IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.10.2020

PRONOUNCED ON : 28.10.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.2964 of 2015
and
M.P.Nos.1 & 2 of 2015

1.M/s.Seatrans Shipping Ltd.
represented by its Managing Director,
Eric J D'Sa,
Zafryn Chambers No.604,
VI Floor, Oil Depot Road,
Sewree (E), Mumbai 400 015.

2.Eric J D'Sa, Managing Director,
M/s.Seatrans Shipping Ltd.

3.Dilip Dera, Director,
M/s.Seatrans Shipping Ltd.

4.Srikanth Rane, Chief Accountant,
M/s.Seatrans Shipping Ltd. .. Petitioners/Accused

Vs.

Jude Vallabadas,
Proprietor,
M/s.T.J.Shipping and
Insurance Services,
Represented by PoA Holder,
Mrs.Chandra Ruba,
No.42, Rajaji Salai,
Chennai - 600 001. .. Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.792 of 2014 on the file of the VIII Metropolitan Magistrate Court, George Town, Chennai and quash the same.

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For Petitioners: Mr.Ramamurthy
for Ms.D.Kamatchi

For Respondent : Mrs.M.G.Rajeswari
for Mr.T.V.Vineeth Kumar

O R D E R

This criminal original petition has been filed seeking to call for the records in C.C.No.792 of 2014 on the file of the VIII Metropolitan Magistrate Court, George Town, Chennai and quash the same.

2. Heard Mr.Ramamurthy, learned counsel representing Ms.D.Kamatchi, learned counsel on record for the petitioners and Mrs.M.G.Rajeswari, learned counsel representing Mr.T.V.Vineeth Kumar, learned counsel on record for the respondent.

3. For the sake of convenience, the petitioners and the respondents will be referred to as the accused and the complainant, respectively.

4. The complainant is in the business of Shipping Logistics in Chennai and the accused is a Shipping Company with its registered office in Mumbai, but having their operations in Chennai, Pudhucherry and Nagapattinam ports.

5. It is the case of the complainant that they acted as the authorized agent of the accused between 2001 and 2008 in Chennai, Pudhucherry and Nagapattinam ports and for the services rendered by the complainant, the accused paid their remunerations after deducting TDS, but, had failed to remit the deducted amount to the Income Tax Department. Therefore, the complainant instituted the present prosecution in C.C.No.792 of 2014 before the Court of VIII Metropolitan Magistrate, George Town, Chennai, against the accused for the offences under Sections 193, 197, 409, 406 and 418 IPC, for quashing which, this petition has been filed under Section 482 Cr.P.C. by the accused.

6. This Court appointed Mr.Senthil Kumar, Senior Standing Counsel for the Income Tax Department to assist.

7. The nub of the allegations is available in paragraph no.11 of the complaint, which reads as under:

> "11....In short, all the accused herein have conspired and colluded among themselves and dishonestly misappropriated the following amounts in the following financial years and committed an offence punishable under Section 409 of Indian Penal Code:

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(a)	2005-2006	..	Rs.1,02,638-00
(b)	2006-2007	..	Rs.1,35,522-00
(c)	Interest amount	..	Rs. 79,259-00
(d)	2007-2008	..	Rs. 89,837-00
(e)	2009-2010	..	Rs.1,15,661-00
	TOTAL		Rs.5,22,907-00

8. The learned counsel for the accused submitted that this is not a case, where, the accused had given a bogus certificate, as if, he had deducted the TDS, but, this is a case, where, the accused had made the payments of the TDS amounts to the Income Tax Department a belatedly and had thereafter given the TDS certificates to the complainant.

9. In support of the above submission, the accused submitted the payment details, which were verified by Mr.Senthil Kumar, learned Senior Standing Counsel for the Income Tax Department.

10. It is seen that for the year 2005-2006, the TDS amount of Rs.1,02,638/- was remitted only on 19.02.2009; for the year 2006-2007, the TDS amount of Rs.1,32,522/- was remitted only on 19.02.2009; for the year 2007-2008, the TDS amount of Rs.89,837/- was remitted only on 08.04.2008; for the year 2009-2010, the TDS amount of Rs.1,15,661/- was remitted only on 05.08.2009. Even according the complainant, the TDS certificates were given on 31.05.2009, 31.08.2009 and 30.06.2010. Thus, this is not a case, where, the accused had made a false representation to the complainant that they had remitted the TDS amount to the Income Tax Department in time and had thereby made the complainant to believe so.

11. The learned counsel for the complainant submitted that the delay in remitting the TDS amount has caused loss and prejudice to the complainant and therefore, the prosecution is maintainable.

12. It is trite that under the Income-tax Act,1961, the authorities can prosecute the complainant for late remittance of the TDS amount. The complainant can also maintain a private complaint, though not under the Income-tax Act, but, under the Indian Penal Code, if the accused had given fabricated TDS certificates or had misrepresented to the complainant that he has remitted the TDS amount to the Income Tax Department without actually remitting the same, on account of which, the complainant had to pay to the Income Tax Department the relevant tax.

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13. In this case, the complaint is silent, inasmuch as the complainant has not stated that they had submitted the Income-tax returns for the aforesaid periods and were forced to pay tax to the Income Tax Department for the failure of the accused to remit the amount in time. In other words, the complainant has not pleaded that they had lost a certain amount of money due to the failure of the accused to remit the TDS amounts in time. In the absence of these allegations in the complaint, a prosecution for the offences under Sections 409 and 418 IPC is unfounded.

In the result, this criminal original petition is allowed and the prosecution in C.C.No.792 of 2014 on the file of the VIII Metropolitan Magistrate Court, George Town, Chennai, is hereby quashed. Connected Crl.M.P. is closed. This Court places on record its appreciation to Mr.Senthil Kumar, learned Senior Standing Counsel for the Income Tax Department for his able assistance to this Court.

Sd/-
Assistant Registrar(CJ conf)

//True copy//

Sub Assistant Registrar

nsd

To

1.The VIII Metropolitan Magistrate,
George Town, Chennai.

2. -do-Through "The Chief Metropolitan Magistrate,
Egmore, Chennai.

+1cc to Ms.D.Kamathchi, Advocate SR.No.34951

PA(CO)
GMY(11/11/2020)

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