IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.10.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NOS.20632 TO 20634 OF 2018
and
CRL.M.P.Nos.11094, 11095, 11096, 11097, 11098 & 11099 of 2021

M.Ganesan ... Petitioner in Crl.OP. Nos.20632 & 20633 of 2018/Accused

1. K.M.P.Agencies
   Rep.by.its Partner Mr.M.Ganesan
   17, Jawaharlal Nehru Street,
   Puducherry – 605 001.

2. M. Ganesan

3. G.Prabavathy
   W/o.M.Ganesan ... Petitioners/Accused in Crl.OP.No.20634 of 2018

- Vs -

The Additional Deputy Commercial Tax Officer,
Intelligence Wing,
Commercial Tax Department,
100 feet Road,
Pudupalayam,
Puducherry-605005.
... Respondent in all Crl.OP's

COMMON PRAYER: Criminal Original Petitions have been filed under Section 482 of Cr.P.C, to call for the records in CC Nos.7/2018, 618 of 2009 & 304 of 2008 on the filed of the Learned Judicial Magistrate No-I, Puducherry and quash the same.

For Petitioner : Ms. V. Meenakshi for M/s.Gnanadesikan Law Associates

For Respondent-1: Mr. V. Balamurugane, Additional Public Prosecutor, Pondicherry.

COMMON ORDER

These Criminal Original Petitions have been filed to quash the criminal cases, which have been launched by the respondent relating to the respective assessment years in which tax has been failed to be paid in full in which penalty proceedings have been invoked resulting in levy of penalty and payment of the escaped tax.

2. It is the case of the petitioner that for the assessment year 2001-2002 and 2002-2003 the petitioner had submitted the respective A-2 return and A-9 return to the Commercial Tax Department, Puducherry, along with payment of necessary turnover tax, which were duly processed and approved. Insofar as the assessment year 2006-2007, the return filed by the petitioner was rejected and, accordingly, notice for the period 2001-2002 and 2002-2003 and pre-assessment notice for the assessment period 2006-2007 was issued to the petitioner relating to suppression of turnover and relating to escaped turnover on the basis of the details obtained from Indian Oil Corporation. It is the case of the petitioner that as he was very sick and was undergoing treatment for very many medical complications, he had requested the respondent that they may be some calculation error in the escaped turnover and had deputed his Manager to attend to the issue. However, the Commercial Tax Officer, after conducting enquiry, passed the respective impugned orders calculating the tax and also levying penalty at 100%.

3. It is the further case of the petitioner that the petitioner filed appeal without paying the mandatory 25% of the difference of tax assessed and due to the non-payment of the amount, the appeal was dismissed, which was challenged by filing writ petition and the same was also dismissed. Thereafter, by order dated 15.12.2005, sanction was accorded to prosecute the petitioner based on which complaint was filed before the learned Judicial Magistrate, Puducherry, which was taken on file and assailing the same, the present petitions have been filed.

4. Learned counsel appearing for the petitioner submitted that the petitioner has not committed any offence as claimed by the respondent. It is the further submission of the learned counsel for the petitioner that the period for which assessment is sought to be reopened, the petitioner was not in possession of the requisite materials due to efflux of time and even the respondent has passed the assessment order based on the best of judgment on the materials available with it, however, it is the submission of the learned counsel for the petitioner that the

error between the figures furnished by the petitioner and the Indian Oil Corporation cannot be put against the petitioner and that the 'C' Forms, which according to the respondent has not reflected the correct turnover position was signed and left with the Indian Oil Corporation and errors in the same cannot be the basis to take action against the petitioner.

5. It is the further submission of the learned counsel for the petitioner that the sanction for prosecution has been given without proper application of mind by the Commissioner, when very many offences of penal nature have been sought to be fastened against the petitioner. It is the submission of the learned counsel for the petitioner that the order of the sanctioning authority does not disclose the basis and the materials on which the sanction order has been passed. It is further submitted on behalf of the petitioner that the complaint filed by the respondent against the petitioner does not disclose the offences made out excepting repeating the Section and the best of judgment order and there is no whisper as to how the petitioner is liable to be prosecuted for the said offences.

6. It is the further submission of the learned counsel for the petitioner that Section 18 (1) of the Central Sales Tax Act prescribes a period of 5 years to determine the best of judgment assessment on turnover from the expiry of the year for which the tax relates. In the case on hand, the assessment pertains to the period 2000-2001 and 2001-2002 and escaped turnover notice was issued and order passed in the year 2006 and, therefore, the limitation of five years having expired, no prosecution could be made against the petitioner.

7. It is the further submission of the learned counsel for the petitioner that though penalty could be levied upto 150%, however, the reason for levying the requisite percentage of penalty ought to be discussed. However, in the case on hand, the penalty order does not reveal the basis on which the penalty is quantified and that being the case, the order passed by the authority, without any proper reasoning is unsustainable, more so when there is no clear finding that the failure to disclose the correct turnover was wilful and wanton.

8. The basis of the prosecution under the repealed Act, which has been substituted with the Puducherry Value Added Tax Act, 2007, which came into force with effect from 3.12.2007 is also pressed into service to assail the penalty order passed by the respondent and also the prosecution launched against the petitioner. Due to the very many inherent improbabilities and also on the question of limitation and other facts as mentioned above, it is prayed that the present petitions to quash the case is liable to be allowed.

9. Per contra, counter has been filed by the respondent and the learned standing counsel appearing for the respondent, adverting to the counter submitted that the petitioner, without exhausting the remedies available under the relevant provisions of law, cannot come before this Court under Section 482 Cr.P.C. and seek quashment of a criminal case, as the criminal court is not vested with jurisdiction to pass any orders. It is the further submission of the learned standing counsel for the respondent that the assessment order having not been challenged in a manner known to law and having allowed the assessment order and proceedings to survive, the petitioner is estopped from questioning the prosecution initiated against him.

10. It is the further submission of the learned standing counsel for the respondent that the Commissioner, after satisfying himself has passed the order according sanction for prosecution and merely because the order is not to the liking of the petitioner or that it does not speak about the documents, which have been relied upon to arrive at the subjective satisfaction, the same cannot be termed to be an order passed without application of mind to the materials placed before the concerned sanctioning authority.

11. It is the further submission of the learned standing counsel for the respondent that all the contentions raised by the petitioner are factual in nature, which cannot be decided by this Court sitting under 482 Cr.P.C. and the petitioner has to go through the rigour of trial to establish his innocence and, therefore, it would not be justifiable for this Court to quash the case at the threshold. Therefore, he prays for dismissing the present petitions.

12. This Court paid its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

13. A careful scrutiny of the materials reveal that the petitioner, though filed appeal, has not filed it in accordance with law by depositing the mandatory security deposit of 25% of the amount, which has led to the dismissal of the appeal and the writ petition filed against the said order also ended in dismissal. The above clearly shows that the petitioner, without properly utilising the remedy available to it, has, as a mere formality submitted an appeal without the mandatory deposit amount. The petitioner not having availed the appeal remedy in the proper manner now cannot come and say that the due process

of law has not been followed.

14. Insofar as the contention of the petitioner relating to application of mind on the part of the sanctioning authority sanctioning prosecution against the petitioner, the question of limitation and also the non-application of mind in the appreciation of materials filed before the assessment officer resulting in the best of judgment, this Court is of the considered view that those contentions are factual in nature, which cannot be gone into by this Court under 482 Cr.P.C. and those contentions have to be raised and tested only at the time of trial. The Court, exercising inherent powers under Section 482 Cr.P.C., cannot quash the case against the petitioner without properly appreciating the facts.

15. The Hon'ble Supreme Court in the case of State of Haryana – Vs Bhajan Lal (1992 Supp (1) SCC 335), has expounded the various circumstances in which the inherent power u/s 482 Cr.P.C. can be invoked. For better appreciation, the relevant portion of the said decision is quoted hereunder :-

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if

any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal

> proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.
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> 104. It may be true, as repeatedly pointed out by Mr Parasaran, that in a given situation, false and vexatious charges of corruption and venality may be maliciously attributed against any person holding a high office and enjoying a respectable status thereby sullying his character, injuring his reputation and exposing him to social ridicule with a view to spite him on account of some personal rancour, predilections and past prejudices of the complainant. In such a piquant situation, the question is what would be the remedy that would redress the grievance of the verily affected party? The answer would be that the person who dishonestly makes such false allegations is liable to be proceeded against under the relevant provisions of the Penal Code, 1860 — namely under Section 182 or 211 or 500 besides becoming liable to be sued for damages.”

16. The present case of the petitioner does not come within any of the circumstances pointed out by the Hon'ble Supreme Court in Bhajan Lal's case (supra) and, therefore, invoking of the jurisdiction of this Court u/s 482 Cr.P.C. would be wholly untenable and impermissible. The petitioner has to establish his innocence or otherwise at the time of trial by adducing proper evidence and it would be unsafe to close the case of the respondent at the threshold, when the case has revenue implications, which pertains to public money.

17. For the reasons aforesaid, this Court is not inclined to accede to the prayer as sought for by the petitioner and, accordingly, these petitions are dismissed leaving open all the points for the petitioner to canvass the same before the trial court at the time of trial. It is made clear that any observation made by this Court in the present judgment are only for the purpose of deciding this case and the trial court shall

deal with the issue raised without being uninfluenced by any observations made by this Court above. Consequently connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

NHS/GLN

To
The Additional Deputy Commercial Tax Officer,
Intelligence Wing,
Commercial Tax Department,
100 feet Road,
Pudupalayam,
Puducherry-605005.

CRL.O.P Nos.20632, 20633
& 20634 of 2018

SS(CO)
SU(10/01/2022)