BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.17978 of 2016
and
Crl.M.P.(MD)Nos.8946 and 8947 of 2016

Rajkumar Thiyagarajan ... Petitioner / Accused

Vs.

Income Tax Department,
O/o. The Principal Commissioner of Income Tax,
Madurai,
Represented by
S.Murugesan,
Income Tax Officer,
Ward II, Theni. ... Respondent /Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for records relating to the impugned complaint in C.C.No.13 of 2016 on the file of the Additional Chief Judicial Magistrate, Madurai and quash the same as illegal.

For Petitioner : Mr.B.Saravanan

For Respondent : Mrs.S.Srimathy
Standing Counsel

O R D E R

This petition has been filed to quash the proceedings in C.C.No.13 of 2016 on the file of the learned Additional Chief Judicial Magistrate, Madurai, as against the petitioner.

2.The learned counsel for the petitioner would submit that the respondent gave a complaint for the offence punishable under Sections 276 (C)(1) and 276 CC of the Income Tax Act 1961, alleging that the petitioner has failed to submit the return for the assessment year 2013-14. The Income Tax Return was filed only on 29.03.2016. He further submitted that the petitioner has received a show cause notice, dated 29.04.2016 and by his reply, dated

24.05.2016 explained that the return of the Assessment Year 2013-14 had already filed on 29.03.2016 and the cash deposits more than Rs.10,00,000/- (Rupees Ten lakhs only) can be properly accounted with the sources in the books of accounts and TDS mentioned in the letter of the respondent, dated 29.04.2014. He further submitted that the computation of income as shown in the return filed on 29.03.2016 would indicate that the petitioner is entitled to refund of the tax to the tune of Rs.1,070/- and the tax payable by the petitioner amounting to the tune of Rs.7,19,409/-. The authority concerned, who accorded sanction to prosecute the petitioner, dated 29.07.2016 stated that no material was placed on record to evidence the submissions of illness of the petitioner's mother and the depression suffered by his accountant for delay in filing of returns. He further submitted that the sanction was accorded to prosecute the petitioner only for the offence punishable under Section 276 CC of the Income Tax Act. Whereas the complaint has filed by the respondent for the offence punishable under Sections 276 (C)(1) and 276 CC of the Income Tax Act, 1961. Therefore, the entire complaint is vitiated and liable to be quashed. He further submitted that the case of the petitioner is false under Section 276 CC proviso (ii) (b) of the Income Tax Act, and as such, the entire complaint is liable to be quashed.

3.Section 276 CC proviso (ii) (b) provides that a person shall not be proceeded against under this section for failure to furnish in due time the Return of fringe benefits under Sub Section (i) of 115WD or return of income under Section 139 (1) if the tax payable by him on the total income determined on regular assessment does not exceed Rs.3,000/- as reduced by advance tax paid and any tax deducted at source.

4.The return filed by the petitioner in the year 2013-14 shows that tax payable by the petitioner is nil and he is also claiming for refund of the tax payable have been adjusted against the advance tax payable and tax deducted at source for the assessment year 2013-14. The return filed by the petitioner for the year 2013-14 shows that tax payable by the petitioner and his claiming for refund of the tax payable have been adjustable against the advance payable and the source for the assessment year 2013-14.

5.The learned counsel appearing for the respondent would submit that the petitioner did not file return and also did not pay any tax for the assessment year 2013-14. Therefore, the respondent has issued a show cause notice as contemplated under Section 276 CC of the Income Tax Act, dated 29.04.2016 for appearance of the petitioner herein. The petitioner herein did not appear in person, but through his authorized representative has issued a reply on 24.05.2016. Since the said reply is not satisfactory and no proof had been adduced to prove the case of the petitioner. Therefore, the respondent has obtained sanction from the Principal Commissioner of Income Tax, Madurai, to prosecute the petitioner herein. He further submitted that the grounds raised by the petitioner cannot be considered under Section 482 of Cr.P.C. when the factual disputes arise. All the points can be considered only during the trial before the trial Court. Hence, he prayed for dismissal of the quash petition.

6.It is seen that the petitioner is the sole accused. The respondent has filed a complaint alleging that the petitioner has failed to file his Income Tax Return for the Assessment Year 2013-14. However, the petitioner has filed an income tax returns on 29.03.2016. On perusal of the returns filed by the petitioner that the total tax with interest payable by the petitioner is a sum of Rs.7,19,409/-. Total tax amount paid by the petitioner including advance tax TDS, TCS and also self assessment tax to the tune of Rs.7,20,484/-. Therefore, the petitioner has also claimed refund of the income tax to the tune of Rs.1,070/-. Further, the Principal Commissioner of Income Tax, Madurai, accorded sanction by order, dated 29.07.2016, to prosecute the petitioner for the offence punishable under Section 276 CC of the Income Tax Act. Whereas on perusal of the complaint, the respondent has lodged a complaint for the offence punishable under Sections 276 (C) (i) and 276 CC of the Income Tax Act. Even according to the defacto complainant, the petitioner has failed to file the Income Tax return for the assessment year 2013-14 within time. Therefore, he can be prosecuted for the offence under Section 276 CC of the Income Tax Act. Whereas Section 276 (C) (i) related to if a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable. Admittedly, the petitioner has failed to pay the tax in time and subsequently, he has filed Income Tax return on 29.03.2016. Therefore, the respondent without application of mind mechanically filed a complaint that too without any allegation for the offence punishable under Section 276 (C) (i) of the Income Tax Act.

7.That apart, the Section 276 CC proviso (ii) (b) provides that a person shall not be proceeded against under this section for failure to furnish in due time the return of fringe benefits under Sub Section (i) of 115 WD or return of income under Section 139 (1) if the tax payable by him and the total income determined on regular assessment does not exceed Rs.3,000/- as reduced by advance tax paid and any tax deducted at source. On perusal of the return filed by the assessment year 2013-14 revealed that the tax payable by the petitioner is nil and he also claimed for refund of the tax after adjusting the other payment made under as advance TDS, TCS and self assessment tax and claimed a sum of Rs.1,070/-. Therefore, the entire complaint is nothing but clear abuse of process of law and it cannot be sustained as against the petitioner.

8.In view of the above discussion, this Criminal Original Petition is allowed and the proceedings in C.C.No.13 of 2016 on the file of the learned Additional Chief Judicial Magistrate, Madurai is quashed as against the petitioner herein. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsd

To

The Additional Chief Judicial Magistrate,
Madurai.

+1 CC to M/s.S.SRIMATHY, Advocate (SR-21281[F] dated 05/11/2020)

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