IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2015

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The Hon'ble Mr. Justice R.S.RAMANATHAN

Crl.O.P.Nos.8422 to 8426 of 2009
and M.P.No.1 of 2009

R.Krishna Mohan ...Petitioner in all Crl.O.Ps.

vs.

The Assistant Commissioner
of Central Excise, Prosecution Unit,
Office of the Commissioner of Central Excise,
MHU Complex,
692, Anna Salai, Nandanam,
Chennai-600 035. ...Respondent in all Crl.OPs.

Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code praying to call for the records in E.O.C.C.Nos.102, 99, 98, 100, 101 of 2009 on the file of the learned Additional Chief Metropolitan Magistrate for Economic Offences (E.O.II), Egmore, Chennai and quash the same.

For Petitioner : Mr.V.Balasubramanian

For Respondent : Mr.T.P.Sekar
Special Public Prosecutor

C O M M O N O R D E R

These petitions have been filed, seeking to quash the proceedings in E.O.C.C.Nos.102, 99, 98, 100, 101 of 2009 on the file of the learned Additional Chief Metropolitan Magistrate for Economic Offences (E.O.II), Egmore, Chennai.

2. The learned counsel for the petitioner submitted that these petitions are filed to quash the complaint pending before the learned Additional Chief Metropolitan Magistrate for Economic Offences (E.O.II), Egmore, Chennai stating that the basis of the complaint, namely the petitioner has not complied with the order of the

Commissioner of Central Excise, Chennai made in O.A.Nos.2/2007 dated 14.02.2007 and submitted that the order made in O.A.No.2/2007 dated 14.02.2007 passed by the Commissioner of Central Excise was set aside in the Final Order No.30 & 31/2010 passed by the CESTAT dated 06.01.2010 in Appeal Nos.E/337 & E/338. The learned counsel further submitted that having regard to the judgment of the Hon'ble Supreme Court in Anil Gupta v. Star India Pvt. Ltd. & Another [(2014) 10 SCC 373 (SC)], the prosecution initiated against the partners without impleading the partnership firm is not maintainable. He also submitted that Section 9AA of the Central Excise Act, 1944 is in parimateria with Section 141 of the Negotiable Instruments Act, 1881 and while interpreting Section 141, the Hon'ble Supreme Court in the judgment referred to above held that without impleading the partnership firm or company, the partners or directors cannot be prosecuted. He therefore submitted that having regard to the above judgment, the prosecution initiated against the petitioner, who is only a partner, is liable to be quashed as the respondent failed to implement the partnership firm, namely M/s.Urbane Industries as one of the accused.

3. Mr.T.P.Sekar, learned Special Public Prosecutor submitted that having regard to the judgment of the Hon'ble Supreme Court, the contention of the learned counsel for the petitioner has to be considered as the partnership firm was not impleaded. However, he further submitted that the prosecution was initiated in the year 2009 and the judgment of the Hon'ble Supreme Court was delivered in the year 2014 and therefore, the petitioner cannot take advantage of the judgment rendered in 2014. He also submitted that the respondent may be granted liberty to initiate proceeding against the partnership firm also along with the petitioner.

4. I am unable to accept the contention of the learned Special Public Prosecutor. Though the judgment in Anil Gupta v. Star India Pvt. Ltd. & Another [(2014) 10 SCC 373 (SC)] was delivered on 07.07.2014, the Hon'ble Supreme Court only laid down the law and did not state in the order that the order will have only prospective operation. Therefore, having regard to the provisions of Section 9AA of the Central Excise Act, 1944, which is in parimateria with Section 141 of the Negotiable Instruments Act, without impleading the partnership firm, prosecution initiated against the partners is not maintainable and on that ground, these petitions may be allowed. As regards the contention of the learned Special Public Prosecutor that liberty may be granted for initiating fresh action against the partnership firm along with the partners, if law permits, the respondent is granted liberty to take further action in the manner known to law.

5. In the result, these Criminal Original Petitions are allowed and the proceedings in E.O.C.C.Nos.102, 99, 98, 100, 101 of 2009 on the file of the learned Additional Chief Metropolitan Magistrate for Economic Offences (E.O.II), Egmore, Chennai is quashed, granting liberty to the respondent to initiate fresh action against the partnership firm along with the partners, if law permits. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To

1.The Additional chief Metropolitan Magistrate
for Economic Offences (Eo II)
Egmore.

2.-do- Through Chief Metropolitan Magistrate,
Chennai.

3.The Assistant Commissioner
of Central Excise, Prosecution Unit,
Office of the Commissioner of Central Excise,
MHU Complex,
692, Anna Salai, Nandanam,
Chennai-600 035.

4.The Special Public Prosecutor for Excise Cases,
High Court, Chennai.

+2cc's to Mr.V.Balasubramanian, Advocate, S.R.No.17124

Crl.O.P.Nos.8422 to 8426 of 2009

KU(CO)
CA(07/04/2015)