IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.28469, 28482 to 28484,
28487 & 28492 of 2018
and Crl.M.P.Nos.16565,16566, 16574 to 16580
& 16582 to 16584 of 2018

J.Dinakaran ... Petitioner in all Crl.O.P.'s

Vs.

The Deputy Director of Income Tax (Investigation),
Unit-3(1),
Nungambakkam,
Chennai - 600 034 ... Respondent in all Crl.O.P.'s

COMMON PRAYER:Criminal Original Petitions filed under Section 482 Cr.P.C. praying to call for the records and quash the charges framed as against the petitioner / accused on 01.11.2018 in the complaint in E.O.CC.Nos.130, 134, 135, 131, 132 & 133 of 2016 pending on the file of the Hon'ble Additional Chief Metropolitan Magistrate, EO-II, Egmore, Chennai for offence under Section 227 of Income Tax, 1961.

For Petitioner in all Crl.O.P.'s : Mr.S.S.Rajesh

For Respondent in all Crl.O.P.'s : Mrs.M.Sheela, Special Public Prosecutor for Income Tax

COMMON ORDER

These petitions have been filed to quash the proceedings in E.O.CC.Nos.130, 134, 135, 131, 132 & 133 of 2016 pending on the file of the Hon'ble Additional Chief Metropolitan Magistrate, EO-II, Egmore, Chennai.

2. Mr.S.S.Rajesh, the learned counsel for the petitioner submitted that the petitioner is an individual engaged in business of arranging finance, dealing with bricks, conducting chit fund, trade old boxes, waster paper assessed to tax by the respondent herein under pan No.AIGPD7898D. The respondent defacto complainant filed complaint in pursuance of the sanction

of the Principal Director of Income Tax(Investigation), Tamil Nadu & Pondicherry under Section 277 of the Income Tax Act, 1961. The complaint is with respect to assessment years 2009-2010, 2010-2011, 2011-12, 2012-2013, 2013-2014 and 2014-2015. The petitioner did not disclose his actual income of business transactions and search was conducted and found that the petitioner did not maintain documents as per the accounting practice and entire transactions were done in cash. On confession of the petitioner, his statement was recorded and disclosed his money lending and chit business. Further allegation is that the petitioner submitted that a sum of Rs.35 crores was not disclosed as income income for the assessment year 2009-2010, 2010-2011, 2011-12, 2012-2013, 2013-2014 and 2014-2015. Therefore, the petitioner wilfully made false statement of return of income tax filed in his individual capacity and wilfully under reported the income earned. It is punishable under Section 227 Income Tax Act and liable for prosecution as such show cause notice was issued on 14.03.2016 and the petitioner issued reply and it was not plausible and not tenable according to the complainant. Therefore, the respondent complainant preferred a complaint for the offence under Section 277 of Income Tax Act.

3. The learned counsel for the petitioner submitted that there is absolutely no prima facie to entertain the complaint as against the petitioner. There are certain procedural irregularities which are carried out by the complainant in initiating the present impugned proceedings and the investigation being there is no locus to initiate prosecution against the petitioner. He further submitted that the petitioner never had an intention to evade income tax as alleged by the complainant and as such the learned Magistrate ought not to have taken cognizance for the offence under Section 277 of Income Tax Act. Therefore, he prayed for quashment of the entire proceedings in E.O.CC.Nos.130, 134, 135, 131, 132 & 133 of 2016 pending on the file of the Hon'ble Additional Chief Metropolitan Magistrate, EO-II, Egmore, Chennai.

4. Per Contra, Mrs.M.Sheela, Special Public Prosecutor for Income Tax appearing for the respondent contended that the petitioner failed to disclose his entire income for the assessment year 2009-2010, 2010-2011, 2011-12, 2012-2013, 2013-2014 and 2014-2015 to the tune of Rs.35 crores. Therefore, it is punishable under Section 277 of Income Tax Act. She further submitted that the petitioner did not disclose his money lending and chit business in his income tax returns. Therefore, a search was conducted on the office premises of the petitioner group of companies along with his residence and found that the petitioner did not maintain documents as per the accounting practice and the entire transaction was done in cash. The

petitioner has wilfully made false statement of return of income filed in the individual capacity and wilfully under reported the income earned by the petitioner. Therefore, there is absolutely no merit in the quash petition and sought for dismissal of the same.

5. Heard Mr.S.S.Rajesh, the learned counsel for the petitioner and Mrs.M.Sheela, Special Public Prosecutor for Income Tax appearing for the respondent.

6. In all the petitions, the petitioner is accused for non disclosing the income to the tune of Rs.35 crores for the assessment years 2009-2010, 2010-2011, 2011-12, 2012-2013, 2013-2014 and 2014-2015. The present complaint has been lodged as against the petitioner for the offence punishable under Section 277 of Income Tax Act. It is also seen that the petitioner did not disclose his money lending and chit business in his returns of income and declared false statement of returns of income filed in his individual capacity and wilfully under reported the income earned by the petitioner. The learned counsel for the respondent relied upon the judgment in the case of Arun Arya Vs. Income Tax Officer in CRMC.No.205 of 2015 dated 28.09.2018, wherein Jammu & Kashmir High Court has held as follows:

> "10. Under the Income-Tax Act, 1961 there are various provisions for compliance with taxing provisions and the collection of taxes. The Income-tax Act seeks to enforce tax compliance in a three fold manner; namely 1) Imposition of interests 2) Imposition of penalties and 3) Prosecutions. In the fight against tax evasion, monetary penalties are not enough. When a calculating tax dodger finds it a profitable proposition to carry on evading taxes over the years, if the only risk to which he is exposed is a monetary penalty in the year in which he happens to be caught. The public in general also tends to lose faith and confidence in tax administration when a tax evader is caught, but the administration lets him get away lightly after paying only a monetary penalty- when money is no longer a major consideration with him if it serves his business interest. The sections dealing with offences and prosecution proceedings are included in Chapter XXII of the Income-tax Act, 1961 i.e. S. 275A to S. 280D of the Act. The provisions of the said Code are to be followed relating to all offences under the Income-tax Act, unless the contrary is specially provided for by the Act. The concept of mens rea is integral to criminal jurisprudence. An offence cannot be committed unintentionally. Generally a guilty mind is a sine qua non for an offence to be committed. However, The

> Taxation Laws S. 278E has carved out an exception to this rule. The said Section places the burden of proving the absence of mens rea upon the accused and also provides that such absence needs to be proved not only to the basic threshold of „preponderance of probability" but „beyond reasonable doubt". In every prosecution case, the Court shall always presume culpable mental state and it is for the accused to prove the contrary beyond reasonable doubt. No doubt, this presumption is a rebuttable one.”

7. She also relied upon the judgment in the case of P.Jayappan Vs. S.K.Perumal reported in 1984 AIR 1693, wherein it is held as follows:

> "It may be that in an appropriate case the criminal Court may adjourn or postpone the hearing of a criminal case in exercise of its discretionary power under section 309 of the Code of Criminal Procedure if the disposal of any proceeding under the Act which has a bearing on the proceedings before it is imminent so that it may take also into consideration the order to be passed therein. Even here the discretion should be exercised judicially and in such a way as not to frustrate the object of the criminal proceedings. There is no rigid rule which makes it necessary for a criminal court to adjourn or postpone the 538 hearing of a case before it indefinitely or for an unduly long period only because some proceeding which may have some bearing on it is pending elsewhere. But this, however, has no relevance to the question of maintainability of the prosecution. The prosecution in those circumstances cannot be quashed on the ground that it is a premature one."

8. The Hon'ble Supreme Court of India has held that the concept of mens rea is integral to criminal jurisprudence and offence cannot be committed intentionally. Section 278 (E) of the Taxation Laws places burden of proving the option of mens rea upon the accused and also provides that such absence need to be proved not only to the basic threshold of “preponderance of possibility” but beyond reasonable doubt. In every prosecution case, the court shall always presume culpable mental state and it is for the accused to prove the contrary beyond reasonable doubt.

9. In the present case, it is evident from the complaint that the petitioner did not disclose his income to the tune of Rs.35 crores for the assessment years 2009-2010, 2010-2011, 2011-12, 2012-2013, 2013-2014 and 2014-2015. The petitioner

wilfully made false statement of return of income and wilfully under reported the income earned. Therefore, the entire proceedings cannot be quashed on the grounds raised by the petitioner as stated supra. The petitioner has to prove the contrary beyond reasonable doubt before the trial court and the trial court has to enquire the complaint independently on the basis of the evidence as such these petitions are liable to be dismissed.

10. Accordingly, these Criminal Original petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Director of Income Tax (Investigation),
   Unit-3(1),
   Nungambakkam,
   Chennai - 600 034

2. The Additional Chief Metropolitan Magistrate,
   EO-II, Egmore, Chennai

3. The Special Public Prosecutor for Income Tax,
   High Court of Madras.

+2 ccs to M/s.R.C.Paul Kanagaraj, Advocate, S.R.No.20396

Order made in
Crl.O.P.Nos.28469, 28482 to 28484,
28487 & 28492 of 2018
and Crl.M.P.Nos.16565,16566, 16574 to 16580
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NRL(CO)
SSM(27/03/2019).