IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

OP(Crl.).No. 117 of 2015 (Q)

AGAINST THE ORDER/JUDGMENT IN CC 11/2008 of CHIEF JUDL.MAGISTRATE, ERNAKULAM.

PETITIONER(S):

K.S.NANDAKUMAR, AGED 49 YEARS,
PROPRIETOR, VYSALI TEXTILES, MUKKADA,
KOLLAM, PIN-691 501.

BY ADV. SRI.DALE P.KURIEN

RESPONDENT(S):

1. INCOME TAX OFFICER,
WARD-2, BEHIND RAILWAY STATION, KOLLAM-691 001.

2. COMMISSIONER OF INCOME TAX (APPEALS),
AAYAKAR BHAVAN, KOWDIAR, THIRUVANANTHAPURAM-695 003.

3. COMMISSIONER OF INCOME TAX,
AAYAKAR BHAVAN, KOWDIAR, THIRUVANANTHAPURAM-695 003.

R1-R3 BY ADVS.SRI.CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT
SRI.K.M.V.PANDALAI, INCOME TAX DEPARTMENT

PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(Crl.).No. 117 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS:

P1 : COPY OF THE CIT (APPEALS) ORDER DTD.7.2.2007.

P2 : COPY OF THE COMPLAINT PRESENTED U/S.190 OF THE CR.P.C BY THE ITO BEFORE THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT (EO)AT ERNAKULAM DTD.28.3.2008.

P3 : COPY OF THE JUDGMENT DTD.23.3.2009 REPORTED IN 2009(2)KLT 948.

P4 : COPY OF THE ORDER OF THE TRIBUNAL IN ITA NO.947/COCH/2008 DTD.27.3.2009.

P5 : COPY OF THE ASSESSMENT ORDER DTD.29.12.2010.

P6 : COPY OF THE MEMORANDUM APPEAL & GROUNDS BEFORE THE COMMISSIONER OF INCOME TAX (APPELLALS) DTD.29.01.2010.

P7 : COPY OF THE DISCHARGE SUMMARY DTD 16.07.2008.

RESPONDENT(S)' EXHIBITS: NIL

//True Copy//

P.A. to Judge

ss

K. RAMAKRISHNAN, J.

O.P.(Crl.) No.117 of 2015

Dated this the 19th day of November, 2015

JUDGMENT

This is a petition filed by the petitioner who is the accused in C.C.No.11/2008 pending before the Additional Chief Judicial Magistrate Court (Economic Offences), Ernakulam, which has been initiated on the basis of a complaint filed by the Income Tax authorities under Section 276(c) of the Income Tax Act for a direction to the magistrate under Article 227 of the Constitution of India.

2. It is alleged in the petition that the dispute regarding the assessment and the appeal was pending before the appropriate authorities. Earlier when court below had insisted for trial of the case, he moved this court by filing W.P.(c) No.8819/2009 and this court by Ext.P3 judgment reported in **Nandakumar v. Income Tax Officer (2009(2) KLT 948)**, directed the court below to

keep the prosecution in abeyance, till the disposal of the appeal pending before the statutory authority. After the decision, the appeal was disposed of in favour of the petitioner and it was remanded to the assessing authority for proper adjudication and after enquiry, the assessing authority had reduced the amount of tax payable. This is being challenged by the petitioner by filing Ext.P6 appeal before the appellate authority and that is pending. Now the court below is again insisting for trial of the case. The decision in the appeal will have impact on the criminal prosecution. So it is necessary that a direction will have been given to the court below for keeping the prosecution in abeyance till the disposal of the statutory appeal pending before the authorities. Hence the petition.

3. Heard the counsel for the petitioner Sri.Dale P.Kurian and Standing counsel for Income Tax, Sri.Christopher Abraham.

4. The counsel for the petitioner submitted that since the appeal is still pending before the appellate authority, proceeding with the criminal prosecution launched by the Income Tax department on the same issue will cause prejudice to him. The Standing Counsel for the respondent admitted that the appeal is pending.

5. It is an admitted fact that there was some dispute arose regarding the submission of return and the particulars mentioned in the return, which according to the Income Tax Department was filed by suppressing their real Income. They filed a complaint before the Additional Chief Judicial Magistrate Court (Economic Offences), Ernakulam under Section 276(c) of Income Tax Act and the learned magistrate has taken cognizance of the case as C.C.No.11/2008 and that was pending before that court. It is also an admitted fact that earlier when the appeal filed by the petitioner was pending before the Income Tax appellate

tribunal, he moved this court by filing W.P.(c)No.8819/2009, seeking similar relief and this court in the decision reported in **Nandakumar v. Income Tax Officer (2009(2) KLT 948)** evidenced by Ext.P3 allowed the petition and directed the criminal prosecution to be kept in pending till final decision by the appellate authority in the matter. It is also admitted by both sides that, that appeal was disposed of by the appellate authority by remanding the matter to the assessing authority as per Ext.P4 order. The assessing authority, after remand, passed Ext.P5 order, reducing the amount, which is being challenged by the petitioner by filing the appeal before the Commissioner Income Tax Appeal, Thiruvananthapuram, evidenced by Ext.P6 appeal memorandum. The fact that the appeal is pending is admitted by the counsel for the respondent as well. So under the circumstances, the dictum laid down in the decision reported in Nandakumar's case (supra) will be applicable even now as the decision of the appellate authority in the matter will have some impact on the criminal prosecution pending in respect of the same subject matter before the Additional Chief Judicial Magistrate Court (Economic Offences), Ernakulam and it is necessary that the prosecution has to be kept in abeyance until final decision is taken in the matter by the appellate authority. So under the circumstances, this court feels that it is necessary in the interest of justice to give a direction to the Additional Chief Judicial Magistrate to keep the prosecution proceedings in C.C.No.11/2008 pending before that court in abeyance, till final orders are passed by the appellate court in Ext.P6 proceedings pending before the Commissioner of Income Tax Appeals, Thiruvananthapuram.

So the petition is allowed and the Additional Chief Judicial Magistrate (Economic Offenes), Ernakulam, is directed to be keep the criminal prosecution in

C.C.No.11/2008 pending before that court against the petitioner filed by the Income Tax Department, in abeyance pending disposal of Ext.P6 appeal pending before the Income Tax Commissioner for Appeals, Thiruvananthapurm.

With the above direction and observation the petition is disposed of.

Office is directed to communicate this judgment to the concerned court, immediately.

Sd/-
K. Ramakrishnan, Judge

//True Copy//

P.A. to Judge

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