HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No. 13618 OF 2010

ORDER:

1. This Criminal Petition under Section 482 Cr.P.C. is filed by Accused Nos. 1,4 and 5 seeking to quash the proceedings in C.C.No.79 of 2009 pending adjudication on the file of learned Judicial First Class Magistrate, Adilabad.

2. The contentions of the petitioners are that the allegations levelled against them are false, baseless and created only to harass them. M/s. G.S. Oils limited is the consigner and they used to receive the cosignees from the dealers of other States and after receiving the same, it submit the same to the department. The petitioners are the purchasers of the consignees received from the dealers of other States to the department and they have not created or forged the documents and that they do not know about the genuineness of the said documents. It is further contended that the second respondent without issuing any show cause notice to them or the company about the genuineness of the C-form, straightaway lodged the complaint with the police to harass them. They have nothing to do with the alleged offences. It is further contended that during the investigation, the police examined the Assistant Commissioner of Sales Tax, Yavatmal, Maharastra State wherein he specifically stated that due to communication gap, he has submitted his earlier report with regard to the genuineness of the documents and in his examination, he has rectified his mistake. The petitioners

contended that they have paid the tax regularly and they are only directors of the firm and crime is registered against them in individual capacity. It is also contended that in view of the specific enactment of General Act, Indian Pencal Code is not applicable.

3. On the other hand, second respondent/complainant contended that genuineness of the firm can be decided in the regular trail. The statements under Section 161 Cr.P.C are not substantive piece of evidence and they can be used for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso.

4. POINT:

Now the point that arises for determination is,

"*whether there is sufficient material to prosecute the petitioners.*"

5. A perusal of the record goes to suggest that the petitioners herein are arrayed as Accused Nos. 1,4 and 5 in C.C.No.79 of 2009. It is their case that A.1 is the Managing Director and A.4 and A.5 are the directors of the partnership firm, namely M/s. G.S.Oils Limited, Adilabad. Basing on the complaint lodged by the second respondent, a case in Crime No. 160 of 2002 was registered on the file of Station House Officer, I Town Police Station, Adilabad against the petitioners herein for the offences punishable under Sections 471, 477-A and 420 IPC. After thorough investigation, the police filed charge sheet and the

same is taken on file and numbered as CC.No.79 of 2009. In the charge sheet as well as in the complaint , there is specific overt act attributed against the petitioners in the report of the Sales Tax Officer that F-forms were not issued to M/s Pashupathi Oil Enterprises as it was not doing any business and its registration was under the process of cancellation. Similarly F-form was not issued to M/s.Salasar Proteins nor the dealer had filed any returns. The Sales Tax Officer, C-II, C970, Akola reported that there were no such transactions for the year 2004-2005 with M/s. G.S.Oils Limited, Adilabad. The Assistant Commissioner of Sales Tax, Khemgaon reported that no such dealer with Registration No. BST-444303/125 was registered with their department and hence the claim of M/s. G.S.Oils Limited is false and bogus. Further the Sales Tax Officer, C-969, Akola reported that the assessee had not made any transactions of cotton seed from M/s. G.S.Ils Limited, Adilabad during 2004-05 and therefore the claim of consignment sales is bogus.

6. Further it is clear from the complaint and charge sheet that M/s. G.S.Oils submitted F-forms in support of their claim of consignment sales to M/s Prabhu Traders, Tamilnadu State during 2003-04. The Assistant Commissioner (CT), Tiruvannamalai reported that M/s. Prabhu Traders had not issued F-form No.493515 and the turnover of Rs.34.52 lakh was not reported to the Department since M/S Prabhu Traders did not receive the consignment from M/s. G.S.Oils Limited. Moreover the Sales Tax Department had not issued F-form No.493515 to

M/s.Prabhu Traders. Therefore it is clear that M/s. G.S. Oils Limited submitted fabricated and forged F-form to claim undue tax exemption of Rs.34.52 lakhs.

7. Similarly M/s. G.S.Oils Limited, Adilabad vide their CST-VI returns filed before the CT department claimed to have effected consignment sales of cotton seed oil cake to M/s. C.P. Aquaculture (India) (P) Limited, Chennai to an extent of Rs.79.25 lakhs during the year 2002-03. However, M/s. C.P. Aquaculture vide their letter dated 22.9.2005 reported that they have not made any transaction of cotton seed oil cake from M/s. G.S.Oils Limited, Adilabad. Further, the Sales Tax Officedr (C-967), Admn. Building, Yuvatmal, Maharashtra informed through their letter that the consignment sales said to have been effected by M/s G.S.Oils Limited, Adilabad to M/s. Bhavani Enterprises, Yuvatmal (MST 445303/S/51) were to be treated as bogus as the Sales Tax Department of Maharashtra had not issued any F-forms as the registration of the said Enterprises had been cancelled w.e.f. 1.4.2001.

8. All these facts clearly go to suggest that the Sales Tax Department had not issued C/F forms to the dealers and therefore the alleged F/C forms submitted by M/S. G.S.Oils Limited, Adilabad are bogus. The statements of officials of the Sales Tax Department during the course of investigation before the police officials speak about the commission of offence. The

enquiry revealed that the so called consignment transfers claimed by M/s. G.S.Oils Limited to their agents outside the state are not actual consignment transfers. In most of the cases, though the consignment agents are registered as dealers on the rolls of the Sales Tax Department, they had not filed any returns to the Department nor had they adduced any documentary proof against receipt of the consignment transfers from M/s. G.S.Oils Limited, Adilabad. Moreover, they had not discharged the statutory obligation of issuing 'F' forms as per the provisions of CST Act, 1956.

9. The petitioners relied on the statement of the Assistant Commissioner of Sales Tax, Yavatmal, Maharastra State who specifically stated that due to communication gap, he has submitted his earlier report with regard to the genuineness of the documents and in his examination, he has rectified his mistake. The same has to be decided during the trial. Any statement made before the police officer under Section 161 Cr.P.C. is not a substantive piece of evidence, but can be used only for contraction and corroboration.

10. In view of the foregoing discussion of the facts and circumstances, I find prima facie material to prosecute the petitioners who are the Managing Director and partners of G.S.Oils Limited, Adilabad and are responsible for the alleged offences. There is specific assertion against the petitioners that they have submitted false and bogus C/F forms which are not

issued by the Sales Tax Departments of the respective States to the concerned consignees. In view of the above, there is nothing to suggest that the second respondent has abused the process of Court and caused any prejudice to the petitioners in setting the criminal law in motion.

11. In the result, the Criminal Petition is dismissed.

12. Miscellaneous petitions pending consideration if any in the Criminal Petition shall stand closed in consequence.

JUSTICE N. BALAYOGI

Dated 9th February, 2018.
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