



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD)No.13383 of 2019

and

Crl.M.P. (MD) Nos.8203 and 8204 of 2019

WEB COPY

1.M/s.Bejan Singh Eye Hospital Pvt. Ltd.,
No.313,-C, M.S.Road,
Vettoornimadam,
Nagercoil - 629 003.

2.Dr.S.M.Bejan Singh,
Managing Director,
M/s.Bejan Singh Eye Hospital Pvt. Ltd.,
No.313,-C, M.S.Road,
Vettoornimadam,
Nagercoil - 629 003.

3.Smt.Rooshitha Bejan Singh,
Director,
M/s.Bejan Singh Eye Hospital Pvt. Ltd.,
No.313,-C, M.S.Road,
Vettoornimadam,
Nagercoil - 629 003.

... Petitioners/Accused 1 to 3

Vs.

Income Tax Department,
O/o.Principal Commissioner of Income Tax-2,
Madurai,
Rep. By the Assistant Commissioner of
Income Tax Circle-I,
Nagercoil.

... Respondent / Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records and to quash the case in C.C.No.425 of 2019 on the file of the Additional Chief Judicial Magistrate, Madurai insofar as the petitioners are concerned.

For Petitioners : Mr.Ashok Padmaraj
For Respondent : Mrs.S.Srimathy,
Senior Standing Counsel

O R D E R

This criminal original petition has been filed to quashing the proceedings in C.C.No.425 of 2019 on the file of learned Additional Chief Judicial Magistrate, Madurai. The petitioners are facing trial for the offences under Sections 276 C(2) of the Income Tax Act.



2.The learned standing counsel appearing for the respondent strongly opposed the prayer for quashing. A detailed counter affidavit has also been filed.

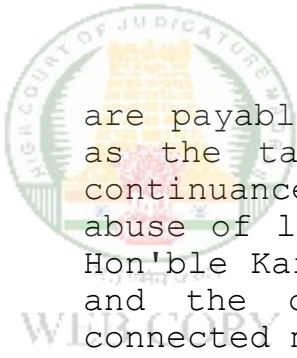
3.The petitioner's counsel reiterated the contentions set out in the memorandum of grounds.

4.I carefully considered the rival contentions and went through the materials on record, particularly the counter affidavit as well as the impugned complaint. It is not in dispute that the first petitioner is an assessee under Income Tax Act and the petitioners 2 and 3 are its Managing Director and Director respectively. The issue concerns the financial year 2011-2012 to 2014-2015. It is not in dispute that the petitioners had filed their income tax return in time admitting their liability. But then the tax was not remitted in time. There was delay. The question that arises for my consideration is whether this will amount a wilful evasion attracting the aforesaid penal provisions.

5.The issue is no longer *res integra*. The learned counsel appearing for the petitioner drew my attention to the decision made by the Hon'ble Karnataka High Court in Crl.P.No.4891 of 2014, dated 14.06.2019. The Hon'ble Karnataka High Court in the aforesaid decision held as follows:

"In the instant case, the only circumstance relied on by the respondent in support of the charge levelled against the petitioners is that, even though accused filed the returns, yet, it failed to pay the self-assessment tax along with the returns. This circumstance even if accepted as true, the same does not constitute the offence under Section 276C (2) of the Act. The act of filing the returns by itself cannot be construed as an attempt to evade tax, rather the submission of the returns would suggest that petitioner No.1 had voluntarily declared his intention to pay tax. The act of submitting returns is not connected with the evasion of tax. It is only an act which is closely connected with the intended crime, that can be construed as an act in attempt of the intended offence. In the backdrop of this legal principle, the Hon'ble Supreme Court in the case of Prem Dass - vs - Income Tax Officer cited supra, has held that a positive act on the part of the accused is required to be established to bring home the charge against the accused for the offence under Section 276C(2) of the Act."

6.It is admitted in the counter affidavit itself that the petitioner have since cleared the dues and as on date no tax dues



are payable in respect of the aforesaid financial years. Inasmuch as the tax has been subsequently paid, I am of the view that continuance of the impugned prosecution would only amount to an abuse of legal process. Respectfully following the judgment of the Hon'ble Karnataka High Court, the impugned proceedings stand quashed and the criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

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/ /2020

Sub Assistant Registrar(CS)

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To:

1.The Additional Chief Judicial Magistrate,
Madurai.

2.Income Tax Department,
O/o.Principal Commissioner of Income Tax-2,
Madurai,
Rep. By the Assistant Commissioner of Income Tax Circle-I,
Nagercoil.

+1 CC to M/s.M.ASHOK PADMARAJ, Advocate (SR-11669[F]

+1 CC to M/s.S.SRIMATHY, Advocate (SR-11639[F] dated 13/03/2020)

Crl.O.P(MD)No.13383 of 2019
12.03.2020

SMA/05/05/2020/3P/5C