cannot be a bar as no penalty was imposed under s. 28, and there is no provision similar to s. 28(4) in the 1961 Act. [930 A-B]

Jain Bros & Others v. *The Union of India & others* [1970] 3 S.C.R. 253, followed.

(2) Article 20(1) does not help the appellant. It is not a *post facto* legislation that is being pressed against him. Section 28(4) did not obliterate the commission of the offence or convert the offence into an innocent act. Under the sec- G tion, the imposition of penalty merely barred the prosecution. But in the present case, the penalty having been imposed under s. 271 of the 1961 Act the launching of prosecution became permissible and was not hit by Art. 20(1). [931 D]

Rao Shiv Bahadur Singh and another v. *The State of Vindhya Pradesh* [1953] S.C.R. 1188, followed.

(3)(a) On the facts alleged, if true, the appellant would be guilty of an offence H under s. 52 of the 1922-Act. Section 297(1) of the 1961-Act repealed the 1922-Act. In s. 297(2) there is no saving for launching a prosecution under s. 52 of the 1922-Act. But since no intention different from that in s. 6 of the General Clauses Act, 1897, appears in s. 297(2) of the 1961-Act, the criminal liability incurred under s. 52 of the 1922 Act remains unaffected under s. 6(c) of the General

Clauses Act. The prosecution can only be for the offence under s. 52 of the 1922-Act and s. 277 of the 1961 Act, which corresponds to s. 52 of the 1922-Act, cannot be invoked. [931 G-H] A

(b) The appellant would also be entitled to rely on the second part of Art. 20(1) that he should not be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. (s. 52 of the 1922 Act), because, s. 277 of the 1961-Act, corresponding to s. 52 of the 1922 Act, provides a greater punishment. [931 E-F] B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 28-39 of 1971.

Appeals by Special Leave from the Judgment and Order dated the 18th August, 1970 of the Rajasthan High Court in SB. Criminal Revision Nos. 102-113 of 1968. C

M. M. Tewari, and *S. M. Jain*, for the appellant.

T. A. Ramachandran, *S. P. Nayar* and *R. N. Sachthey*, for the repondent.

The Judgment of the Court was delivered by D

UNTWALIA, J. These are 12 appeals filed by the appellant on grant of special leave by this Court from the common judgment of the Rajasthan High Court allowing 12 Criminal appeals filed by the respondent in accordance with section 417(3) of the Code of Criminal Procedure, 1898. The appellant as partner of his partnership firm filed 12 Income Tax Returns for various assessment years—the last one being assessment year 1959-1960. The Returns were filed by E the appellant between 26-3-1958 and 16-10-1961 in accordance with section 22(2) of the Income Tax Act, 1922—hereinafter referred to as the 1922 Act. The said act was repealed and replaced by the Income Tax Act, 1961—hereinafter called the 1961 Act. The 1961 Act came into force on or from 1-4-1962. During the course of the assessment proceedings when account books were produced for examination by the Income-tax Officer, Special Investigation Circle— F 'B', Jaipur, he suspected their genuineness or correctness. In May, 1963 the appellants premises were searched and a number of other books of account and documents were seized. Thereupon the appellant filed revised Returns on 1-3-1964 in respect of all the 12 periods. In the revised Returns the total income shown was far greater than what was shown in the earlier Returns. Income-tax was assessed after the filing of the revised Returns in respect of all the periods in accord- G ance with the 1961 Act. Penalty proceedings were initiated and penalty was levied in respect of each Return under section 271(1) (c)(iii) of the 1961 Act. The respondent filed 12 complaints against the appellant alleging commission of offence by him under section 277 of the 1961 Act. Since the respondent was not quite sure of the legal position, as a matter of abundant precaution 12 more com- H plaints were filed on the same facts to make out commission of offence by the appellant under section 52 of the 1922 Act. The City Magistrate, Jaipur in whose court all the 24 complaints were filed ordered

A the tagging of the 12 complaints filed later under section 52 of the 1922 Act with the complaints filed earlier under section 277 of the 1961 Act. To all intents and purposes therefore the numerically 24 complaints became 12 complaints for trial of the appellant under section 277 of the 1961 Act or section 52 of the 1922 Act as the case may be.

B After the commencement of the trial the appellant in each case filed a petition before the City Magistrate that the launching of the prosecution against him was bad and void in view of the provisions of section 28(4) of the 1922 Act read with Article 20(1) of the Constitution of India. The Magistrate felt persuaded to accept the stand taken on behalf of the appellant and held that he could not be prosecuted after imposition of penalty under the taxing statute and C acquitted the appellant in all the cases. The High Court has held that since no penalty was imposed on the petitioner or his firm under section 28 of the 1922 Act, section 28(4) was not a bar to the institution of the prosecution nor was it hit by Article 20(1). The High Court did not express any view whether the offence, if any, committed by the appellant fell under section 277 of the 1961 Act or section 52 of the 1922 Act. The appeals were allowed and the Magistrate D was directed to proceed with the trials in accordance with the law. Hence these appeals.

The only question falling for our determination in these appeals is whether institution of the prosecution against the appellant for the alleged commission of offences by him under either the 1961 or the 1922 Act was bad in law as being violative of section 28(4) of the 1922 Act or Article 20(1).

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Section 297(1) of the 1961 Act repealed the 1922 Act. Certain savings were provided in sub-section (2) some of which even without those express provisions would have been covered by section 6 of the General Clauses Act, 1897. But for the sake of precision and certainty those provisions were made. Some of the clauses (a) to (m) in sub-section (2) of section 297 are such that a different intention F appears from them and they over-ride or supplement the provisions contained in section 6 of the General Clauses Act. Section 297 (2) provides "Notwithstanding the repeal of the Indian Income-tax Act, 1922 (XI of 1922) (hereinafter referred to as the repealed Act),—

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(f) any proceeding for the imposition of a penalty in respect of any assessment completed before the 1st day of April, 1962, may be initiated and any such penalty may be imposed as if this Act had not been passed;

(g) any proceeding for the imposition of a penalty in respect of any assessment for the year ending on the H 31st day of March, 1962, or any earlier year, which is completed on or after the 1st day of April, 1962, may be initiated and any such penalty may be imposed under this Act."

All the 12 assessments although they related to the years earlier than the year ending on the 31st day of March, 1962 were completed after coming into force of the 1961 Act. Hence a proceeding for the imposition of penalty in respect of any one of those years had to be and was initiated under the 1961 Act in accordance with clause (g). Clause (f) did not come into play and no penalty was imposed under section 28 of the 1922 Act. That being so, as rightly pointed out by the High Court, section 28(4) was not a bar to the launching of the prosecution as no such provision is to be found either in section 271 or in any other section of the 1961 Act. Section 28(4) says "No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section." The said provision is not available to the appellant to bar the institution of the prosecution for an offence against either of the two Acts when a penalty has been imposed not under section 28(1) of the 1922 Act but under section 271(1) of the 1961 Act.

Grover, J delivering the judgment on behalf of the Constitution Bench of this Court in the case of *Jain Bros & others* v. *The Union of India others*(1) has pointed out at page 263 :

> "It is obvious that for the imposition of penalty it is not the assessment year or the date of the filing of the return which is important but it is the satisfaction of the income tax authorities that a default has been committed by the assessee which would attract the provisions relating to penalty. Whatever the stage at which the satisfaction is reached, the scheme of ss.274(1) and 275 of the Act of 1961 is that the order imposing penalty must be made after the completion of the assessment. The crucial date, therefore, for purposes of penalty is the date of such completion."

At page 264 says the learned Judge further :

> "Both ss. 271(1) and 297(2)(g) have to be read together and in harmony and so read the only conclusion possible is that for the imposition of a penalty in respect of any assessment for the year ending on March 31, 1962 or any earlier year which is completed after first day of April 1962 the proceedings have to be initiated and the penalty imposed in accordance with the provisions of s.271 of the Act of 1961."

Even clause (1) of Article 20 of the Constitution does not help the appellant. It is not a *post facto* legislation which is being pressed into service against him. As pointed out by a Constitution Bench of this Court in *Rao Shiv Bahadur Singh and another* v. *The State of Vindhya Pradesh*(2) at page 1198 :

> "This article in its broad import has been enacted to prohibit convictions and sentences under *ex post facto* laws. The principle underlying such prohibition has been elaborately

(1) [1970] (3) S.C.R. 253.

(2) [1953] S.C.R. 1188.

A discussed and pointed out in the very learned judgment of Justice Willes in the well known case of *Phillips* v. *Eyre*—(1870) 6 Q.B.D. I, at 23 and 25 and also by the Supreme Court of U.S.A. in *Calder* v. *Bull*—3 Dallas 386; I Law. Edition 648 at 649. In the English case it is explained that *ex post facto* laws are laws which voided and punished what had been lawful when done. There can be no doubt as to
B the paramount importance of the principle that such *ex post facto* laws, which retrospectively create offences and punish them are bad as being highly inequitable and unjust."

Article 20(1) also prohibits the subjecting of any person to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. On the facts
C alleged against the appellant, if found to be true, at the time he made the false statements in the declarations he did commit an offence under section 52 of the 1922 Act. Sub-section (4) of section 28 did not obliterate the factum of the commission of the offence and did not transmute the offence into an innocent act because of the imposition of penalty under section 28. Such imposition merely barred the prosecution for the trial and conviction of the commission of the
D offence. The penalty having been imposed under section 271 of the 1961 Act the launching of the prosecution became permissible and was not hit by Article 20(1) of the Constitution. We are inclined to think that the offence, if any, committed by the appellant was under section 52 of the 1922 Act as the allegedly false statements in declarations were made at a time when the said Act was in force. No
E false statement in any declaration seems to have been made under the 1961 Act to form the basis of a charge against the appellant under section 277 of that Act. The punishment provided in this section is greater than the one engrafted in section 52 of the 1922 Act. To that extent only the appellant would be entitled to press into service the second part of clause (1) of Article 20 of the Constitution which says that no person shall:

F "be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

It is advisable to discuss and dispose of a new point which arose during the hearing of these appeals. Sub-section (1) of section 297 of the 1961 Act repealed the 1922 Act including section 52. In
G sub-section (2) no saving seems to have been provided for the launching of the prosecution under the repealed section 52 of the 1922 Act. It does not seem correct to take recourse to clause (h) of Section 297(2) to make the offences come under section 277 of the 1961 Act as was endeavoured to be done by the respondent in the first 12 complaint petitions. But then from no clause under sub-section (2) a different intention appears in this regard from what has been
H said in section 6 of the General Clauses Act. On the facts alleged the criminal liability incurred under section 52 of the 1922 Act remains unaffected under clause (c) of section 6 of the General Clauses

Act. In the case of *T. S. Baliah* v. *T. S. Rangachari*(1) Ramaswami, J. delivering the judgment of this Court has said at page 71 :

> "The principle of this section is that unless a different intention appears in the repealing Act, any legal proceeding can be instituted and continued in respect of any matter pending under the repealed Act as if that Act was in force at the time of repeal. In other words, whenever there is a repeal of an enactment the consequences laid down in s.6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears in the repealing statute. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The question is not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. Section 6 of the General Clauses Act therefore will be applicable unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new statute and the mere absence of a saving clause is by itself not material."

In the result all the appeals fail and are dismissed.

V.P.S. *Appeals dismissed.*

(1) [1969] (3) S.C.R. 65.