IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case Nos.1194 and 1195 of 2019
and
Crl.M.P.Nos.15879 & 15881 of 2019

Shri.Pradeep Dayanand Kothari,
No.114, Mahatma Gandhi Road,
4th Floor, Kothari Building,
Chennai -600 034. ... Petitioner
in both Crl.R.Cs/Accused

..vs..

The Deputy Commissioner of Income Tax,
Corporate Circle 4(2),
Chennai - 600 034. ... Respondents
in both Crl.R.Cs/Complainant

Criminal Revision Cases filed under Section 397 read with 401 Cr.P.C, to call for the records relating to the proceedings made in Crl.M.P.Nos.2917 and 2915 of 2019 in E.O.C.C.Nos.113 and 112 of 2015 dated 19.08.2019 on the file of the Additional Chief Metropolitan Magistrate (E.O.II) Court at Egmore, Chennai - 600 008 and set aside the same.

For Petitioner : Mr.S.Senthilnathan
in both Crl.R.Cs

For Respondent : Mr.N.Baskaran
Standing Counsel for Income Tax
in both Crl.R.Cs

COMMON ORDER

These Criminal Revision Cases have been filed against the order dated 19.08.2019 passed in Crl.M.P.Nos.2917 and 2915 of 2019 in E.O.C.C.Nos.113 and 112 of 2015 on the file of the Additional Chief Metropolitan Magistrate (E.O.II) Court at Egmore, Chennai - 600 008.

2.The petitioner is an assessee. The respondent filed complaints against the petitioner under Section 276 (C)(1) and 277 of the Income Tax Act, 1961 r/w Section 200 Cr.P.C., for the assessment year 2006-2007 and 2007-2008 before the learned Additional Chief Metropolitan Magistrate (E.O.I), Egmore, Chennai in E.O.W.C.C.Nos.112 of 2015 and 113 of 2015. During the pendency of the said cases, the petitioner/assessee filed a petition under Section 245 Cr.P.C., to discharge him from the said cases. The learned Magistrate, after considering the entire materials dismissed the petition. Challenging the said order, the present Criminal Revision Cases.

3. The learned counsel for the petitioner would submit that the petitioner is not aware of the amount deposited in his account, therefore, he has not disclosed the income during the relevant periods i.e.,2006-2007 and 2007-2008. Subsequently, the respondent passed the assessment order. Aggrieved over the same, the petitioner has preferred an appeal before the Tribunal, and the same is pending. Therefore, once the assessment proceedings are setting aside, the entire case against the petitioner goes out and therefore, he filed the discharge petition. However, the learned Magistrate failed to consider the same, dismissed the petition, which warrants interference of this Court.

4. The learned Standing Counsel appearing for the respondent would submit the petitioner had operated undeclared account with HSBC located in Switzerland. Further, the amount, which was deposited in that account, is well within the knowledge of the petitioner. The knowledge of the petitioner about the same can be decided after trial and not at this stage. Further, the petitioner all along participated in the assessment proceedings. Therefore, the ground taken by the petitioner is not a correct ground to discharge the petitioner at this stage. Therefore, both these revisions may be dismissed.

5.Heard the learned counsel on either side and perused the materials available on record.

6.Admittedly, the petitioner is an assessee and the respondent filed complaints against the petitioner under Section under Section 276 (C)(1) and 277 of the Income Tax Act, 1961 r/w Section 200 Cr.P.C for the assessment year 2006-2007 and 2007-2008 before the learned Additional Chief Metropolitan Magistrate (E.O.I), Egmore, Chennai in E.O.W.C.C.Nos.112 of 2015 and 113 of 2015. The petitioner filed his returns, in which, he has not disclosed certain amounts deposited in his account. Therefore, the respondent filed complaints against the petitioner. Though the learned counsel for the petitioner would submit that he has admitted the said deposit, however, he denied the knowledge. The ground taken by the petitioner about the knowledge can be decided only after trial and not at this stage. Therefore, while deciding the petition under Section 245 Cr.P.C, the Court has to consider the allegations made in the complaint against the petitioner. If any allegation is found with supporting documents, the Court cannot conduct roving enquiry on the same. This Court finds prima facie material against him.

Further, in any private complaint made under Section 200 Cr.P.C., the Court has to see the allegations levelled in the complaint and documents annexed therein, but, not the defence taken by the accused and documents produced by them at the time of framing charges.

7.Therefore, under these circumstances, this Court on a careful reading of the complaints and documents filed by the respondent,prima facie case is made out against the petitioner. Further, the knowledge of petitioner cannot be decided at this stage and the same can be decided after trial. Hence, this Court does not find any perversity or infirmity in the order passed by the Court below.

8.Accordingly, these Criminal Revision Cases are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Chief Metropolitan Magistrate (E.O.II)
Egmore,
Chennai - 600 008.

2.The Deputy Commissioner of Income Tax,
Corporate Circle 4(2),
Chennai - 600 034.

+1cc to Mr.S.Senthilnathan, Advocate, S.R.No. 21841
+2cc to Mr.N.Baskaran,Special Public Prosecutor, Income Tax,
Chennai, Advocate, S.R.No. 2202, 2201

Crl.R.C.Nos.1194 and 1195 of 2019
and
Crl.M.P.Nos.15879 & 15881 of 2019

SR(CO)
GN(09/02/2021)