IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO. 13183 OF 2011

Anupam Kumar Didwania .. Petitioner

- Vs -

Asst. Commissioner of Income Tax
Central Circle (3)
Madras 600 034. .. Respondent

Criminal Original Petition filed u/s 482 Cr.P.C. praying this Court to call for the records and quash the proceedings in C.C. No. 186 of 1991 on the file of the Addl. Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai.

For Petitioner : Mr. J.Srinivasan

For Respondent : Mr.N.Baskaran, Spl. PP (IT Cases)

ORDER

The present petition has been filed for the quashment of the the case on the file of the learned Addl. Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai, in C.C. No.186 of 1991.

2. It is the case of the petitioner that he is the Proprietor of West Coast Corporation. It is the case of the petitioner that pursuant to the search that was conducted in the premises of the various members of the petitioner's family, the income tax department, alleging that malpractice has been done in contravention of the provisions of the income tax act, initiated action under the provisions of the Income Tax Act and prohibitory orders were issued not to deal with the goods that were seized and were under the control of the respondent. It is the further case of the petitioner that pursuant to the filing of a petition before the Calcutta High Court against the prohibitory order and the court had granted interim stay of the said prohibitory order and had permitted the petitioner to remove the goods subject to the final outcome of the petition. Against the said order, Special Leave Petition was filed before the Hon'ble Supreme Court and an order was passed directing

conduct of an enquiry and, accordingly, enquiry was conducted, which has resulted in the filing of the present case before the court below.

3. Learned counsel appearing for the petitioner submitted that offences u/s 193 IPC have been framed, which is per se unsustainable for the reason that no complaint, as is mandated u/s 195 Cr.P.C. has been filed by any competent authority. Further, it is submission of the learned counsel for the petitioner that the complainant/respondent was aware of the said transaction even in the year 1982, but for reasons best known, no action was taken and the present action in the year 1991 is time barred.

4. It is the further submission of the learned counsel appearing for the petitioner that the 'No Due Certificate' issued in the year 1995 by the respondent has literally compounded the offence and, thereby, there is no due/offence attached with the petitioner and, therefore, the present complaint/case against the petitioner is wholly unsustainable.

5. Per contra, learned Special Public Prosecutor appearing for the respondent submitted that the enquiry, which was ordered by the Hon'ble Supreme Court against the prohibitory orders of the Calcutta High Court, brought to light very many malpractices and evasion of tax as also impersonation committed by the petitioner and the other accused and, therefore, the complaint was preferred before the trial court, which, after due application of mind, has taken the case on file. Therefore, the contention of the petitioner that there is no complaint as mandated u/s 195 Cr.P.C. for fastening a charge u/s 193 IPC is wholly unsustainable.

6. It is the further submission of the learned Special Public Prosecutor that the enquiry at the instance of the Hon'ble Supreme Court has brought to light not only evasion of tax and penal interest, but also filing a petition before the Calcutta High Court by personation, which requires to be dealt with iron hands. The majesty of the Court itself is at stake by the act of the petitioner, which, if condoned, will pave the way for commission of such grave offences.

7. Further, it is the submission of the learned Special Public Prosecutor that the 'No Due Certificate' will in no way affect the pending judicial proceedings and if at all the petitioner is aggrieved, the petitioner is at liberty to raise the said issue at the time of trial, which could be gone into by the trial court and it is not open to the petitioner to plead that the said 'No Due Certificate' would nullify the case pending before the trial court. Further, it is submitted by the

learned Special Public Prosecutor that all the issues raised are triable issues and it would not be in detriment to the respondent to have the whole case closed at this stage.

8. This Court paid its unceremonious attention to the contentions advanced by the learned counsel appearing on either side and also perused the materials available on record.

9. Threefold contentions have been advanced on behalf of the petitioner, relating to the charge u/s 193 IPC in the absence of any complaint, the prosecution being time barred and that 'No Due Certificate' having already been issued in the year 1995, the present prosecution is unsustainable.

10. Insofar as the first contention relating to Section 193 IPC is concerned, it is to be noted that against the stay on the prohibitory orders passed by the Calcutta High Court, Special Leave Petition was filed before the Hon'ble Supreme Court, leading to the ordering of an enquiry by the Hon'ble Supreme Court. In essence, it is to be noted that the Special Leave Petition has resulted in the enquiry and the findings in the enquiry has ended in the filing of the case before the trial court. Therefore, pleading that there is no complaint as mandated u/s 195 Cr.P.C., for making out an offence u/s 193 IPC is wholly unsustainable, as the enquiry is the outcome of the judicial proceedings culminating in the filing of the case. The enquiry report, by itself, is a complaint and, therefore, it cannot be stated that there is no complaint on the basis of which the case has been filed.

11. This Court, by no means is implying that the stand of the petitioner that a complaint is mandatory for maintaining a charge u/s 193 IPC and, in the present case, this Court is not inclined to go into the said issue, as this Court has already held supra that the enquiry on the basis of the direction of the Hon'ble Supreme Court has led to the filing of the enquiry report leading to the filing of the present case before the trial court.

12. Insofar as the second contention relating to the prosecution being time barred is concerned, a perusal of the materials available on record reveals that search was conducted in the premises of various members of the petitioner's family even in the year 1982 leading to prohibitory orders being passed by the respondent. However, pursuant to the petition filed before the Calcutta High Court leading to grant of stay leading to the goods held under prohibitory orders being removed, the Hon'ble Supreme Court was moved, which resulted in the direction to conduct an enquiry and the enquiry has resulted in the filing of the case before the trial court. Therefore, the sequence of

events only reveal that it was a continuous process for which the petitioner also was one of the instruments and, therefore, by no means, could it be stated that the prosecution was time barred, as the judicial proceedings, which was initially at the behest of the petitioner had consumed the time leading to the filing of the case in the year 1991. Therefore, it cannot be held that the prosecution is time barred, as contended by the learned counsel for the petitioner.

13. The last of the contention of the learned counsel being that 'No Due Certificate' having been issued by the respondent, the prosecution is per se unsustainable, as even by the said certificate, the respondent has accepted that there is no due payable by the petitioner. Though, on the face of the contention, the same looks attractive, but what requires to be pointed out here is that the case has been filed even in the year 1991 before the trial court and the trial is proceeding since 1991. When a matter is sub judice, it is not only administratively, but also judicially wrong on the part of the department to issue the 'No Due Certificate' and such certificate cannot have any sanctity in the eye of law, that too, as pointed out above, when a complaint is pending against the petitioner. The case has been taken cognizance of by the trial court and unless it reaches it logical conclusion or a petition is filed by the prosecution to withdraw the case, mere issuance of a 'No Due Certificate' would not be suffice to hold that the case against the petitioner is unsustainable or that the petitioner has paid the dues that are due to the respondent. It is for the respondent to place before the Court that the petitioner has paid the dues to the respondent and even then, in the nature of charges framed against the petitioner, it is for the trial court to accept or reject such submissions on behalf of the respondent. Only on the trial reaching its logical conclusion, would the petitioner either absolve himself of the charges or face the consequences of the verdict against him. It is neither open to the department to issue such certificates, which would undermine and defeat the prosecution nor is it open to the petitioner to harp on the said certificate and plead before this Court that the said certificate would nullify all the charges framed against the accused. Therefore, the above contention advanced on behalf of the petitioner deserves to be rejected.

14. The detailed enquiry conducted at the instance of the orders of the Hon'ble Supreme Court has brought to light various irregularities committed by the petitioners, which requires to be put to trial to find out the culpability of the petitioners and other connected with the said offence and, therefore, putting a stop at this point of time would not only be against the prosecution, but also in defiance of the orders of the

Hon'ble Supreme Court, as the Hon'ble Supreme Court, even on the basis of the limited materials placed before it had directed the enquiry and subsequent to the enquiry, many materials having come to light, the same have to be tested at the time of trial and, therefore, it would be wholly unsafe to preclude the prosecution from going on with the trial.

15. A holistic appreciation of the materials available on record categorically reveals that the issues, that are before the trial court, are triable issues, which cannot be quashed at the present stage and it has to be taken to its logical end and, therefore, the present petition for quashment of the case at the instance of the petitioner, does not inspire the confidence of this Court and, according, the same deserves to be rejected.

16. For the reasons aforesaid, the present criminal original petition, being devoid of merits is liable to be dismissed. Accordingly, the present petition is dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

VSN/GLN

To

1. The Addl. Chief Metropolitan Magistrate
E.O.I, Egmore
Chennai.

2. The Assistant Commissioner of Income Tax,
Central circle(3),
Madras 600 034

3. The Special Public Prosecutor
(IT Cases), High Court
Chennai.

+1cc to Mr.J.Srinivasan, Advocate, Sr.No.70
+1cc to Mr.N.Baskaran, Advocate, Sr.No.151

Crl.Op.13183 of 2011

LN(CO)
GS(06/08/2020)