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M.V. JAVALI

v.

MAHAJAN BOREWALL AND CO. AND ORS.

SEPTEMBER 26, 1997

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[M.K. MUKHERJEE AND M. JAGANNADHA RAO, JJ.]

Income Tax Act, 1961 : Sections 276-B and 278-B.

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Company—Offence by—Prosecution—Punishment—Company being a juristic person cannot be imprisoned—Punishment of fine in substitution of imprisonment—Prosecution of respondent—Partnership firm and its partners in Special Court for economic offences—Alleged commission of offence under section 276-B—Trial Court discharged the firms as well as its partners—Appeal—High Court held that prosecution of firm was legally impermissible—

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Partners of firm also discharged by High Court—Appeal before Supreme Court—Held in view of the provisions of Section 278-B, a company can be prosecuted and punished for an offence committed under Section 276-B, yet the sentence of imprisonment which has got to be imposed thereunder cannot be imposed, it being a juristic person—However, this apparent anomalous situation can be resolved, needless to say, only by a proper interpretation of the Section—The only harmonious construction that can be given to Section 276-B is that the mandatory sentence of imprisonment and fine is to be imposed where it can be imposed, namely on persons but where it cannot be imposed, namely on a company, fine will be the only punishment.

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Siraj-ul-Haq Khan v. The Sunni Central Board of Wakf U.P., AIR (1959) SC 198 and Union of India v. Fillip Tiago De Gama, AIR (1990) SC 98, relied on.

P.V. Pai v. R.L. Rinawna, ILR (1993) Karnataka 709, referred to.

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Towne v. Elsjher, [1918] 245 US 418, 425; Lenigh Valley Coal Co. v. Yensavage, 218 FR 547 and Mahadeolal Kanodie v. The Administrator General of West Bengal, [1950] 3 SCR 578, AIR (1960) SC 936, cited.

47th Report of the Law Commission of India, referred to.

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Interpretation of Statutes—Principles of—Ascertainment of legislative intent.

CRIMINAL APPELLATE JURISDICTION · Criminal Appeal No. 899 A
of 1997.

From the Judgment and Order dated 2.12.94 of the Karnataka High Court
in Crl. R. No. 671 of 1994.

K.N. Shukla, Ms. Sushila, Shukla and S.N. Terdol for the Appellant. B

Joseph Vellapally, Ms. Janaki Ramachandran and Ramesh Babu M.R. for
the Respondents.

The following Order of the Court was delivered :

Special Leave granted. Heard the learned counsel for the parties. C

The appellant, who is an Assistant Commissioner of Income Tax, filed
a complaint in the Special Court for Economic Offences at Bangalore alleging
commission of an offence under Section 276-B, read with Section 278B, of the
Income Tax Act, 1961 ('Act' for short) by M/s Borewell & Co., a registered D
partnership firm (the respondent No. 1) and its three partners (the respondent
Nos. 2 to 4.) The Special Court took cognizance of the offence alleged and
issued process against the respondents for their attendance. After entering
appearance they filed an application praying for their discharge under Section
245(2) of the Code of Criminal Procedure. The Special Court allowed the E
application on the ground that before granting sanction for their prosecution
under Section 279(1) of the Act, the Sanctioning Authority did not give the
respondents a personal hearing. The other grounds raised by the respondents
for their discharge were however kept open. Assailing the order of discharge
the appellant filed a revision petition in the High Court which was dismissed
by the impugned order. Hence this appeal. F

In upholding the order of discharge, the High Court did not deal with
the ground that found favour with the Special Court but held - relying upon
its earlier judgment in *P.V. Pai v. R.L. Rinawna*, ILR (1993) Karnataka 709 that
the prosecution of respondent No. 1 under Section 276-B was not maintainable
for if ultimately the Special Court found it to be guilty it (the Court) could not G
legally impose a substantive sentence upon it which was mandatory thereunder.
As regards the other respondents, though the High Court found that the
prosecution against them was maintainable for the above offence, it still
upheld their discharge.

To answer the question whether a company, being a juristic person and H

A thus incapable of being sentenced to imprisonment can be prosecuted - and for that matter convicted - for committing an offence under the Act which provides for compulsory imprisonment and fine, it will be necessary to refer to the provisions of the Act with which we are concerned in this appeal.

B Section 276-B lays down that if a person fails to pay to the credit of the Central Government, the tax deducted at source by him as required by or under the provisions of Chapter XVII-B [which includes Section 194 C(2) for violation of which the prosecution in the instant case was lodged] he shall be punished with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine. Section

C 278-B reads as under :

278-B (1) "Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company *as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.*

D Provided that nothing contained in this sub-section render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

E (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

F Explanation - For the purposes of this Section -

G (a) "*company*" means a body corporate, and includes -

(1) a firm; and

H (ii) an association of persons or a body of individuals whether incorporated or not; and

(b) "director", in relation to -

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(i) a firm, means a partner in the firm,

(ii) any association of persons or a body of individuals, means any member controlling the affairs thereof,"

(emphasis supplied)

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From a plain reading of the above Section it is manifest that if an offence under the Act is committed by a company the persons who are liable to be proceeded against and punished are: (i) The company, (which includes a firm); (ii) every person, who at the time the offence was committed, was in-charge of, and was responsible to the company for the conduct of the business; and (iii) any director (who in relation to a firm means a partner), manager, secretary or other officer of the company with whose consent or connivance or because of neglect attributable to whom the offence has been committed. The words 'as well as the company' appearing in the Section also make it unmistakably clear that the company alone can be prosecuted and punished even if the persons mentioned in categories (ii) and (iii), who are for all intents and purposes vicariously liable for the offence, are not arraigned for it is the company which is primarily guilty of the offence.

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Even though in view of the above provisions of Section 278B, a company can be prosecuted and punished for an offence committed under Section 276B (besides other offences under the Act) the sentence of imprisonment which has got to be imposed thereunder cannot be imposed, it being a juristic person. This apparent anomalous situation can be resolved needless to say, only by a proper interpretation of the Section. Before we proceed to consider the principles governing the interpretation of statutes we may profitably look to the 47th report of the Law Commission of India dated February 28, 1972. While dealing with social and economic offences committed by Corporations (including companies, firms and association of individuals) it observed that though a company had no physical body and traditional punishments might thus prove ineffective, the real penalty could be inflicted upon its respectability, that is, by way of a stigma. Therefore, it was appropriate that the company itself be punished so that in the public mind the offence would be linked with the name of the Corporation and not merely with the name of the director or manager who might be a non-entity. Punishment of fine in substitution of imprisonment could solve the problem in this behalf. The Commission recommended, apart from introduction of a provision in Section 62 of the

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A Indian Penal Code, appropriate amendments in the Central Excise Act, 1944, Wealth Tax Act, 1957 and Income Tax Act, 1961 on the lines of Section 93 of the Gold Control Act, 1968. The provisions contained in Section 278B of the Act appear to be based on the recommendations of the Law Commission. Para 8.1 of the Law Commission Report reads as under :

B “8.1 An important type of white-collar crime is that committed by Corporations. Since a Corporation has no physical body on which the pain of punishment could be inflicted, nor a mind which can be guilty of a criminal intent, traditional punishments prove ineffective, and new and different punishments have to be devised. The real penalty of a corporation is the diminution of respectability, that is, the stigma. C It is now usual to insert provisions to the effect that the Director or Manager who has acted for the corporation should be punished. But it is appropriate that the corporation itself, should be punished. In the public mind, the offence should be linked with the name of the corporation, and not merely with the name of the Director or Manager, D who may be a non-entity. Punishment of fine in substitution of imprisonment in the case of a corporation could solve the problem in one aspect; but at the same, it is necessary that there should be some procedure, like a judgment of condemnation, available in the case of an anti-social or economic offence committed by a Corporation. This will be analogous to the punishment of public censure proposed for E individuals.”

And Para 8.3, to the extent it is relevant for our purposes, reads as under :

F “8.3. In many of the Acts relating to economic offences, imprisonment is mandatory. Where the convicted person is a corporation, this provision becomes unworkable, and it is desirable to provide that in such cases, it shall be competent to the court to impose a fine. This difficulty can arise under the Penal Code also, but it is likely to arise more frequently in the case of economic laws.”

G Coming now to the principles of interpretation of statutes this Court observed in *Siraj-ul-Haq Khan v. The Sunni Central Board of Wakf, U.P.*, AIR (1959) SC 198 as under :

H “It is well settled that in construing the provisions of a statute, courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective; an attempt must always be

made so to reconcile the relevant provisions as to advance the remedy intended by the statute. In such a case, it is legitimate and even necessary to adopt the rule of liberal construction so as to give meaning to all parts of the provision and to make the whole of it effective and operative.” A

Again in *Union of India v. Filip Tiago De Gama*, AIR (1990) SC 981 this Court observed : B

“The paramount object in statutory interpretation is to discover what the legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation. ‘Words are certainly not crystals, transparent and unchanged’ as Mr. Justice Holmes has wisely and properly warned *Towne v. Eisjher*, (1918) 245 US 418, 425. Learned Hand, J. was equally emphatic when he said ‘Statutes should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them’. (*Lenigh Valley Coal Co. v. Yensavage* : 218 FR 547 at 553)” C D

It further observed as under :

“If there is obvious anomaly in the application of law the Court could shape the law to remove the anomaly. If the strict grammatical interpretation gives rise to absurdity or inconsistency, the Court could discard such interpretation and adopt an interpretation which will give effect to the purpose of the legislature. That could be done, if necessary even by modification of the language used. (See *Mahadeolal Kanodia v. The Administrator General of West Bengal*, [1950] 3 SCR 578, AIR (1960) SC 936). The legislators do not always deal with specific controversies which the Courts decide. They incorporate general purpose behind the statutory words and it is for the court to decide specific cases. If a given case is well within the general purpose of the legislature but not within the literal meaning of the statute, then the Court must strike the balance.” E F G

Keeping in view the recommendations of the Law Commission and the above principles of interpretation of Statutes we are of the opinion that the only harmonious construction that can be given to Section 276B is that the mandatory sentence of imprisonment and fine is to be imposed where it can H

- A be imposed, namely on persons coming under categories (ii) and (iii) above, but where it cannot be imposed, namely on a company, fine will be the only punishment. We hasten to add, two other alternative interpretations could also be given: (i) that a company cannot be prosecuted (as held in the impugned judgment); or (ii) that a company may be prosecuted and convicted but not punished, but these interpretations will be *dehors* Section 278B or
- B wholly inconsistent with its plain language.

- For the foregoing discussion we are unable to sustain the impugned order of the High Court so far as it held that the prosecution of respondent No.1 was legally impermissible. Equally unsustainable is the order of the High
- C Court dismissing the revision petition qua the other respondents in absence of any finding to indicate that it agreed with the reasoning of the trial Court for their discharge. We, therefore, allow this appeal, set aside the impugned order of the High Court upholding the discharge of the respondents and direct it to hear the revision petition filed by the appellant afresh in accordance with law and in the light of the observations made herein before.

- D T.N.A.

Appeal allowed.