

find that the case of criminal misappropriation comes very close to one of the illustrations in *Best's case* (supra) cited in *Deopkaran Nenshi's case* (supra) in which it was held that the offence of withholding the money was a continuing offence, the basis of the decision being that every day that the money is wilfully withheld, the offence was committed.

(23) In so far as precedents are concerned, therefore, we find that there is no binding precedent of the Supreme Court. There is no decision directly on the point of a Division Bench either of this Court or of any other High Court. The Single Bench decisions in which a contrary view has been taken have been explained and we, therefore, find that the question as to the nature of the offence under section 406 of the Indian Penal Code—whether it is continuing or a non-continuing offence—has not been gone into and for the foregoing reasons, we hold that the offence under section 406 of the Indian Penal Code is a continuing offence.

We answer the reference accordingly. The case will now be listed before the learned Single Judge for disposal according to law.

P.C.G.

Before : G. C. Mital & S. S. Grewal, JJ.

M/S JAGDISH CHANDER AGGARWAL,—*Petitioner.*

versus

THE ASSESSING AUTHORITY, EXCISE AND TAXATION
OFFICER, CHANDIGARH AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 15165 of 1990.

27th February, 1991

Constitution of India, 1950—Arts. 226/227—Code of Civil Procedure, 1908—O. 2, rl. 2—Maintainability—Writ Jurisdiction—Second petition filed taking additional ground—Petition cannot be entertained—Proper remedy is to seek amendment of earlier petition.

Held, that general principles of law require that all points should be raised in one and the same writ petition and there can be no piecemeal consideration of points. Filing of the second writ petition with additional ground is not the remedy and, therefore, we decline

M/s Jagdish Chander Aggarwal v. The Assessing Authority, Excise and Taxation Officer, Chandigarh and another (G. C. Mital, J.)

to entertain another writ petition. In case the petitioner left some point in the earlier writ petition, the proper remedy for it is to seek amendment.

(Paras 3 & 4)

Petition under Articles 226/227 of the Constitution of India praying that:—

- (i) *Issue an appropriate Writ, order or direction, declaring wheat being tax free item in view of Entry 39 of Schedule 'B' of the Punjab General Sales Tax Act, 1948, cannot be taxed without the Notification under Section 31 of the Punjab General Sales Tax Act 1948.*
- (ii) *Over-rule the decision of the Full Bench reported as 42 STC 429.*
- (iii) *Service of advance notices upon the respondents be dispensed with.*
- (iv) *Filing of certified copy of Annexure P/1 may kindly be dispensed with.*
- (v) *Any other writ, order or direction may kindly be issued in the circumstances of the case which this Hon'ble Court deems fit, and costs of the petition be allowed throughout.*

It is further prayed that during the pendency of the writ petition, the recovery proceedings may kindly be stayed.

Harbhagwan Singh, Sr. Advocate with Saukat Ali, Advocate, for the Petitioner.

Anand Swaroop, Sr. Advocate with Mr. A. K. Mital and Ajay Tewari, Advocate, for the Respondent.

JUDGMENT

Gokal Chand Mital, J.

(1) The petitioner earlier filed a civil writ petition No. 4420 of 1990 to challenge the levy of tax under the Punjab General Sales Tax Act, 1948 (for short 'the Act'), on the turnover of wheat on the ground that it was an agricultural produce and was not taxable in view of entry 39 of Schedule-B of the Act. The prayer of stay was declined in that writ petition,

(2) Now this writ petition has been filed by the same petitioner and the additional ground raised is that in the earlier writ petition the point was not taken that without notification under Section 31 of the Act wheat could not be taxed.

(3) Challenge is to the levy of tax on the wheat under the Act and general principles of law require that all points should be raised in one and the same writ petition and there can be no piecemeal consideration of points. Filing of the second writ petition seems to be an effort to again get stay which was not granted in the earlier writ petition. In fact the Motion Bench did grant stay of recovery on 28th November, 1990 but the stay was declined on 25th January, 1991.

(4) On a consideration of the matter, we decline to entertain another writ petition. In case the petitioner left some point in the earlier writ petition, the proper remedy for it is to seek amendment. Certainly filing of a fresh writ petition is not the remedy.

(5) With these observations, the writ petition stands disposed of. No costs.

R.N.R.

Before : G. C. Mital, A.C.J. & H. S. Bedi, J.

UNION OF INDIA,—Petitioner.

versus

HARBANS SINGH TULI & SONS BUILDERS PRIVATE LTD.,
CHANIDGARH,—Respondents.

Civil Revision No. 2934 of 1990

14th April, 1991.

Arbitration Act, 1940—S. 8—Appointment of Arbitrator—Arbitration clause in the contract providing for appointment of Arbitrator by named authority and not by consent of parties—Appointment by resort to S. 8, therefore, is illegal.

Held, that if under the arbitration clause in the contract the arbitrator is to be appointed by a named authority and not by consent