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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.2475 OF 2017

AND

CRL.M.P.NO.1740 OF 2017

Hima Bindu

...Petitioner

Versus

1.Union of India Represented by
The Assistant Commissioner of Central Excise,
Villupuram Divison,
No.9, Solai Nagar,
Sudhakar Nagar,
Villupram-605602.

2.Arunachalam Sugar Mills Ltd.,
Melapambadi Post,
Somasipadi (Via),
Tiruvannamalai District-606611.

3.V.Kannan

4.V.Baskaran

5.J.Jeganmohan

6.A.R.Saravanan

7.P.Pugalendhi

8.Joseph Gopairaj

9.S.Ramji

10.S.Srikumar

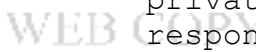
...Respondents

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to quash the complaint against the petitioner filed by the 1st respondent/complainant arraying petitioner as accused No.5 in C.C.No.1 of 2015, pending on the file of the Chief judicial Magistrate (Economic Offences Cases) at Thiruvannamalai.

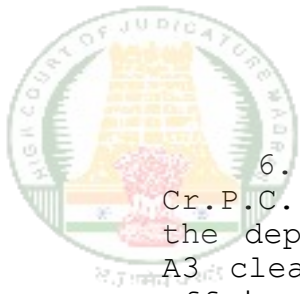
For Petitioner : Mr.B.Balavijayan

For R1 : Mr.N.P.Kumar
Central Govt. Standing Counsel

For R9 & R10 : Mr.M.Palanivel



ORDER



6. The entire complaint filed under Section 200 of the Cr.P.C. makes it clear that even the investigation conducted by the department and the statements recorded by them from A2 and A3 clearly indicate that only A2 and A3 were in the helm of affairs of the company and they said to have cleared Sugar and Molasses clandestinely in order to avoid excise duty. In Paragraph No.20, sub clause (v) of the complaint itself states that the statements recorded from A2 and A3 also indicate that the staff have carried out the transactions only as per their instructions. As the staff are nothing to do with the payment of excise duty and they have just carried out the instructions of the employer to allow the goods to go outside the factory, it cannot be construed that they also made an attempt or concealed the payment of excise duty. After all they are only employees and they acted in the factory as per the instructions of the employer. It is the duty cast on the employer and the manufacturer to pay the Excise Duty and not by the employees. When such being the position, merely because the other accused were employees at the given point of time, and when excise duty has been avoided by the manufacturer or employer or owner of the factory, the employees cannot be prosecuted and they cannot be forced to undergo the ordeal of the criminal trial.

7. From the allegations in the very complaint itself indicate that there was no offence made out against this petitioner except he being the employee. Avoidance of the excise Duty or removing the goods to avoid excise duty cannot be attributed against the employees, they just acted as per the instructions of the employer. Hence this court feels that this is a fit case in which this court could exercise its power under Section 482 Cr.P.C. to quash the proceedings initiated against the present petitioner.

8. Accordingly, the criminal original petition is allowed. The proceedings initiated in the private complaint against the petitioner/ Accused 5 filed by the 1st respondent/complainant in C.C.No.1 of 2015, pending on the file of the Chief judicial Magistrate (Economic Offences Cases) at Thiruvannamalai, is quashed. Consequently, the connected criminal miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

psa/asr



To

1.The Chief judicial Magistrate
(Economic Offences Cases)
Thiruvannamalai.

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2.The Assistant Commissioner of Central Excise,
Union of India, Villupram Division,
No.9, Solai Nagar, Sudhakar Nagar,
Villupuram - 605 602.

+1cc to Mr.B.Balavijayan, Advocate SR.No.69721

Cr1.O.P.No.2475 of 2017

EV(CO)
RVM(12/01/2021)