

Income Tax Officer, A Ward v. Radha Kishan (M. M. Punchhi, J.)

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on the loss of his identity. If this is understood in this perspective, there is no difficulty in assigning the absorbees seniority in accordance with seniority rule 15. Nothing more need be added.

M. M. Punchhi, J.

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Before : M. M. Punchhi, J.

Income Tax Officer, A. Ward.—Petitioner.

versus

RADHA KISHAN,—Respondents.

Criminal Revision No. 1093 of 1985.

February 27, 1984.

*Income Tax Act (XLIII of 1961)—Ss 276 CC, 292 A—Code of Criminal Procedure (II of 1974)—S. 360—Probation of Offenders Act (XX of 1958)—No challenge to conviction in appeal—Bargain for probation—Matter remitted back—Respondent can challenge his conviction.*

*Held*, that if sentence is to be imposed in all events, then this Court by itself can impose it without sending the matter back to the lower appellate court. But it is a case of plea bargaining. The matter thus as a whole has to be remitted back leaving it open to the respondents to challenge his conviction. And if that is set aside, the question of imposing any sentence would not arise. It would be totally unfair to the respondent to keep his conviction affirmed in these proceedings.

(Para 5).

*Petition under Section 401 Cr. P.C. for the revision of the order of the Court of Shri Hari Ram, Sessions Judge, Ambala, dated 6th March, 1985, reversing that of the order of the Court of Shri C. B. Jaglian, HCS, Judicial Magistrate Ist Class, Jagadhri, Distt Ambala, dated 20th December, 1983, setting aside the sentence of imprisonment and fine against the accused and giving benefit of probation.*

*He is ordered to be released on bail on his furnishing personal bond in the sum of Rs. 3,000 with a surety in the like amount to keep peace and be of good behaviour for a period of one year. He is further directed to come and receive the sentence as and when called upon to do so during this period. The necessary bonds be furnished to the satisfaction of this court. The appellant is further directed to pay Rs. 100 as costs of the litigation. The amount of fine already paid is ordered to be adjusted against this head.*

Ashok Bhan, Sr. Advocate, with Ajay Kumar Mittal, Advocate,  
for the petitioners.

K. K. Aggarwal, Advocate, for the respondent.

#### ORDER

*M M. Punchhi, J. (Oral)*

(1) This is a revision petition against the appellate order of Shri Hari Ram, Sessions Judge, Ambala, preferred by the Income-Tax Officer, A.Ward, Yamunanagar, district Ambala. The challenge is solely confined to the substitution of the order of sentence to release of the accused-respondent on probation in terms stated therein.

(2) The facts are simple. The respondent was a partner of three firms. These firms were assessable to Income-tax for the year 1978-79. No doubt, the firms were required to file their returns before 31st July, 1978, the respondent too in his personal capacity had to file a return totalling up his income derived as partner from the aforementioned three firms. He failed to do so within the time prescribed and thus he came within the grips of section 276 CC of the Income-tax Act, 1961. On prosecution, the respondent was convicted by the trial Court which sentenced him to three months' rigorous imprisonment and a fine of Rs. 100. In default of payment of fine, he was ordered to further undergo rigorous imprisonment for a period of fifteen days.

(3) The respondent filed an appeal before the Sessions Judge, Ambala, and there it appears that a plea bargaining was struck. As is evident from para 9 of the judgment, the learned counsel appearing for the said respondent did not challenge the conviction of the respondent and straightaway pleaded for the benefit of Section 360 of the Code of Criminal Procedure being extended to

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him. And as is evident from para 10 thereof, this course was not opposed by learned counsel appearing for the Income-tax Officer. Rather he laid claim to the costs of litigation. The learned Judge passed the order in these circumstances.

(4) Mr. Ashok Bhan, learned counsel appearing for the Income-tax Officer-petitioner, is only aggrieved against the order of releasing the respondent on probation and on the strength of section 292 A of the Income-tax Act says that either this Court should impose the sentence or send the matter back to the lower appellate Court for doing the needful. Section 292 A provides as under :—

“Section 360 of the Code of Criminal Procedure, 1973 and the Probation of Offenders Act, 1958 not to apply. Nothing contained in section 360 of the Code of Criminal Procedure, 1973, or in the Probation of Offenders Act, 1958, shall apply to a person convicted of an offence under this Act unless that person is under eighteen years of age.”

(5) If sentence is to be imposed in all events, then this Court by itself can impose it without sending the matter back to the lower appellate Court. But as said before, it is a case of plea bargaining. The matter thus as a whole has to be remitted back leaving it open to the respondent to challenge his conviction. And if that is set aside, the question of imposing any sentence would not arise. It would be totally unfair to the respondent to keep his conviction affirmed in these proceedings.

(6) Therefore, for the above reasoning, this petition is allowed, the order of the Sessions Judge, Ambala, as a whole is set aside and the appeal is remitted back to him for disposal in accordance with law. Parties through their counsel are directed to put in appearance before him on 3rd April, 1989.

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P.C.G.