IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18..12..2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision Case
Nos.1111, 1112, 1113 and 1131 of 2013
and M.P.Nos.1 of 2013

Saravanan [A2] ... Petitioner

-Versus-

1.The Additional Deputy Commercial
Tax Officer-IW,
Intelligence Wing,
Commercial Taxes Department,
100 Feet Road,
Puducherry. [Complainant]

2.M/s.Vasanthi Agencies,
Rep. by Smt.Vasanthi,
No.27, Ist Floor, Main Road,
Anandharangapallai Nagar,
Puducherry.

3.P.Vasanthi,
W/o. Palaniappan,
Partner of M/s.Vasanthi Agencies,
Res. Old No.159, St. Rozario Street,
Muthialpet,
Puducherry-3. ... Respondents

Crl.R.C.No.1111 of 2013: Revision filed under Sections 397 r/w 401 of Cr.P.C. praying to call for the records pertaining to Cr.M.P.No.5506 of 2009 in C.C.No.301 of 2008 on the file of the learned Judicial Magistrate-I, Puducherry and set aside the order dated 15.09.2012 made in Cr.M.P.No.5506 of 2009 in C.C.No.301 of 2008 and consequentially discharge the petitioner from the charges.

Crl.R.C.No.1112 of 2013: Revision filed under Sections 397 r/w 401 of Cr.P.C. praying to call for the records pertaining to Cr.M.P.No.5508 of 2009 in C.C.No.339 of 2008 on the file of the learned Judicial Magistrate-I, Puducherry and set aside the order dated 15.09.2012 made in Cr.M.P.No.5508 of 2009 in C.C.No.339 of 2008 and consequentially discharge the petitioner from the charges.

Crl.R.C.No.1113 of 2013: Revision filed under Sections 397 r/w 401 of Cr.P.C. praying to call for the records pertaining to Cr.M.P.No.5507 of 2009 in C.C.No.340 of 2008 on the file of the learned Judicial Magistrate-I, Puducherry and set aside the order dated 15.09.2012 made in Cr.M.P.No.5507 of 2009 in C.C.No.340 of 2008 and consequentially discharge the petitioner from the charges.

Crl.R.C.No.1131 of 2013: Revision filed under Sections 397 r/w 401 of Cr.P.C. praying to call for the records pertaining to Cr.M.P.No.8449 of 2010 in C.C.No.9 of 2010 on the file of the learned Judicial Magistrate-I, Puducherry and set aside the order dated 15.09.2012 made in Cr.M.P.No.8449 of 2010 in C.C.No.9 of 2010 and consequentially discharge the petitioner from the charges.

For Petitioner : Mr.S.Ashok Kumar,
Sr. Counself for
Mr.R.Udhayakumar

For Respondents : Mr.M.R.Thangavel,
Government Advocate
[Puducherry]

COMMON ORDER

The revision petitioner is Accused No.2 in C.C.Nos.301, 339, 340 of 2008 and 9 of 2010 on the file of the learned Judicial Magistrate-I, Puducherry. The said calendar cases were instituted on four different complaints filed under Section 190(1) of Cr.P.C. alleging tax evasions which were punishable under the provisions of the Puducherry General Sales Tax Act, 1967 r/w Puducherry Value Added Tax Ac, 2007. Pending cases, the petitioner filed applications seeking to discharge him from the charges. The learned Magistrate by an individual order dated 15.09.2012 refused to discharge the petitioner from the charges and dismissed all his applications . It is this order now under challenge in this revision case.

2. The case of the complainant/1st respondent herein in C.C.No.301 of 2008 in brief is as follows:- There are totally three accused in the case. A1 is a partnership firm. A2 and A3 are partners of the firm. The petitioner is A2. They were running the business of resale of petrol, diesel and lubricant oil, etc. A1 firm has been registered under The Pondicherry General Sales Tax Act, 1967 and deemed to be a registered dealer under The Pondicherry Value Added Tax Act, 2007. According to

the complainant, based on an intelligence tip off, when the officials of the department compared the sales data made available by the Indian Oil Corporation with the sales turnover submitted by A1 firm, the authorities found that there were a large scale tax evasion on the part of the accused. The assessing authority doubted the correctness and completeness of the returns filed by the accused, therefore issued a pre assessment notice to the accused, on 30.06.2007 which was served on 30.06.2007 jointly and severally to A1 to A3. Despite sufficient opportunities, the accused did not come forward with any objection to the pre assessment notice and therefore, the assessing authority issued second notice dated 04.10.2007. But, there was no response from the accused. Therefore, the assessing authority after following the due procedures, completed the assessment; passed an order of assessment dated 28.11.2007 and issued demand and penalty notices whereby the accused were required to pay a sum of Rs.12954404/- as tax and a sum of Rs.12765152/- as penalty.

3. Likewise, the assessing authority found that the accused reported incorrect sales turn over details and there were tax evasions on the part of the accused by suppressing the actual sales turnover during the financial year 2001-2002, 2002-2003 and 2003-2004 also. Hence, the assessing authority initiated separate proceedings and on failure of the accused to pay the tax and penalty separate complaints have been filed. The learned Magistrate has taken cognizance of offences and issued summons to all the accused. Thereafter, the learned Magistrate framed charges. The accused denied the charges and they opted for trial. Accordingly, the cases were posted for trial.

4. While so, petitioner/A2 filed a petition under Section 245 of Cr.P.C. praying to discharge him from the charges on the ground that he got retired from the partnership firm as early as on 01.10.1999 due to some personal reasons and in his place one Mr.Palaniappan was inducted as a partner in the firm and A3 has been managing the affairs of the business; and the partnership was accordingly reconstituted by means of a deed and in view of Clause (8) of the deed of reconstitution of the partnership firm, the continuing partners shall indemnify and keep indemnified the retained partner against all, loss, costs, charges and expenses that the retained partner may suffer or incur on account of any claim being made against him as a partner of the firm.

5. The said discharge petitions were sternously opposed by the complainant stating that the retirement of A2 from the partnership firm was not duly intimated to the department as required under law. The petitioner in such circumstances cannot absolved from his tax liability. There are prima facie material

to proceed against the petitioner for suppression of actual tax turn over and it is for the petitioner to establish during trial that he retired from the partnership firm as early as on 01.10.1999 and on that ground he cannot be discharged from the charges.

6. The learned Magistrate after having considered the submissions made on either side, dismissed the discharge petitions by order dated 15.09.2012 which are now under challenge before this court.

7. I have heard the learned senior counsel for the petitioner/A2 and the learned Government Advocate for the 1st respondent and also perused the records carefully.

8. The learned senior counsel for the petitioner would submit that the petitioner got retired from the partnership firm as early as on 01.10.1999 and on his retirement, the partnership was duly reconstituted by inducting Mr.Palaniappan as a partner in the place of the petitioner. It was also duly intimated to the authorities concerned. According to him, the fact, as borne out of records, would be that the petitioner has sent a letter dated 07.04.2003 stating that two existing partners were to retire from 31.03.2003 and the constitution changed from partnership to proprietory concern w.e.f. 01.04.2003 which was not disputed by the department. This would go to show that the petitioner retired from the partnership firm as early as in the year 2003 and he cannot be mulcted with any criminal liability.

9. Per contra, the learned Government Advocate would contend that, according to the department, there were suppressions of actual sales turnover from the financial year 2000-2001 to 2003-2004 on the part of the partnership firm. Even though the petitioner claimed to have resigned from the partnership firm on 01.10.1999 , absolutely, there was no communication from the petitioner regarding his retirement and the department letter upon which the petitioner placed reliance was of the year 2003 and that application was not accepted by the department. Even assuming that the petitioner retired in the year 2003, the petitioner cannot escape from his liability which had occurred much prior to the year 2003. This is a fact in issue which needs to be proved by letting in oral and documentary evidence. The trial court having appreciated the available materials, rightly concluded that they are all matters to be decided in trial based on the evidence, both oral and documentary, evidence being let in by the parties and therefore, dismissed the discharge petitions which does not require at all any interference at the hands of this court. He, therefore, prays for dismissal of the revisions.

10. I have considered the rival submissions carefully.

11. Admittedly, the petitioner/A2 was a partner of the firm. During the financial year 2000-2001, 2001-2002, 2002-2003 and 2003-2004 A1 firm is stated to have reported incorrect sales turnover and there were huge variance noticed between the purchase value of petroleum products and sales turn over and therefore, the authority initiated proceedings under law.

12. According to the petitioner, by the time when the alleged suppressions of actual sales turn over were noticed, the petitioner was not at all the partner of the firm and he retired from the partnership firm as early as on 01.10.1999 which was much prior to the alleged tax evasion and it was also duly intimated to the department and as a matter of fact, the firm was subsequently reconstituted with a new partner in the place of retiring partner.

13. The learned senior counsel for the petitioner in attempt to convince this court would submit that by letter dated 08.04.2003, as it could be borne out of the records, the department has accepted the receipt of Form-10 filed by A1 firm intimating that on account of the fact that two existing partners have retired from 31.03.2003, the constitution has been changed from partnership to proprietory concern w.e.f. 01.04.2003, the petitioner, who was the erstwhile partner, cannot be mulcted with any liability.

14. Even if it is assumed that the petitioner retired from the partnership firm from on 01.10.1999, there is absolutely nothing on record to show that it was duly intimated to the department forthwith as required under law. The petitioner heavily placed reliance on an internal communication, appears to be an office note of the department, dated 08.04.2003, which shows that on account of retirement of two partners, the constitution has been changed from partnership to proprietory concern w.e.f 01.04.2003. This fact is also borne out of records. But, the tax evasions relate prior to the said communication. Furthermore, the department took a stand that application was not accepted and it was returned for necessary compliance. As already concluded, there is no material on record to show that the petitioner got retired on 01.10.1999. If the petitioner had any materials with him, it is for him to establish the same in trial by letting in oral and documentary evidence in support of his case. This was the findings of the learned Magistrate in which I do not find any illegality or perversity warranting interference. Thus, the criminal revisions fail and the same deserve to be dismissed.

15. In the result, the criminal revision cases are dismissed. Since the matters are pending from the year 2008, the

trial court is directed to expedite the trial and complete the same within a period of six months from the date of receipt of a copy of this order. Consequently,connected MPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Judicial Magistrate-I, Puducherry, Puducherry.

2.The Chief Judicial Magistrate Puducherry.

3.The Public Prosecutor, Pondicherry, High Court, Madras.

4.The Additional Deputy Commercial Tax Officer – IW, Commercial Tax Department 100 Feet Road, Pondicherry.

+3cc to the Government Pleader, S.R.No.90425 to 90427

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PPA(CO)

RRK(08/01/2018)