IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.07.2020

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THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.3252 of 2017
and
Crl.M.P.Nos.2346 and 2347 of 2017

Mrs.Jayashree ... Petitioner/Accused

Vs

The Income Tax Officer
Non-Corporate Ward - 11(4)
Kanmani Building
No.611, Anna Salai
Chennai - 600 006. ... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the entire records in EOCC No.161 of 2016 on the file of Additional Chief Metropolitan Magistrate, Egmore (E.O-II), Allikulam Road, Chennai and quash all further proceeding against the accused.

For Petitioner : Mr.P.Rameshkumar

For Respondent : Mr.L.Murali Krishnan
Special Public Prosecutor
IT Cases

ORDER

This petition has been filed to quash all further proceedings in EOCC No.161 of 2016 on the file of Additional Chief Metropolitan Magistrate, Egmore (E.O-II), Allikulam Road, Chennai, as against the petitioner/accused.

2. The learned Counsel appearing for the petitioner would submit that the respondent has filed a complaint against the petitioner for the offence under Section 276 CC of Income Tax Act alleging that the accused during the assessment year 2013-2014 sold a property for a sum of Rs.1,05,60,000/- (Rupees One Crore Five Lakhs and Sixty Thousand only) and against which, she

purchased immovable property for a sum of Rs.1,55,00,000/- (One Crore and Fifty Five Lakhs only) but failed to file her return of income for the assessment year 2013-2014 and even after the respondent/complainant issued a notice on 06.07.2015 and again on 26.04.2016, calling upon the petitioner/accused to file her return of income, she failed to file her return of income and hence, a show cause notice was issued on 29.04.2016 and upon receipt of the same, the petitioner/accused submitted her return on 24.05.2016 stating that she had reinvested the entire sale consideration in a residential property and therefore, the income was exempted from tax under Section 54 F of the Income Tax Act and there was no taxable income. However, the respondent/complainant has filed the present complaint for non-filing of return by the petitioner/accused alleging that inspite of the exemption, it was obligatory on the part of the petitioner/accused to file return of income and then claim exemption. Hence the petitioner/accused has filed this petition to quash all further proceedings in EOCC No.161 of 2016.

3. The learned Special Public Prosecutor would submit that the trial has already been commenced and some of the prosecution witnesses have already been examined and the case is posted for further evidence on the side of the prosecution.

4. Heard Mr.P.Ramesh Kumar, learned counsel appearing for the petitioner and Mr.L.Murali Krishnan, learned Special Public Prosecutor appearing for the respondent.

5. 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.

> 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.

6. 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.
>
> 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."

7. 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.

8. In view of the above discussion, the quash petition cannot be entertained at this stage and this Court is not inclined to quash the proceedings in EOCC No.161 of 2016 on the file of Additional Chief Metropolitan Magistrate, Egmore (E.O-II), Allikulam Road, Chennai. The petitioner is at liberty to raise all the grounds before the trial Court. The personal appearance of the petitioner is dispensed with and she shall be represented by a counsel after filing appropriate application. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. However, considering that the EOCC is of the year 2016, the trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

9. Accordingly, this criminal original petition is dismissed. Crl.M.P.No.2346 of 2017 is closed and Crl.M.P.No.2347 of 2017 is disposed of with the above directions.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Chief Metropolitan Magistrate,
   Egmore (E.O-II), Allikulam Road, Chennai

2. The SpecialPublic Prosecutor,
   for ITI Cases,
   High Court, Madras.

3. The Income Tax Officer,
   Non Corporate Ward-11(4)
   Kanmani Building, No.611, Anna Salai,
   Chennai-6.

Crl.O.P.No.3252 of 2017
and
Crl.M.P.Nos.2346 and 2347 of 2017

AK(CO)
CB(21/09/2020)