IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2019

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.Nos.11276 and 11277 of 2019

Mr.Naveen Balaji
... Petitioner in both the Petitions

Vs

The Assistant Commissioner of Income Tax,
Central Circle-2(2)
Nungambakkam,
Chennai-600 034. ... Respondent in both the Petitions

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of Criminal Procedure Code to direct the learned Additional Chief Metropolitan Magistrate, E.O-II, at Egmore, Chennai to permit and allow the Accused to cross examine the witness in E.O.C.C.Nos.35 and 34 of 2018 examined on the side of the prosecution before framing of charges.

For Petitioner : Mr.P.Ramesh Kumar

For Respondent : Ms.M.Sheela,
Special Public Prosecutor.

C O M M O N O R D E R
(through Video Conference)

These Criminal Original Petitions have been filed to direct the learned Additional Chief Metropolitan Magistrate, E.O.-II, at Egmore, Chennai to permit and allow the Accused to cross examine the witness in E.O.C.Nos.35 and 34 of 2018 examined on the side of the prosecution before framing of charges.

2.Heard Mr.P.Ramesh Kumar, learned Counsel appearing for the Petitioner and Ms.M.Sheela, learned Special Public Prosecutor appearing for the respondent.

3.The Petitioner is the accused for the offence under Section 276CC of the Income Tax Act, 1995. In respect of the violation committed by the Petitioner under the Income Tax Act, 1995, the respondent herein lodged private complaint against this Petitioner and the same has been taken on file in E.O.C.Nos.35 & 34 of 2018.

4.Now by following the procedure contemplated under Criminal Procedure Code for framing of charges, the learned Additional Chief Metropolitan Magistrate, E.O.- II, Egmore examined one K.Shivalingam in chief as PW1 on 27.02.2019 and after completing the chief examination, the evidence of PW1 was closed and the case was adjourned to 13.03.2019 for framing of charges in E.O.C.Nos.35 and 34 of 2018.

5.The grievance of the petitioner is that immediately, after recording the chief examination of PW1, the petitioner, being the accused himself, was not given an opportunity to cross examine the witness in E.O.C.Nos.35 and 34 of 2018. In this regard, the learned Additional Chief Metropolitan Magistrate refused to consider the grievance of the petitioner by saying that the accused is not entitled to cross examine the witnesses before framing of charges.

6.However, the learned Counsel appearing for the Petitioner fairly conceded that the Petitioner herein has not filed any formal application in E.O.C.Nos.35 and 34 of 2018 before the learned Additional Chief Metropolitan Magistrate for the grievance now redressed.

7.Therefore, in the said circumstances, in view of the fact that no formal application has been filed before the Court concerned, this Court cannot direct the learned Magistrate to consider the request made by the Petitioner. Therefore, the Petitioner is directed to file a petition before the Additional Chief Metropolitan Magistrate, E.O.II, Egmore in E.O.C.Nos.35 and 34 of 2018 within a period of one month from the date of receipt of copy of this order and upon receipt of such petition, the learned Additional Chief Metropolitan Magistrate, E.O.II, Egmore is directed to consider the same and pass orders in accordance with law.

8.If the order passed by the learned Additional Chief Metropolitan Magistrate, E.O.II, Egmore is not in favour of the Petitioner, then the Petitioner is entitled to approach this Court by way of filing proper petition.

9.With the above directions, these Criminal Original Petitions are disposed of.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner of Income Tax,
   Central Circle-2(2)
   Nungambakkam,
   Chennai-600 034.

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

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

Crl.O.P.Nos.11276 and 11277 of 2019

SS(CO)
RV(03/12/2020)