IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.06.2016

PRONOUNCED ON: 12.07.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.9382 of 2016

& Crl.M.P. Nos.4843 & 4844 of 2016

S. Kathiresan ... Petitioner/Accused

Vs.

The Additional Deputy Commercial Tax Officer - IW
Intelligence Wing
Commercial Taxes Road
100 Feet road
Puducherry ... Respondent/Complainant

Criminal Original Petition filed under Section 482, Cr.P.C., seeking to call for the records in C.C. No.280 of 2010 on the file of the Judicial Magistrate Court No.1, Puducherry and quash the same.

For petitioner : Mr. S. Ravee Kumar

For respondent : Mr. M.R. Thangavel
Additional Public Prosecutor - Pondy

ORDER

In this case, the petitioner is challenging the prosecution launched by the Additional Deputy Commercial Tax Officer - IW, Intelligence Wing, Commercial Taxes Department, Puducherry in C.C. No.280 of 2010 before the Judicial Magistrate Court No.1, Puducherry for offences under sub-rule (3) of Rule 9 and Rule 14 of the Central Sales Tax (Registration and Turnover) Rules, 1957, Section 35 and Section 59(1)(d) of the Puducherry Value Added Tax Act, 2007 and Sections 176, 179, 180 and 409, IPC.

2. The petitioner is a dealer of petroleum products and runs a business in the name and style of Sri Rajeswari Agencies in Puducherry. The case of the prosecution is as under:

> “There was a complaint from the general public that the accused was operating the petrol bunk even on 24.01.2010 although the registration was cancelled with effect from 21.01.2010.
>
> In view of the complaint received from the general public, the officers of the Intelligence Wing, duly authorised under Section 55 of the Puducherry Value Added Tax Act, 2007 inspected the business premises on 24.01.2010 at 11.30 a.m. While entering the business premises, it was found that the accused was operating the petrol bunk in the business premises at No.199, Bouvancare Street, Mudaliarpet, Puducherry. The salesmen of the petrol bunk were supplying the petrol to their customers and the customers were drawing petrol from the bunk. Thiru. N. Subramanian who is the father of the accused was available in the business premises and the officers of the Intelligence Wing introduced themselves and explained that they have come there to conduct the inspection of the business premises for operating the petrol bunk even after cancellation of the Registration Certificate and requested him to cooperate in conducting the inspection. The officers of the Intelligence Wing requested the said person Thiru. N.Subramanian to produce the books of accounts and records maintained in connection with the operation of the business and permit the officers to make search and count the cash available in the till. Thiru. N. Subramanian refused to answer any questions and the one line reply was that he can answer only after consulting his advocate from Chennai. The officers of the Intelligence Wing took the physical stock available in the business premises and accordingly the accused was having M.S. (Ordinary Petrol) 361 litres, M.S. (Extra-premium petrol) 532 litres, H.S.D. (ordinary diesel) 10256 litres and H.S.D. (Extra mileage diesel) 2409 litres. Thiru. N. Subramanian was requested to produce the purchase invoice received from the Indian Oil Corporation and sale bills issued to the customers. Thiru. N. Subramanian replied to the officers that the purchase invoices are not in the business premises but available only with the advocate and assured to produce the same on 27.01.2010. Thiru. N. Subramanian produced the sales

invoice book bearing No.001 to 600. The scrutiny of sale invoice establishes that the accused issued the sale bills bearing distinct No.250 to 2665 on 23.01.2010 and No.266 to 273 on 24.01.2010. Similarly another sale invoice book bearing No.1201 to 1800 was also used. On scrutiny of the sale invoice, it was found that the accused issued the sale bills bearing distinct No.1231 to 1260 on 23.01.2010 and No.1261 to 1275 on 24.01.2010. Thiru N.Venkatesan, the customer of M/s. Sri Rajeswari Agencies who was drawing petrol for his motor cycle bearing no.PY-01-V-1335 at the time of inspection was examined by the officers of the Intelligence Wing and informed that he has drawn the petrol from M/s. Sri Rajeswari Agencies and produced sale invoice bearing distinct no.272 dated 24.01.2010. The scrutiny of sale invoice and statement given by the customer drawing petrol establish that the accused was operating the business on 23.01.2010 and 24.01.2010 even after cancellation of their registration certificates. The sale invoice book bearing no.01 to 600 is marked as Document No.4 and sale invoice book bearing no.1201 to 1800 is marked as Document No.5 and the statement given by Thiru. N. Venkatesan is marked as Document No.6."

3. It is the allegation of the department that the petitioner has been carrying on with his business despite cancellation of his registration from 21.01.2010.

4. The learned counsel for the petitioner disputed the allegation and submitted that the prosecution is an abuse of process of law.

5. It is trite that this Court cannot go into disputed questions of fact in an application under Section 482, Cr.P.C. The prosecution has alleged in the complaint that despite cancellation of registration, the petitioner was carrying on with his business even thereafter and they have also recovered certain materials like bills etc. When the petitioner was asked to sign the statement of accounts by the Commercial Tax Officer-Investigation Wing on 24.01.2010, he refused to sign the same and therefore, he is being prosecuted under Section 180 IPC also.

6. Since there are sufficient materials for the prosecution to proceed, the prosecution cannot be quashed in the light of the law laid down by the Supreme Court in State of Haryana vs. Bhajan Lal, [1992 Supp (1) SCC 335].

In the result, this Criminal Original Petition is dismissed as being devoid of merits. Connected Crl.M.Ps. are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

cad

To

1. The Judicial Magistrate No.1
Puducherry

2. The Additional Deputy Commercial Tax Officer - IW
Intelligence Wing
Commercial Taxes Road
100 Feet road
Puducherry

3. The Public Prosecutor
High Court of Madras
Chennai 600 104

+1cc to Mr.S.Ravee Kumar, Advocate, S.R.No.39122

Crl.O.P. No.9382 of 2016

EU(CO)
CA(27/07/2016)