IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2022
Delivered on : 17.06.2022

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.No.23139 of 2019
and
Crl.M.P.Nos.12128 & 12129 of 2019

Hemant Meka Rao ... Petitioner / Accused No.2

Vs.

Smt.C.Sundari ... Respondent / Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records in E.O.C.C.No.103 of 2019 pending on the file of the learned Additional Chief Metropolitan Magistrate (E.O-I), Egmore, Chennai and quash the same.

For Petitioners : Mr.Abdul Saleem
For Respondent : Ms.M.Sheela
Special Public Prosecutor
for Income Tax

O R D E R

This Petition had been filed to quash the case in E.O.C.C.No.103 of 2019 pending on the file of the learned Additional Chief Metropolitan Magistrate (E.O-I), Egmore, Chennai.

2. The learned Counsel for the Petitioner submitted that as per the Income Tax Act, the Petitioner ought to have been issued with notice before issuance of notice under Section 2(35) of the Income Tax Act, 1961 which is a statutory notice to be issued to the persons in charge of the Management of the Company or Firm or Organisation. Here, the Petitioner was one of the Directors of the Company but he was not a Managing Director of the Company.

2.1. The learned Counsel for the Petitioner invited the attention of this Court to the proceedings dated 30.03.2017 of the Commissioner of Income Tax regarding sanction for Prosecution and submitted that prior to that sanction, no notice was served to the Petitioner in his capacity as Director of the

Company and only on 04.04.2017, they had issued notice subsequent to the sanction. Therefore, the Petitioner had preferred this Petition seeking to quash the Complaint preferred by the Income Tax Authority. He had relied upon the reported ruling of the High Court of Delhi in 2006 SCC Online Del 1752 in the case of Sushil Suri and Others Vs. State and submitted that the observation of the Delhi High Court in the concluding paragraph Nos.6 to 9 are squarely applies to the facts of this case. The said Judgment is based on the ruling of the this High Court and the Bench of Haryana High Court.

3. The counter filed by the learned Counsel for the Respondent/Complainant states that the Hon'ble Apex Courts and High Courts in a catena of decisions have laid down that "Once a statute requires to pay tax and stipulates period within which such payment is to be made, the payment must be made within that period. If the payment is not made within that period, there is default and an appropriate action can be taken under the Act".

3.1. This Court in Crl.O.P.no.18649 of 2017 on 05.04.2019 in the case of Good News Channel Pvt Ltd Vs. Income Tax relying upon a plethora of cases held that simply charging of interest or penalty by the Department under Section 201 (1A) of the Act, for the delay in the payment of the amount to the Central Government, does not obliterate the Prosecution and both have different objects.

(i) Hon'ble Supreme Court of India - Appeal (Crl.) 1377 of 1999 dated 23.03.2007 - Madumilan Syntex Ltd & Ors Vs. Union of India.

(ii) 1993 (3) WLC 416 - Universal Supply Corporation and Ors. Vs. State of Rajasthan and Anr.

(iii) 2002 (2) MLJ 368 - Income Tax Officer (TDS), Nagpur Vs. Sultan Enterprises, Chandrapur and Ors.

3.2.The learned Counsel for the Respondent submitted that tax which was deducted by the Company out of the various expenses incurred was the Government money and the deductor was merely a custodian of the same as such taxes are deducted out of payments to third parties and which would go to the credit of the concerned third party and if such payments are not made on time into the government coffers the third party do not get the credit for no fault of theirs. The accused has no right over the amount which does not belong to them and was legally bound to deposit the amount of tax within the time specified in the law. It is the legal responsibility of the Principal Officers/Directors to comply with such legal requirement, which he had failed to do. The various Courts have held that the assessee cannot be granted immunity from prosecution merely on the ground that ultimately TDS was deposited in Government account albeit lately.

3.3.The learned Counsel for the Respondent submitted that the contention raised by the Petitioners are clearly matters of trial and when ingredients of offence are clearly made out in the Complaint to establish that the accused has committed an offence, the same cannot be quashed - State of Haryana Vs. Bhajan Lal reported in 1992 Supp (1) SCC.

3.4. The learned Counsel for the Respondent submitted that the time honoured principle that in matters seeking to quash a criminal Complaint, uncontroverted averments in the Complaint without any addition or subtraction should be looked into to examine whether an offence can be made out. This proposition continues to operate as the basic and fundamental test in a catena of decisions laid down by the Hon'ble SC and various High Courts following the above case.

3.5.The learned Counsel for the Respondent submitted that the contentions of the Petitioner in the present petition pertain can be tested only during the trial and not otherwise.

3.6.The learned Counsel for the Respondent submitted that on perusal of the Complaint and the chief examination of the Complainant with exhibits documents establishes a prima facie case against the accused to frame charges and proceed against under the provisions of 276 B of the Income Tax Act, 1961. Therefore, the learned Counsel for the Income Tax seeks to dismiss this Petition as not maintainable.

4. Reply to the argument of the learned Counsel for the Petitioner, the learned Counsel for the Income Tax Department submitted that the issues in this case are Whether separate notice is given to the Director of the Company? Whether the Prosecution is vitiated? and she invited the attention of this Court to the notice, which was addressed to the Principal Officer dated 23.09.2013. Also subsequent to notice to the Petitioner dated 23.12.2013 addressed to the Principal Officer. It is for the Principal Officer to reply to the notice and it is his burden to comply with the statutory provisions of the Income Tax Act.

5. The learned Counsel for the Income Tax Department also relied on the ruling of the Hon'ble Supreme Court in (2007) 11 SCC 297 in the case of Madhumilan Syntex Ltd., and others Vs. Union of India and another and sanction order of the Income Tax Department dated 30.03.2017.

6. In the light of the reported ruling of the Hon'ble Supreme Court in (2007) 11 SCC 297 in the case of Madhumilan Syntex Ltd., and others Vs. Union of Indian and another, the submission of learned Counsel for the Petitioner that he was not served with a notice regarding the alleged offences by the Income Tax Authorities, is found unacceptable. As rightly pointed out by the learned Counsel for the Income Tax Department, it is for the Petitioner to discharge his burden, as per the Income Tax Act. Therefore, the submissions of the learned Counsel for the Petitioner that this Petition is not maintainable cannot be accepted in the light of the reported ruling in (2007) 11 SCC 297 in the case of Madhumilan Syntex Ltd., and others Vs. Union of Indian and another relied on by the learned Counsel for the Income Tax Department. What had been argued by the learned Counsel for the Petitioner can be considered as valuable right available to the Petitioner which can be agitated only before the trial Court in the light of the ruling of the Hon'ble Supreme Court reported in 1992 Supp (1) SCC 335:1992 SCC (cri) 426 in the case of State of Haryana Vs. Bhajanlal, this Court exercising extraordinary powers under Section 482 of Cr.P.C., cannot quash the Complaint preferred by the Income Tax.

In the result, this Criminal Original Petition is dismissed.

The learned Additional Chief Metropolitan Magistrate (E.O-I), Egmore, Chennai is directed to proceed with the trial and dispose of the case within a period of three months from the date of receipt of a copy of this order or from the date of uploading this order in the website of this Court. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr.Abdul Saleem, Advocate, S.R.No.36566
+1cc to Ms.M.Sheela, Advocate, S.R.No.37605

CRL.O.P.No.23139 of 2019

RR[co]
NSK/11/07/2022