BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.(MD)No.373 of 2014

C.Gurusamy .. Petitioner/A2

Vs.

The State represented by
The Inspector of Police,
District Crime Branch,
Virudhunagar crime No.14/04 .. Respondent/complainant

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the order dated 26.06.2012 made in Crl.M.P.No.5409 of 2011 in C.C.No.164 of 2010 on the file of the Judicial Magistrate No.II, Virudhunagar and set aside the same as illegal.

For Petitioner : Mr.M.E.Ilango

For Respondent : Mr.K.Suyambulinga Bharathi,
G.A., (Crl. Side)

ORDER

The petitioner is A2 in C.C.No.164 of 2010 on the file of the learned Judicial Magistrate No.II, Virudhunagar has filed this quash petition, having been charged for the offence under Sections 120(b), 465, 468, 471, 407 and 420 IPC and under Section 45(6) and 45(7) of Tamil Nadu General Sales Tax Act, 1959.

2.The case of the prosecution is that A1 running match factory in the name and style of Annai Agency and Shri Ganesh Match Works, which were registered with Sales Tax authorities. Similarly, this petitioiner/A2 running a match factory in the name and style of Shri Meenachi Match Works and registered under the Tamil Nadu General Sales Tax Act. According to the prosecution, between 1996 and 1999, number of 65 “C” forms were issued for Annai Agency and 70 “C” forms were issued for Shri Meenachi Match Works by the Sales Tax authorities. A1 and A2 had misused the said “C” forms and submitted false returns to the Sales Tax authorities showing very low turnover suppressing their actual turnover to evade sales tax to the tune of around Rs.1 crore. Therefore, the authorities conducted enquiry based on the "C" forms issued by them and they find that the accused concealed the actual turnover thereby causing loss to the exchequer. When the authorities issued notice to the accused, A1 submitted an affidavit dated 08.05.2003 stating that it was he who was actually running all the three Match Factories and A2 his younger brother had no role to play in the business and he was signing as Gurusamy in all the papers and were submitting the same to the Sales Tax department. The said affidavit was construed as confession by Ganesan that he forged the signatures of A2 and submitted false returns to the department. Therefore, the department lodged a police complaint against both the accused.

3.The contention of the learned counsel appearing for the petitioner is that in the name of the petitioner, Shri Meenachi Match Works had been registered with the sales tax authorities and during the period 1996 and 1999, the petitioner along with his brother Ganesan/A1, in whose name, Shri Ganesh Match works and Annai Agency have been registered had obtained "C" forms from the sales tax authorities and they have sold it to various others for gain. The petitioner's brother viz., Ganesan/A1 had filed an affidavit before the authorities on 08.05.2003, wherein, he had absolved the petitioner from the case taking onus and responsibility. Further, it is submitted that this Court in Crl.R.C.No.406 of 2013 had discharged the petitioner's brother Ganesan/A1 from the above case, in which, the entire case had been elaborately dealt with. Further, this Court in that order had come to a conclusion as follows:

> "Therefore, I am of the opinion that this criminal prosecution against both the accused is a clear abuse of process of Court and no charges for the said offences can be legally framed against them as there are no materials to sustain the accusation."

The other accused referred in the order is the petitioner. In view of the same, he prayed for discharge of him from C.C.No.164 of 2010 on the file of the learned Judicial Magistrate No.II, Virudhunagar.

4.The learned Government Advocate (criminal side) submitted that the company has been closed in the year 1990 and thereafter, fresh registration had been obtained on 02.08.1991, which factor has been spoken to by the sales tax authorities. In fact, L.W.3, who is for the department had inspected the factory, where, he found the petitioner is the proprietor and solely responsible for the running of Shri Meenachi Match Works. Further, L.Ws.11 to 14 are the witnesses, who had stated about obtaining "C" forms from the petitioner and his brother and thereby, benefitted out of it. L.Ws.15 to 17 are the Managers and employees of Shri Meenachi Match Works, who stated about the role of the petitioner. However, the respondent on a query, fairly submitted that no appeal has been so far filed against the order of this Court in Crl.R.C.No.406 of 2013 dated 07.04.2014.

5.Heard both sides and perused the materials available on records.

6.Perusal of the order made in Crl.R.C(MD) No.406 of 2013 dated 07.04.2014, in which, the case of the petitioner had been elaborately discussed and this Court had given a finding that this criminal prosecution against both the accused is a clear abuse of process of Court and no charges for the said offences can be legally framed against them as there are no materials to sustain the accusation. In view of the same, this Court is inclined to quash the proceedings as against the petitioner/A2 also.

7.Accordingly, this criminal original petition is allowed and the order of the trial Court dated 26.06.2012 made in Crl.M.P.No.5409 of 2011 in C.C.No.164 of 2010 on the file of the Judicial Magistrate No.II, Virudhunagar is set aside.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate No.II,
Virudhunagar.

2.The Inspector of Police,
District Crime Branch,
Virudhunagar.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.E.ILANGO, Advocate (SR-2980[F] dated 24/01/2020)

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24.01.2020

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