IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.23649 of 2018
and Crl.M.P.Nos.13315 and 13319 of 2018

1.M/s.Sai Logistics Private Limited,
represented by its Managing Directors,
Ms.Lily Ignesh Mary & Mr.Ravichandiran,
No.7, Morrison, First Street,
Cement Road, Alandhur, Chennai 600 016.

2.Lily Ignesh Mary
3.Ravichandiran .. Petitioners

Vs

The Assistant Commissioner of Income Tax
Corporate Circle - 6(i), Aayakar Bhawan,
No.121, Mahatma Gandhi Road,
Chennai 600 034. .. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records of the docket order dated 25.07.2018, made in Crl.M.P.No.1504 of 2018 in C.C.No.9 of 2018 on the file of the Additional Chief Metropolitan Magistrate Economic Offence - II, at Egmore at Allikulam, Chennai and quash the same and in consequence, discharge the petitioners.

For Petitioners : Mr.S.Senthilnathan

O R D E R

The petitioners are the accused in C.C.No.9 of 2018 before the Additional Chief Metropolitan Magistrate Economic Offence - II, at Egmore at Allikulam, Chennai for the offence under Section 276 CC of the Income Tax Act on the private complaint lodged by the Income Tax Department.

2.It is the case of the department that for the Accounting year ending 31.03.2013, the petitioner company was required to pay Income Tax for the assessment year 2014 - 2015 and that he had failed to file the return of income on time. Hence, the prosecution.

3.On receipt of summons, the petitioners filed Crl.M.P.No.1504 of 2018 in E.O.C.C. No.9 of 2018 under Section 245 (2) Cr.P.C for discharge which has been rejected by the Trial Court by order dated 25.07.2018, challenging which, the petitioners are before this Court.

4.Heard Mr.S.Senthilnathan, learned counsel appearing for the petitioners who placed strong reliance on Section 245 (2) Cr.P.C and contended that even in a case where the provisions of Chapter XIX B applies, the accused can be discharged under Section 245 (2) Cr.P.C without examining the witnesses.

5.There cannot be any quarrel with the said proposition of Mr.S.Senthilnathan. However, such a power can be exercised only where on the face of the complaint, if the Court comes to the opinion that the allegations are groundless. It is a trite law that even a strong suspicion is enough to frame the charge as held by the Hon'ble Supreme Court in Central Bureau of India Vs. K.Narayana Rao (2012) 9 SCC 512.

6.Mr.S.Senthilnathan contended that the petitioners were not liable to pay any Income Tax and that it is the Income Tax Department which has to refund certain amounts to the petitioner company. Therefore, the very non-filing of the return cannot be a reason for launching a prosecution against the petitioners.

7.In the opinion of this Court, this is a disputed question of fact which cannot be gone into in proceedings under Section 245 (2) Cr.P.C. On a reading of the complaint of the Income Tax Department, there are prima facie materials to take cognizance of the offence and issue process which the Trial Court has done. There are no materials to exercise powers under Section 245 (2) Cr.P.C, to discharge the accused at the threshold in this case. It is always open to the petitioners to plead for discharge under Section 245(1) Cr.P.C, after the prosecution witness is examined.

8.With the above liberty, this petition is closed. The respondent is directed to produce their witnesses for examination before the Trial Court within a period of three (3) months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Assistant Commissioner of Income Tax
Corporate Circle - 6(i), Aayakar Bhawan,
No.121, Mahatma Gandhi Road,
Chennai 600 034.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Haja Mohideen Gisthi, Advocate, S.R.No. 68760
+1cc to Mr.S.Senthil Nathan, Advocate, S.R.No. 68718

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GN(22/10/2018)