

Tiwari Kanhaiyalal Etc. v. The Commissioner of Income Tax, Delhi

Criminal Appeals Nos.28-39 of 1971

[1975] 3 SCR 927 | 1975-03-13

Whether penalties imposed under the 1961 Act barred prosecution for allegedly false pre-repeal declarations under old section 28(4) or Article 20(1), and whether the prosecution could survive repeal and proceed under new section 277.

271(1)(c)(iii) (penalties actually imposed) | 277 (complaints filed but not the proper offence for the alleged pre-1961 statements) | 297(1), 297(2)(f), 297(2)(g) and 297(2)(h) (repeal, penalty transition and rejected deeming route)

Two-judge bench | A. Alagiriswami, J. | N.L. Untwalia, J.

Assessment years: 1959-60

Mixed penalty/prosecution transition; no conviction or retrospective greater punishment

This case concerns twelve pre-1961 returns, with only the last AY 1959-60 identified, and penalties imposed under section 271 after assessments were completed after 1 April 1962. Appeal dismissal permits trial of the saved 1922 section 52 offence; it neither proves guilt nor authorises section 277's greater punishment. Old section 28(4) depended on a penalty imposed under old section 28, and section 297(2)(h) did not convert the offence. The printed High Court revision/appeal labels differ. The later Hindustan Unilever check is limited to the section 6(c) savings quotation, not its differing assessment-Act recital. Original PDF unchanged. Comprehensive later treatment, current law and 2025 mapping are not verified.

01 FACTS OF THE CASE

The appellant, a partner of a firm, filed twelve income-tax returns under section 22(2) of the 1922 Act between 26 March 1958 and 16 October 1961. The last specified assessment year was 1959-60; the report does not list the other years. During assessment proceedings the Income-tax Officer, Special Investigation Circle-B, Jaipur, suspected the genuineness or correctness of the books. A search in May 1963 produced further books and documents. On 1 March 1964 the appellant filed revised returns for all twelve periods showing substantially larger income. The judicial narrative states that the assessments were made after those revised returns in accordance with the 1961 Act, and penalties were imposed for each return under section 271(1)(c)(iii) (physical page 2/SCR 928 D-H).

The respondent first filed twelve complaints under section 277 of the 1961 Act and, to guard against uncertainty over the governing offence, filed twelve further complaints on the same facts under section 52 of the 1922 Act. The City Magistrate, Jaipur, tagged each later complaint to its corresponding earlier one, producing twelve effective trial cases, not twenty-four separate trials. The Magistrate accepted the appellant's claim that old section 28(4), read with Article 20(1), barred prosecution after tax penalties and acquitted him in each case (physical pages 2-3/SCR 928 H-929 C).

The Rajasthan High Court held that no penalty had been imposed under old section 28, so subsection (4) did not bar prosecution; Article 20(1) did not invalidate its institution. It directed the Magistrate to proceed with the trials without choosing between section 277 and section 52. The appellant brought all twelve special-leave appeals to the Supreme Court. The report's appellate metadata identifies the High Court's 18 August 1970 order as S.B. Criminal Revision Nos.102-113 of 1968, whereas the judicial opening describes twelve respondent appeals under section 417(3) of the 1898 Code. That printed procedural-label discrepancy is retained without reconstruction (physical pages 2-3/SCR 928 B-D and 929 B-D).

Source: See the proposition-specific paragraph and PDF-page references below.

02 DISCUSSION BY THE HON'BLE COURT

The Court treated the institution of prosecution, rather than guilt on the alleged declarations, as the question for decision. Section 297(1) repealed the 1922 Act. Section 297(2) contains express savings, some clarifying and others overriding or supplementing section 6 of the General Clauses Act. Under clause (f), penalties relating to assessments completed before 1 April 1962 could be initiated and imposed as if the 1961 Act had not passed. Clause (g) applied the new Act to penalties for the year ending 31 March 1962 or earlier years where assessments were completed on or after 1 April 1962 (physical page 3/SCR 929 D-H).

All twelve assessments were completed after the new Act came into force. Consequently, clause (g), not clause (f), governed these penalties. Old section 28(4) barred prosecution on the same facts only where a penalty had been imposed under that section. Here the penalties were under section 271, and the 1961 Act had no equivalent bar in the provisions considered. The Court therefore rejected the claim that section 28(4) prohibited institution. It expressly relied on *Jain Brothers v. Union of India* for reading sections 271(1) and 297(2)(g) together and treating completion of assessment as the relevant transition date for those penalties. The references to sections 274(1) and 275 occur in that quotation, not in a separately decided limitation issue (physical page 4/SCR 930 A-F).

Article 20(1) did not prohibit prosecution for conduct already criminal when done. Drawing on *Rao Shiv Bahadur Singh*, the Court explained that the constitutional protection concerns retrospective creation of offences and greater punishment. Old section 28(4) did not erase the offence or make the conduct innocent; it imposed a prosecution bar when its specified penalty condition was met. That condition was absent because the penalties here were imposed under the 1961 Act (physical pages 4-5/SCR 930 G-931 D).

The Court nevertheless preserved the appellant's protection against a greater punishment. The allegedly false declarations were made during the 1922 Act, and no false declaration under the 1961 Act appeared to form the basis of the charge. The offence, if proved, was therefore under section 52. Section 277 carried a greater punishment, so Article 20(1)'s second limb prevented its use to impose that greater punishment on these alleged old offences. The Court's conditional language about the facts and the offence must not be converted into a finding of guilt (physical page 5/SCR 931 B-F).

On repeal, section 297(2) contained no express saving directed to prosecution under old section 52. That omission did not extinguish the criminal liability. The Court rejected the respondent's attempted use of clause (h) to convert it into an offence under section 277; instead section 6(c) of the General Clauses Act preserved the liability because no contrary legislative intention appeared on this issue. It quoted *T.S. Baliah v. T.S. Rangachari* on examining the new enactment for an intention inconsistent with preservation, rather than requiring an express saving in every instance. This is an issue-specific application: it does not hold that every clause of section 297 leaves section 6 untouched (physical pages 5-6/SCR 931 F-932 D).

02 DISCUSSION BY THE HON'BLE COURT

Source: See the proposition-specific paragraph and PDF-page references below.

03 JUDICIAL DECISION

All twelve appeals failed and were dismissed. The High Court's direction to proceed with the trials remained effective, subject to the Supreme Court's identification of the saved old section 52 offence and Article 20(1) protection against greater punishment under section 277. The Court did not convict or sentence the appellant, decide that the declarations were false, or fix any fresh tax or penalty amount. The concluding order does not state a costs direction (physical page 6/SCR 932 concluding paragraph).

Source: See the proposition-specific paragraph and PDF-page references below.

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue on permissibility of prosecution; appellant retains old-offence and punishment protections

All twelve appeals dismissed; prosecution may proceed under saved section 52 of the 1922 Act

Final decision on the prosecution-bar and transition questions, not a criminal guilt determination

Depends on penalties under section 271 after post-1 April 1962 assessment completion and allegedly false declarations made while the 1922 Act operated; no general approval of retrospective offences or greater punishment.

Source: See the proposition-specific paragraph and PDF-page references below.

05 AKHB REVIEW POINT

Keep three questions separate: which Act governs the civil tax penalty, which provision criminalised the declaration when made, and whether repeal preserved that criminal liability. Applying new-Act penalty machinery does not automatically convert an old offence into a new one. Conversely, an old prosecution bar triggered only by an old-section penalty is not engaged merely because a different statutory penalty was imposed. The decision permits a trial; it proves neither falsity nor guilt.

Bounded later primary check: Hindustan Unilever Limited v. State of Madhya Pradesh, decided 5 November 2020, paragraph 16 directly cites and quotes Tiwari on survival of old criminal liability through section 6(c); paragraph 17 applies repeal-and-saving reasoning in the distinct food-adulteration setting (physical pages 13–14/SCR 467–468). This confirms that specific later use, not comprehensive approval of every tax proposition. Its introductory recital calls the assessments old-Act assessments; the original Tiwari narrative at SCR 928 G states that they were assessed in accordance with the 1961 Act. This note follows the original for its facts and relies on the later passage only for the quoted savings principle.

Source: See the proposition-specific paragraph and PDF-page references below.

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Caption, actual date and bench

Source url: [Open cited source](#)

Pdf pages: 1

Paragraphs: SCR 927 heading

Source role: reported metadata

2.

Topic: Full appeal group, conflicting High Court procedural labels, author, returns and actual penalties

Source url: [Open cited source](#)

Pdf pages: 2

Paragraphs: SCR 928 B–H

Source role: reported metadata and judicial text

3.

Topic: Paired complaints, acquittals, High Court ruling and exact issue

Source url: [Open cited source](#)

Pdf pages: 3

Paragraphs: SCR 929 A–D

Source role: judicial text

4.

Topic: Section 297(2)(f)/(g) text and penalty-transition application

Source url: [Open cited source](#)

Pdf pages: 3; 4

Paragraphs: SCR 929 E-930 F

Source role: judicial text

5.

Topic: Article 20(1), alleged old offence, no new declaration and protected punishment

Source url: [Open cited source](#)

Pdf pages: 4; 5

Paragraphs: SCR 930 G-931 F

Source role: judicial text

6.

Topic: Rejected section 297(2)(h) route; section 6(c) survival and T.S. Baliah quotation

Source url: [Open cited source](#)

Pdf pages: 5; 6

Paragraphs: SCR 931 F-932 D

Source role: judicial text

7.

Topic: All appeals dismissed; no costs direction stated

Source url: [Open cited source](#)

Pdf pages: 6

Paragraphs: SCR 932 concluding paragraph

Source role: judicial text

8.

Topic: Bounded later direct citation of saved old criminal liability

Source url: [Open cited source](#)

Pdf pages: 13; 14

Paragraphs: SCR 467-468, paragraphs 16-17 and footnote 10

Source role: later judicial text bounded

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

The alleged false declarations were made while the 1922 Act was in force, but assessments were completed after 1 April 1962 and penalties were actually imposed under the 1961 Act. The Court directly applies section 297(2)(g) and section 271, decides the reach of the former section 28(4) bar, and rejects conversion of the alleged old offence to section 277 through section 297(2)(h). This is a genuine mixed transition decision, not merely an old-Act analogy.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

N.L. Untwalia, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961 (actual penalty and repeal/savings); Indian Income-tax Act, 1922 (returns, alleged offences and claimed prosecution bar)

OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Indian Income-tax Act, 1922: sections 22(2), 28(1), 28(4) and 52; General Clauses Act, 1897: section 6, particularly clause (c); Constitution of India: Article 20(1); Code of Criminal Procedure, 1898: section 417(3) (High Court appeal history); Income-tax Act, 1961: sections 274(1) and 275 appear in the quoted Jain Brothers reasoning; no independent limitation ruling here

SPECIFIED PRIMARY-SOURCE CHECKS AND THEIR LIMITS

1.

Kind: direct later judicial treatment

Status: bounded verified

Source url: [Open cited source](#)

Finding: Paragraph 16 directly quotes Tiwari on the survival of section 52 criminal liability under General Clauses Act section 6(c); paragraph 17 applies savings reasoning in a different statutory setting.

Limit: Only identity page 1 and text/images 12-14 reviewed. Original Tiwari facts control over the differing introductory assessment-Act recital. Not comprehensive later treatment.

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 6 PDF pages; SHA-256

5d6560e2f17145d29e3cfdffc1661fd8b60ac560672977b088e05b31867a1f56. Original bytes preserved. Judicial body begins physical page 2/SCR 928 D (Untwalia, J.) and ends physical page 6/SCR 932 concluding paragraph dismissing all appeals. Page 1 and upper page 2 are reporter material, appellate metadata and appearances. No neighbouring judgment.

Open cited source rendition

full primary text read: True; all primary page images reviewed: True; source integrity verified: True; actual statutory scope verified: True; later treatment comprehensive: not_verified; current law status: not_verified; statutory mapping 2025: not_verified

The printed caption spells KANAHAIYALAL; the conventional Kanhaiyalal spelling is used in the normalized title. The source PDF is unchanged.; Only the last AY, 1959-60, is identified. Twelve returns do not establish twelve consecutive assessment years.; The full appeal group is Criminal Appeals Nos.28-39 of 1971. Appellate metadata describes S.B. Criminal Revision Nos.102-113 of 1968; the judicial opening describes respondent appeals under section 417(3). Neither is silently rewritten.; Twenty-four complaint filings were paired into twelve effective trials. Appeal dismissal permits the prosecutions to proceed; it is not a conviction or affirmation of proved falsity.; The new-Act penalty holding is separate from the saved old offence: section 297(2)(h) does not convert it to section 277, and Article 20(1) retains the protection against greater punishment.; The 2020 later citation's assessment-Act recital differs from the original narrative; reliance on that later case is confined to the section 6(c) savings proposition. No fresh costs order is stated in the original disposition.

Twelve returns for various assessment years are involved; only the last, AY 1959-60, is expressly identified. The earlier years are not enumerated and no consecutive twelve-year range is inferred (physical page 2/SCR 928 D-E).

STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 or certification of present law. Actual historical statutory versions and transition limits remain controlling for this note.

LATER TREATMENT

Source checked 2026-10-05. not_verified. A bounded direct later check of Hindustan Unilever (5 November 2020), paragraph 16 and immediate context, is separately recorded. No comprehensive citation history, full statutory amendment chain, current-law certification or 2025 mapping verified.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 6](#)

SHA-256: 5d6560e2f17145d29e3cfdffc1661fd8b60ac560672977b088e05b31867a1f56

[later judgment bounded treatment - PDF pages: 17](#)

SHA-256: 883f0295b2952ea292e7f525a59a7ccebf2387952d88aa7932d16e55260386

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

PROFESSIONAL DISCLAIMER

General research information only; not legal or tax advice, a certified judgment or a substitute for the full order. Applicability depends on facts, assessment year, statutory version and jurisdiction. Subsequent treatment is unverified unless identified sources are expressly stated. Downloading does not create a professional engagement. Obtain case-specific advice before reliance.