



Crl.O.P.Nos.15369, 13716 & 13717 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.Nos.15369, 13716 & 13717 of 2019

and

Crl.M.P.Nos.7566, 6751 and 6753 of 2019

1. Mrs. Valipi Reddy Rajani Reddy

2. Karan Jit Singh Jasuja

... Petitioners in all Crl.O.Ps

Vs.

Shri. D.Rohini

Deputy Commissioner of Income Tax

TDS Circle – 2,

Chennai – 600 034

... Respondent in

Crl.O.P.No.15369/2019

Shri. M.S.Anoop,

Assistant Commissioner of Income Tax,

TDS Circle – 2,

Chennai – 600 034.

... Respondent in

Crl.O.P.No.13716 & 13717/2019

COMMON PRAYER: Criminal Original Petitions have been filed under Section 482 of Cr.P.C, prayed to quash the entire proceedings against the



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Petitioners in EOCC.Nos.105, 136, 135 of 2017 pending on the file of the learned Additional Chief Metropolitan Magistrate – I, Egmore, Chennai (EOCC-I).

For Petitioners
in all Crl.O.Ps : Mr.Alakendran
for Mr.D.Baskar

For Respondents
in all Crl.O.Ps : Ms.M.Sheela
Special Public Prosecutor

COMMON ORDER

The Criminal Original Petition has been filed to quash the entire proceedings against the Petitioners in EOCC.Nos.105, 136, 135 of 2017 pending on the file of the learned Additional Chief Metropolitan Magistrate – I, Egmore, Chennai (EOCC-I).

2. The learned Counsel for the Petitioner submitted that the the proceedings were initiated against the Petitioners treating them as a Principal Officer of the Company alleging that a notice under Section 2(35) of the Income Tax Act was served on them. However, the Petitioners were not served with the said notice and therefore there was no chance for them to repudiate the allegation in the show cause notice. Therefore, the entire



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proceedings were initiated against the Petitioners are vitiated as the mandatory requirement of treating the Accused as Principal Officer had been complied with.

2.1. It is the submission of the learned Counsel for the Petitioner that as per the Section 2(35) of the Act means the person, who is connected with the management and administration of the Company. No material was placed by the Complainant as to how the Petitioners as Directors of A-1 participated in the conduct of business of the Company. As per the Complaint and the documents relied upon by the Respondent are as follows:

15.02.2016 -Show cause notice issued to A-1

16.02.2016 -Notice issued before sanction given to A-2

27.02.2015- Notice to A-3(first Petitioner)

10.01.2017 – Sanction to Prosecution

03.03.2017 – Notice Under Section 2(35) to A3 and A4

2.2. It is the submission of the learned Counsel for the Petitioner that the Assessing Officer should give notice under Section 2(35) of the Act



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before the Sanction to Prosecute is obtained and the same had not been complied with. The sanction issued by the Authority fixing the liability on the Petitioners without treating them as Principal Officers is untenable in law.

2.3. The learned Counsel for the Petitioner submitted that the first Petitioner who is arrayed as A-3 was appointed as a Non Executive Independent Director on 05.01.2001. The first Petitioner resigned on 14.11.2014. Therefore, the first Petitioner ceases to be a Director of the said firm M/s.Marg Limited (A1) on and from 14.11.2014. The second Petitioner who is arrayed as A-4 was appointed as a Non Executive Independent Director on 20.06.2007 and 25.09.2017 with ROC. The second Petitioner/A-4 resigned on 22.11.2017. Thus, the first Petitioner ceases to be a Director of the said M/s.Marg Limited (A1) on and from 22.11.2017. Under those circumstances, there was no clear and specific averment in the Complaint that the Directors were in charge and responsible for the conduct of business and the Complainant has merely presumed that the Directors of the Company must be guilty because they were holding a particular Office. In the absence of whisper nor a shred of evidence nor anything to show,



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apart from presumption drawn by the Complainant that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, no case had been made out. Therefore, he seeks to quash the charge sheet in EOCC.Nos.105, 136, 135 of 2017 pending on the file of the learned Additional Chief Metropolitan Magistrate – I, Egmore, Chennai (EOCC-I).

3. Ms.M.Sheela, learned Special Public Prosecutor vehemently objected to quash the proceedings in EOCC.Nos.105, 136, 135 of 2017 pending on the file of the learned Additional Chief Metropolitan Magistrate – I, Egmore, Chennai (EOCC-I), that trial had already commenced and witnesses have been examined.

In the light of the vehement objection of the learned Special Public Prosecutor, these **Criminal Original Petitions are dismissed** with direction to the learned Additional Chief Metropolitan Magistrate – I, Egmore, Chennai (EOCC-I) to complete the proceedings within a period of four months from the date of receipt of a copy of this Order. Consequently,



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connected Miscellaneous Petitions are closed.

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Index: Yes/No

Internet: Yes/No

To.

1. The Additional Chief
Metropolitan Magistrate – I,
Egmore, Chennai (EOCC-I)
2. The Public Prosecutor,
High Court, Chennai.



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SATHI KUMAR SUKUMARA KURUP.,J.

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