



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order
26.10.2021

Date of Pronouncing Order
16.11.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.Nos.826 & 827 of 2017
and
Crl.M.P.Nos.7568 to 7571 of 2017

G. Victor Devasahayam

.. Petitioner
in both the Crl.R.Cs

Vs.

The Assistant Commissioner of Income Tax,
Central Circle-II(2)
Presently Company Circle I(3),
Chennai - 600 034.

.. Respondent
in both the Crl.R.Cs

COMMON PRAYER : Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to set aside the order dated 24.11.2016 passed by the learned Additional Chief Metropolitan Magistrate, (E.O-I) Egmore, Allikulam, Chennai in Crl.M.P.Nos.3147 & 3148 of 2013, respectively in E.O.C.C.Nos.181 & 182 of 1991.

For Petitioner : Mr. P. Ramesh Kumar

For Respondent : Mr. L. Murali Krishnan,
Special Public Prosecutor for Income
Tax

C O M M O N O R D E R

The matter is heard through "Video Conference".

2. The fourth accused is the revision petitioner herein.

3. These criminal revision petitions are filed against the order dated 24.11.2016 passed by the learned Additional Chief Metropolitan Magistrate, Economic Offences I, Egmore, Allikulam, Chennai, in Crl.M.P.Nos.3147 & 3148 of 2013, respectively in E.O.C.C.Nos.181 and 182 of 1991, respectively.

4. After hearing the learned counsel for the petitioner and the learned Standing counsel for the Income Tax and after perusal of the order, the chequed history of the case is as under:



4(i) originally two complaints were filed against the accused herein and others in E.O.C.C.Nos.181 and 182 of 1991, for the offences under Sections 276C(1), 277 and 278B of the Income Tax Act, 1961 and Sections 120B, 193, 196, 420 read with 511 of IPC for 2 Assessment years namely 1983-84 and 1984-85 respectively. On appearance of the accused, Crl.M.P.No.23 of 1993 was filed under Section 218 of Cr.P.C., by the accused for clubbing of E.O.C.C.No.182 of 1991 along with E.O.C.C.No.181 of 1991 since the issues relating to the complaints were the same in both the cases. The said petition was allowed by the learned Magistrate on 28.01.1993 on a No objection endorsed by the complainant. Accordingly, the cases were clubbed and evidence was recorded jointly, charges were framed under the above Sections with 2 counts on each of the said charge. Thereafter, the witnesses were cross examined.

4(ii) The complainant's counsel filed a memo for reasons stated herein praying the lower Court to frame separate charges in both the cases and also an application in Crl.M.P.No.1015/2014 & 1016/2014 under Section 256 of Cr.P.C., for altering the charge and the said memo and applications were allowed by order dated 14.08.2014.

4(iii) In the meanwhile, the complainant filed an application in Crl.M.P.No.277 of 2013 under Section 311 of Cr.P.C., to examine additional witness and the said application was allowed by an order dated 03.03.2011.

4(iv) thereafter, based on the evidence of P.W.7, the complainant filed an application under Section 216 of Cr.P.C., in Crl.M.P.No.3147/2013 to frame an additional charge under Section 276C(2) of the Income Tax Act for non-payment of tax arrears. The said petition was allowed by order dated 24.11.2016 and the present revision is against the said order. Framing of additional charges based upon the additional evidences let in after 26 years of persecution is unsustainable in law and is liable to be set aside.

4(v) the allegation in the complaint filed in 1991 was that the petitioner was in the trade of manufacturing and sale of Pesticides and Chemicals for agricultural purpose and was also engaged in Research activities. On 30.06.1983, the petitioner filed return of Income for the Assessment year 1983-84 claiming a loss of Rs.5,74,033/- wherein a Capital Expenditure of Rs.1,24,10,880/- was claimed on Scientific Research relating to his business. The above said sum included a claim of Rs.59,88,893/- being the cost of purchase of Land and Building at No.62, Spur Tank Road, Chetpet, Chennai.

4(vi) The First accused Company was having their Research and Development wing at Padappai and Thiruvottiyur and was recognized by the Indian Council of Agricultural Research (ICAR)



under Section 25(1) (2) of the Income Tax Act, 1961. As suggested by the study team of ICAR, the accused Company wanted to have a Centralised Laboratory within the City of Madras for its Process and Development work and accordingly the above mentioned property was purchased. But the said claim was rejected by the Assessing Officer mainly on the ground that the property was purchased barely 4 days before the completion of the Assessment year on 30.06.1982 and therefore, it could not have been used for the Scientific Research as claimed. The accused submits that disallowing the said claim, the assessment was completed on 20.07.1986 by adding the aforesaid sum of Rs.59,88,893/- as income and apart from the levying tax of Rs.39,41,253/- levied a sum of Rs.63,19,208/- as penalty. Thereafter, notices were issued for the tax arrears and assets of the first accused were attached.

4(vii) thereafter on 26.03.1991, the respondent launched the prosecution for offences under Section 276C(1), 277 and 278 of the Income Tax Act along with Section 120B, 193, 196, 420 read with 511 of IPC., and the case proceeded thereafter as stated earlier. The petitioner submits that the present allegation for non-payment of tax arrears existed even in 1991 when the complaint was filed originally and therefore, it is not a fresh fact which either arise subsequent to the filing of the complaint or which was not known to the complainant when the complaint was originally filed.

4(viii) all along the accused have defended himself based upon the original charge of evasion and after 26 years when the case was to conclude by itself, the application by the complainant to frame charge for non-payment of tax would amount to an endless prosecution on the part of the complainant.

5. The learned counsel for the petitioner would contend that the petition filed by the prosecution is after 26 years of prosecution.

5(i) Second submission: The present charge of non-payment of tax existed even when the complaint was filed originally in the year 1991 and there is nothing between for coming forward prompting the complainant to file the present application. The present application is filed to frame additional charge based upon the additional evidence of P.W.7 is not maintainable.

6. Mr.L.Murali Krishnan, learned Special Public Prosecutor for the Income Tax, relied upon the judgment of the Hon'ble Supreme Court in Dr.Nallapareddy Sridhar Reddy Vs. The State of Andhra Pradesh & Ors in Crl.A.No.1934 of 2019.

7. From the records, it is seen that for the Assessment Year relating to 1983-84 and 1984-85 of E.O.C.C.Nos.181 & 182 of 1991, as he moved by the complainant and it has reached the



stage of 313 questioning. At this juncture, the present application is filed and it was allowed.

8. On perusal of the private complaint filed by the Income Tax Department and the evidence of P.W.7, I find that after completion of the prosecution, the prosecution has examined five witnesses and defence side evidence is closed. Thereafter, it appears that the application is filed by the complainant/Assistant Commissioner of Income Tax, under Section 311 of Cr.P.C., to need an additional evidence namely P.W.7/Recovery officer, through whom Exs.P42 to P.48 were marked relating to the Assessment Year 1988-89, 1989-90. After examination of the said Tax Recovery Officer by name C.Gayathri, it appears that the prosecution has filed the present application under Section 216 of Cr.P.C., for framing of additional charges. The initial charge in the main case in E.O.C.C.Nos.181 and 182/1991, are are filed under Section 276 (1) of Income Tax Act and the said charge has been framed on 02.09.2006, that was for evasion of tax. Now by way of additional charge, they want to include the fresh charge under Section 276C(2) of Income Tax Act, 1961 namely evasion of payment of tax.

9. According to the petitioner, the newly examined witness viz., tax recovery officer viz., Gayathri has not issued any notice for recovery of tax, interest, and penalty and notice was also not served, it was disputed by the Income Tax Officer. The said question is the question of fact. It is for the trial, the necessary question has to be confronted with the concern material witness.

10. The lower Court record reveals that as per Ex.P.44, P.W.7 has stated that demand notice in ITCP.No.1 dated 04.03.1988 was issued for Assessment Year 1983-84, directing the defaulter of company to pay the arrears within 15 days. As per Exs.P.45 & P.46, the accused defaulter company was issued notices for payment of interest under Section 220(2) for the Assessment Year 1983-1984. Since, it is framing of additional charge, I am imposing self-restriction upon myself, except to say that the factum of private notice was issued or not, it is the matter for trial. With regard to the proposed charge, I find that the facts are in common for both offences under Section 276(C)(1) and 276(C)(2) of Income Tax Act.

11. The main E.O.C.C.Nos.181 and 182/1991, charges for the offence under Section 276(C)(1), after examination of P.W.7, in connection with the very same Assessment Year for non payment of Tax, charge under Section 276(C)(2) Income Tax Act was now sought to be added by way of alteration of charge. It is not disputed that sanction under Section 279 (1) of Income Tax Act is already been granted and sanctioned for the offence under Section 276(C)(1) and other offences. Since the expression "unless the sanction had been already obtained for a prosecution



on the same facts as those on which, the altered or added charge is found", new or fresh sanction is not required, as contemplated under Section 216(5) of Cr.P.C., is present.

11(i) As stated supra, the Assessment Year is one and the same. Initial charge is for evasion of tax. Now, by way of alteration of charge, it is included to add evasion of payment of tax and hence, I do not find any error in the order passed by the Special Sessions Judge, in allowing the application.

12. The last point that was urged by the learned counsel for the petitioner is with regard to the stage of the case. According to the petitioner, the matter is posted for argument, at this stage, whether, this type of nature of the petition can be entered.

13. The Hon'ble Supreme Court in Dr.Nallapareddy Sridhar Reddy Vs. The State of Andhra Pradesh & Ors. in Crl.A.No.1934/2019, dated 21.01.2020, has held that the stage of the proceedings is irrelevant for alteration of the charge and hence, I find no illegality or irregularity in the impugned order passed by the learned Sessions Judge.

14. Accordingly, these criminal revision petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

AT

To

1.The Assistant Commissioner of Income Tax,
Central Circle-II(2)
Presently Company Circle I(3),
Chennai - 600 034.

2.The Additional Chief Metropolitan Magistrate, (E.O-I)
Egmore, Allikulam, Chennai.

+1cc to Mr.L. Murali Krishnan, Advocate SR.No.58749

Crl.R.C.Nos.826 & 827 of 2017 and
Crl.M.P.Nos.7568 to 7571 of 2017

KG(CO)
GMY(01/12/2021)