IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.1955 of 2020

Boopathy,
S/o.Jagannathan,
12, Periyapet, Sellur,
Karaikkal,
Puducherry – 609 607. ... Petitioner/Accused

Vs.

The Commercial Tax Officer,
Commercial Taxes Department,
Government of Puducherry,
Karaikkal. ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.146 of 2008, pending on the file of the learned Judicial Magistrate-II at Karaikkal and quash the same.

For Petitioner : Mr.N.Ramesh

For Respondent : Mr.V.Balamurugane
Additional Public Prosecutor.

ORDER

This petition has been filed to quash the proceeding in C.C.No.146 of 2008, on the file of the learned Judicial Magistrate-II at Karaikkal, thereby taken cognizance for the offences under Sections 49(2)(a), 49(2)(b) and 27(2)(b) r/w 27 (3) of Pondicherry General Sales Tax 1967 r/w Section 81 of the Puducherry Value Added Tax Act, 2007 and under Section 409 and r/w 34 of IPC, as against the petitioner.

2. The learned counsel appearing for the petitioner would submit that there are totally five accused in this case in which, the petitioner is arrayed as first accused. He further submitted that the officer who accorded sanction for prosecution to prosecute the petitioner and others in C.C.No.146 of 2008 has no competency to accord sanction. In this regard, the petitioner already filed a petition in C.M.P.No.696 of 2012 in C.C.No.146 of 2008 to discharge and the trial Court did not consider the points raised by the

petitioner herein and held that sanction for prosecution is required from the Commissioner (CT) to file the prosecution complainant, by virtue of Repeal and Saving Clause under Section 81(2) of the Puducherry Value Added Tax Act, 2007. But unfortunately the trial Court instead of deciding the competency of the person who is occupying the office of the Commissioner (CT), held other way around that the Commissioner (CT) is competent to issue the sanction for prosecution. Aggrieved by the same, the petitioner and other accused persons have also preferred revision Petition in Crl.R.C.Nos. 233 to 236 and Crl.R.C.Nos.926 & 956 of 2014 before this Court and this Court by an order dated 03.09.2018, dismissed the revision petitions only on the ground that already charges were framed and trial has been commenced in all the cases. Therefore this Court did not consider the said point raised by the petitioner and dismissed the revision petitions. Therefore, the petitioner is constrained to filed this petition to quash the proceedings. Hence, the entire proceedings is liable to be quashed and sought for quashment of the entire proceedings.

3. Per contra, the learned Additional Public Prosecutor appearing for the respondent filed counter and submitted that the petitioner already raised the very same point in the discharge petition and the same was negatived by the trial Court in Crl.M.P.No.696 of 2012 in C.C.No.146 of 2008, by an order dated 05.12.2013. Aggrieved by the same, the petitioner also filed a Criminal Revision petition before this Court in Crl.R.C.No.233 of 2014 and the same was also dismissed by this Court by an order dated 03.09.2018. Therefore this petition is nothing but only to drag the proceeding. He further submitted that the respondent filed complaint in the year 2008 and it is pending even till today without any progress only for the reason that all the accused persons filed discharge petition and the same were negatived by the trial Court. Thereafter all the accused persons have filed revision petitions in the year 2014 and the same were dismissed by this Court in the year 2018. Immediately after dismissal of the revision petitions, the accused persons were summoned for framing of charges. However, again the petitioner is come forward with this present petition to quash the proceedings.

3.1. He further submitted that the G.O.Ms.No.270/69/F5 dated 14.11.1969 of the Government of Puducherry, Finance Planning and Local Administration Department, empowers all officers of the Sales Tax Department of the rank of Deputy Commercial Tax Officers and above, to accord sanction for prosecution for the offences punishable under the Act or Rules framed thereunder. The Government of Puducherry, Finance Department also issued notification vide G.O.Ms.No.45/97/F2 dated 25.07.1997, designating the post of Deputy Commissioner of Commercial Taxes as Commissioner of Commercial Taxes in the

Pondicherry General Sales Tax Act, 1967, by virtue of the provisions of the Pondicherry General Sales (Amendment) Act, 1996 and the said order shall be deemed to have come into force with effect from 21.09.1996. Therefore, the Commissioner of Commercial Taxes is competent to issue prosecution sanction against the defaulting dealer and on the similar line the prosecution sanction was also issued as against the petitioner herein. Therefore, all the points raised by the petitioner herein are rightly negatived by the trial Court and same was confirmed by this Court. Hence, he sought for dismissal of the quash petition.

4. Heard Mr.N,Ramesh, learned counsel appearing for the petitioner, Mr.V.Balamurugane, learned Additional Public Prosecutor (Pondy) appearing for the respondent.

5. There are totally five accused, in which the petitioner is arrayed as A1. The petitioner has been charged for the offences under Sections 49(2)(a), 49(2)(b) and 27(2)(b) r/w 27(3) of Pondicherry General Sales Tax 1967 r/w Section 81 of the Puducherry Value Added Tax Act, 2007 and under Section 409 and r/w 34 of IPC. The case of the prosecution is that the petitioner is the sole proprietor of M/s.Fishermen Fuel Centre, Karaikal and petroleum dealer registered his business under the PGST Act, CST Act, 1956 and PVAT Act, 2007 and an assessee in the books of CTO, Karaikal. On cross verification of the sales details obtained from the Indian Oil Corporation, Chennai, with that of the monthly returns filed by the petitioner, it was ascertained that large scale of suppression of purchase and sales turnover from the years 2000-2001 to 2005-06. Thereafter sufficient opportunities were given to the petitioner and the Assessing Officer has levied tax and penalty to the tune of Rs.1,42,41,862/- Thereafter, the Commercial Tax Officer, Karaikal had taken special effort to recover the arrears of tax and penalty, but the petitioner failed to pay the same as per the assessment order. Hence, the respondent filed complaint with a prayer to recover the arrears of tax and penalty and to punish him for the above said offences.

6. It is seen that after filing the complaint before the trial Court, the petitioner filed discharge petition in Crl.M.P.No.696 of 2012 before the trial Court viz., the learned Judicial Magistrate-II, Karikal, and the same was dismissed by an order dated 05.12.2013. Aggrieved by the same, the petitioner filed a revision before this Court in Crl.R.C.No.233 of 2014 and this Court by an order dated 03.09.2018 dismissed the revision petition and also observed as follows :-

> "5. On a perusal of the complaints and the final reports, this Court finds that there are prima facie allegations

made out against the petitioner/accused to proceed the cases further. At the time of deciding petition, seeking discharge, the Court has to see whether there is any prima facie allegations to proceed the case and the defence taken by the accused need not be looked into at the time of framing of charges. Under these circumstances, the contention of the petitioner that the authority, who accorded sanction is incompetent, is not acceptable. Prosecution has to prove its case at the time of trial, whether the authority, who accorded sanction is competent or not and also it is a matter for trial and the issue raised by the petitioner/accused regarding competency, can be decided at the time of trial. Now, charges were framed and trial has been commenced in all the above cases, hence at this stage, these revisions against the order of dismissal of discharge petitions, for the petitioner is not applicable to the present case on hand, where the Court found the case is not made out, but in the present case, the learned Magistrate found that there is prima facie material to proceed the case against the accused. It is settled proposition of law that while considering petition for discharge of the accused, allegations and materials in the documents filed under Section 173 Cr.P.C., must be considered and not the defence taken by the accuse."

The learned counsel appearing for the petitioner submitted that though this Court observed that charges were framed and the trial has been commenced, even till today no charges have framed as against the petitioner and the trial yet to be commenced.

7. The only point raised by the learned counsel appearing for the petitioner is that the competent authority did not accord any sanction to prosecute the petitioner herein. In this regard the learned Additional Public Prosecutor (Pondy) filed counter and submitted as follows :-

"8. I submit that as per order vide G.O.Ms.No.270/69/F5 dated 14.11.1969 of the Government of Puducherry, Finance Planning and Local Administration Department, empowers all officers of the Sales Tax Department of the rank of

Deputy Commercial Tax Officers and above, to accord sanction for prosecution of offences punishable under the Act or Rules framed thereunder, which arise within their jurisdiction.

9. I submit that the Government of Puducherry, Finance Department issued notification vide G.O.Ms.No.45/97/F2 dated 25.07.1997 designating the post of Deputy Commissioner of Commercial Taxed as Commissioner of Commercial Taxes in the Pondicherry General Sales Tax Act, 19678, by virtue of the provisions of the Pondicherry General Sales (Amendment) Act, 1996 and the said order shall be deemed to have come into force with effect from 21.09.1996.

10. I further submit that in exercise of powers conferred under Section 3 of the Puducherry Value Added Tax Act, 2007 read with sub-section (5) of Section 71 of the Puducherry Value Added Tax Act, 2007, the Government of Puducheery has issued a Notification bearing G.O.Ms.No. 55/F2/2013, dated 12.03.2013 and Corrigendum in G.O.Ms.No.11/CT/2017 dated 31.01.2017. As per the above said Notification and Corrigendum, the Deputy Commissioner of the Commercial Taxes was designated as Commissioner (CT) of the Respondent Department retrospectively with effect from 01.07.2007 and therefore the Commissioner of the Commercial Taxes Department is competent to issue prosecution sanction against the defaulting dealer and on the similar line the prosecution sanction was also issued against the petitioner herein.

11. I further submitted that as per Section 81(8) of the PVAT Act, 2007. "any Rules, Regulation, Notification or Orders made are issued under the repealed Act and continuing in force on the day immediately before the commencement of this Act, shall continue to be in force on or after the commencement of this Act insofar as they are not inconsistent with the provisions of the Act". Accordingly, the Notification issued by the Finance Department in G.O.Ms.No.45/97/F2 dated

25.07.1997 under the repealed PGST Act, 1967 and as per Section 81(8) of the PVAT Act, 2007 is continued even after the commencement of the PVAT Act, 2007. In view of the above proviso, the Commissioner of Commercial Taxes Department is empowered and competent to accord prosecution sanction against the defaulting dealers including the petitioner herein insofar as they are not inconsistent with the provision of the Act.

12. I further submit that Thiru M.Rajasekar, Assistant Commissioner, Commercial Taxes Department, Puducherry has been ordered to hold full additional charge of the post of Commissioner of Commercial Taxes Department until further orders or till the post is filled up whichever is earlier vide Notification in G.O.Ms.No. 15/F2/2007 dated 18.04.2007 and as such he was holding full additional charge of the post of the Commissioner (CT) from 18.04.2007 to 04.05.2012 and discharged the duties attached to the designated post of Commissioner. Therefore, the prosecution sanction issued by Thiru. M.Rajasekar under Section 63 of the PVAT Acts, 2007 for filing C.C. agains the petitioner before the JM-II, Karaikal to recover the arrears of tax and penalty and to punish him under IPC offences is valid in the eye of law.

13. I submit that in the meanwhile Thiru. M.Rajesekar who was ordered to hold full additional charge of the post of Deputy Commissioner has filed Original Application in O.A.No.1449/2019 before the Hon'ble CAT, Madras Bench to promote him to the Deputy Commissioner (CT) and designated him as Commissioner (CT) on regular basis. After hearing, the Hon'ble CAT, Madras Bench has directed to consider him to the post of Deputy Commissioner. Further, the above said order of the Hon'ble CAT is entirely different in nature and the same will not vitiate the prosecution sanction issued by the Thiru M.Rajasekar, who hold the full additional charge as Commercial (CT)

right from 18.04.2007 to 04.05.2012 by virtu of the Notification in G.O.Ms.No.15/F2/2007 dated 18.04.2007."

Accordingly, the competent officer accorded sanction for prosecution to prosecute the petitioner for the offences under Sections 49(2)(a), 49(2)(b) and 27(2)(b) r/w 27(3) of Pondicherry General Sales Tax 1967 r/w Section 81 of the Puducherry Value Added Tax Act, 2007 and under Section 409 and r/w 34 of IPC.

8. Further this Court also finds that there are prima facie materials to attract the offences under Sections 49(2)(a), 49(2)(b) and 27(2)(b) r/w 27(3) of Pondicherry General Sales Tax 1967 r/w Section 81 of the Puducherry Value Added Tax Act, 2007 and under Section 409 and r/w 34 of IPC, as against the petitioner. Therefore, this Court dismissed the discharge petition not only on the ground that already the charges were framed and trial commenced but also on merits, as stated above. This quash petition is nothing but to clear abuse of process of Court, since the petitioner already filed discharge petition and the same was dismissed on merits and the same was also confirmed by this Court in Crl.R.C.No.233 of 2014 by an order dated 03.09.2018. Therefore, the quash petition is devoid of merits and liable to be quahsed.

9. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

> " 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.
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> 13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

10. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in Crl.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Invstigation Vs. Arvind Khanna, wherein, it has been held as follows:

> “19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.
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> 20.In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

11. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in Crl.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

> "9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage...................."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C. However, the petitioner is at liberty to raise all the ground before the trial Court and it is yet open to the trial Court to consider the same on merits and in accordance with law and complete the trial within a period of six months from the date of receipt of copy of this Order.

12. With above directions, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(ADI-MDU)

//True Copy//

Sub Assistant Registrar

rts

To

1.The Judicial Magistrate-II,
Karaikkal

2.The Commercial Tax Officer,
Commercial Taxes Department,
Government of Puducherry,
Karaikkal

3.The Public Prosecutor,
Madras High Court,
Chennai.

CRL.O.P.No.1955 of 2020

RGN(CO)
CB(12/10/2020)