IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.04.2022
Pronounced on : 13.06.2022

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.No.8801 of 2019
and
Crl.M.P.Nos.4652 & 4654 of 2019

Mr.Ramiah Senthil Kumar ... Petitioner

Vs.

The Income Tax Officer,
Corporate Ward 7 (5),
Aayakar Bhawan,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034. ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records relating to E.O.C.C.No.22 of 2018 on the file of Additional Chief Metropolitan Magistrate, Economic Offences - I, Egmore, Chennai and quash the same.

For Petitioner : Mr.Ashokpathy for
M/s.Pass Associates

For Respondent : Mr.N.Baskaran
Special Public Prosecutor

O R D E R

This Criminal Original Petition had been filed to quash the case in E.O.C.C.No.22 of 2018 on the file of Additional Chief Metropolitan Magistrate, Economic Offences - I, Egmore, Chennai.

2. The learned counsel for the Petitioner submitted that he had been issued show cause notice on 21.06.2017, roughly about 24 days prior to the filing of objection by the Petitioner. In the mean while, sanction was obtained and a private complaint was

filed by the Income Tax Authority. Only to quash the complaint filed by the Income Tax Authorities, the Petitioner had approached this Court.

2.1. As per the learned counsel for the Petitioner, the Petitioner is employed in Abu Dhabi and had immovable property, he sold it and purchased another property by way of sale deed executed on 12.02.2014.

2.2. During the financial year 2014-2015, he had not paid Income Tax for the capital gains, he has two years period to file his Income Tax return. On 21.06.2017 a show cause notice was issued and it was received by his mother which is objected to by the learned counsel for the Income Tax Department stating that for the sale of the property and capital gains, he has to pay tax within two years period, either he has to reinvest or keep it in Bank account. For which he had not paid Income Tax on that time for which 20 % will be deducted. If he had not reinvested, he has to pay the Income Tax. On scrutiny by the Income Tax Authorities through automatic method it revealed that transactions are through Bank. Therefore, the Authorities came to know about the same and issued the show cause notice.

3. It is the submission of the learned counsel for Income Tax Authorities that a show cause notice was issued and it was received by the mother of the Petitioner. The Petitioner had knowledge about the same but he did not respond to the notice on time. Therefore, sanction obtained and criminal complaint filed. At this stage, he cannot seek to quash the complaint. The only remedy available to the Petitioner is to file compounding petition before the Income Tax Authorities. Therefore, the learned counsel for the Income Tax Authorities seeks to dismiss the Petition as having no merits.

3.1. The learned Counsel for the Income Tax vehemently objected to the submissions of the learned Counsel for the Petitioner stating that the Petitioner was employed in Abu Dhabi and he had sold a property belonging to him in Chennai and entered into a contract with a builder regarding the construction of building wherein he is to be allotted a plot. Therefore, as per Section 51 of Income Tax Act, it is treated as capital gains. The Petitioner had not voluntarily disclosed the capital gains and it is automatically uploaded in the Income Tax Website by the Income Tax Portal based on computer operations since transaction involved during the Bank. Therefore, as per the PAN Card details, automatically capital gains are noticed by the computer. Based on the said, notice was issued to the Petitioner through his mother. Therefore, he had the knowledge of the same, but he did not pay 20% to be deducted as IT on capital gains. Therefore, for the violation of the same, the Income Tax Authorities had lodged a complaint in E.O.C.C.No.22 of 2018 on the file of Additional Chief Metropolitan Magistrate, Economic Offences - I, Egmore, Chennai.

4. It is the submission of the learned Counsel for the Petitioner that the Petitioner is not a regular Income Tax Assessee since he is employed in Abhu Dhabi, he is not aware of this provision of Income Tax for the benefit of Bank Transactions and he had availed PAN Card, but that cannot be used against him even though summons were served on the mother of the Petitioner. The mother of the Petitioner had not informed him as she was not aware of the legal implication of the same. Therefore, the filing of the criminal complaint in E.O.C.C.No.22 of 2018 against the Petitioner is to be quashed.

4.1. The learned Counsel for the Petitioner submitted that the non-filing of return on account of bonafide belief that the Petitioner did not have taxable income previously and that the Petitioner did not have an effective and reasonable opportunity to offer an explanation for non-filing of return. The Respondent, without taking into consideration of the prima facie genuinity of reason for Non-filing of return, in utter violation of principles of natural justice, has accorded sanction for prosecution of the Petitioner/Accused in a mechanical manner culminating in the impugned complaint by the Respondent. Therefore, the Petitioner seeks to quash the complaint in E.O.C.C.No.22 of 2018 on the file of Additional Chief Metropolitan Magistrate, Economic Offences - I, Egmore, Chennai.

4.2. The learned Counsel for the Respondent/Income Tax relied on the ruling of this Court in Crl.O.P.No.11998 of 2018 dated 28.01.2022 and Crl.O.P.No.25561 of 2016 dated 26.10.2021, relevant portion of which reads as follows:

> "24. As stated by the Hon'ble Supreme Court, the claim of the Petitioner herein that he was innocent and ignorant and therefore, indulgence should be granted to him, is actually a fact which should be proved by him in a Court of law. Such innocence or ignorance cannot be presumed. On the other hand, what can be presumed is the culpable mental status and it is for the Petitioner herein to prove the contrary.
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> 26.Insofar as the judgment relied on by the learned Counsel for the Petitioner of the Gujarat High

Court is concerned, the learned Judge, with due respect, has not at all considered the presumption as given in Section 278 E of the Act, 1961, regarding culpable mental state. This was a provision brought into the Taxation Law in the year 1986 itself. The burden lies on the assessee to show that the had no wilful intention not to file the Return. Any explanation to discharge such burden can be tested only during the course of trial."

4.3. The learned Counsel for the Respondent/Income Tax relied on the reported ruling of Hon'ble Supreme Court in 2004 (2) SCC 193 in the case of Prakash Nath Khanna and another Vs. Commissioner of Income Tax and another, relevant portion of which reads as follows:

"Income Tax Act, 1961-Section 276-CC r/w Section 139 (4)-Non-filing of income tax return by "due date" -Prosecution-Return of income for assessment year 1988-89 to be filed on or before 31-7-1988 was infact filed on 20-3-1991-Assessment was completed and penalty was imposed for late submission for return-Complaint filed in Court for offence u/s 276-CC of the Act and Court took cognisance-High Court dismissed petition seeking quashing of complaint-Appeal-By Amendment Act, 1986, power of Income Tax Officer to extend time for furnishing return was taken away w.e.f.1-4-1987-Provisions of Section 276-CC was clear and no scope for trying to clear any doubt or ambiguity- If return was fiiled in terms of sub-section (4) of Section 139 of the Act that would not dilute infraction in not furnishing return "in due time" -Court has to presume existence of culpable mental state interms of Section 278-E-Whether there was wilful failure to furnish return would be a matter which was to be adjudicated factually by Court-No illegality in impugned order. (Paras 18 to 23)

23. There is a statutory presumption prescribed in Section 278-E. The court has to presume the existence of culpable mental state, and absence of such mental state can be pleaded by an accused as a defence in respect to the act charged as an offence in the prosecution. Therefore, the factual aspects highlighted by the appellants were rightly not dealt with by the High Court. This is matter for trial. It is certainly open to the appellants to plead absence of culpable mental state when the matter is taken up for trial."

4.4. The learned Counsel for the Income Tax submitted that if at all the Petitioner seeks relief, it is for him to compound the offences. The Commissioner of Income Tax has power to compound the offences. The Petitioner seeking to quash the complaint in E.O.C.C.No.22 of 2018 on the file of Additional Chief Metropolitan Magistrate, Economic Offences - I, Egmore, Chennai, is not maintainable. In the light of the above ruling, this Petition lacks merits and is to be dismissed.

5. In the course of the arguments of the learned Counsel for the Petitioner submitted that the Petitioner had already paid Income Tax along with penalty. In the light of the above, instead of dismissing this Petition, the Income Tax Authority is advised to consider the claim of the Petitioner regarding the compounding of offences as was advised in the course of arguments of the learned Counsel for Income Tax Authorities.

5.1. From the facts and circumstances of this case, the Petitioner is employed in Abhu Dhabi and is not an Income Tax assessee. After notice having been received by his mother, he did not have knowledge and his mother had not communicated the same to him. Therefore, he could not respond to the show cause notice within the time specified. Since he had not responded, the Income Tax Authority obtained sanction to prosecute the case. Pending the case, he paid Income Tax with penalty.

Under those circumstances, prosecuting this criminal complaint will result in miscarriage of justice. Therefore, pending criminal complaint, Income Tax Authorities are advised to grant him the opportunity to compound the offences.

In the result, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CCC)

// True Copy //

Sub Assistant Registrar

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To

1. The Additional Chief Metropolitan Magistrate,
Economic Offences - I, Egmore, Chennai

2.The Public Prosecutor
High Court of Madras
Chennai 600 104.

3.The Income Tax Officer,
Corporate Ward 7(5),
Aayakar Bhawan,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

+1cc to M/s.Pass Associates, Advocate SR.No.35303

CRL.O.P.No.8801 of 2019

KV(CO)
CB(06/07/2022)