IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2022

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THE HON'BLE MS.JUSTICE R.N.MANJULA

Crl.O.P.Nos.27650 & 27652 of 2019
and Crl.M.P. Nos.14740 & 14742 of 2019

The Assistant General Manager,
Authorized Office,
State Bank of India,
C/o. Stressed Assets and Management Branch,
Red Cross Building office at
No.32, Montieth Road,
Egmore, Chennai - 600 008. ... Petitioner in both petitions

vs.

The Pallikonda Selection Grade Town Panchayat
Rep. by its Executive Officer,
R.Anandan ... Respondent in both petition

Criminal Original Petitions are filed under Section 482 of Criminal Procedure Code, to call for the records and quash the complaint in STC Nos.999 & 1001 of 2019 on the file of the learned Judicial Magistrate V, Vellore, by allowing these petitions.

For Petitioner : Mr.V.Arun
(in both petitions)
For Respondent : Ms.A.Sri Jayanthi
(in both petitions)

COMMON ORDER

This Criminal Original Petition has been filed to call for the records and quash the complaint in STC Nos.999 & 1001 of 2019 on the file of the learned Judicial Magistrate V, Vellore.

2. The petitioner is the second accused in a private complaint filed by the respondent against the petitioner and another for default in paying Municipal tax. A complaint has been filed consequent to the demand notices sent by the respondent to the petitioner on 15.02.2019 and 18.03.2019. However, the demand notices would show they were dated 23.03.2019. The respondent had sent several demand notices claiming property tax due totaling a sum of Rs.3,68,280/- pertaining to assessment numbers 883, 884, 885, 5930. However, the first accused had failed to pay the commercial tax. Since the first accused had closed the company and it is under the maintenance of the second accused, first and second accused are jointly and severally liable to pay commercial tax dues. Since

commercial tax dues were not settled, a private complaint has been filed to punish the accused under Section 347 and 348 of Tamil Nadu Municipality Act r/w. 64 to 70 IPC.

3. The learned counsel for the petitioner submitted that the petitioner is a banker from whom the respondent had availed loan; since the respondent had committed default in paying the loan dues to the petitioner's bank, the property of the first accused has became a non-performing asset and over which DRT proceedings were also initiated and in view of that the said property is in the custody of the petitioner bank; only after the DRT proceedings are over and the property is brought for sale, the tax dues in respect of the property can be settled to the creditors.

4. It is seen from the proceedings initiated by the petitioner before DRT-I, Chennai, a Joint Compromise Memo has been entered into between the petitioner and the first accused on an agreement to settle the dues as an one time settlement. The petitioner as a local body is entitled to prosecute the assessee, if any tax due to the local body is not paid.

However, before proceeding to criminal prosecution, the procedure contemplated under Rule 30 Schedule IV of the Tamil Nadu District Municipalities Act, 1920, should be followed. In the case in hand, it is not stated whether any distraint warrant has been issued after following due process. Had the distrain warrant been issued, it would have been possible for the petitioner to recover its dues by attaching the property. It is not stated in the complaint as to whether such proceedings have been taken at any point of time before initiating criminal action. Since the petitioner has straight away taken action under Section 347 and 348 of the Tamil Nadu District Municipalities Act, 1920, before fulfilling the distraint process as contemplated under Rule 30 of Schedule 4 of the Tamil Nadu District Municipalities Act, 1920, the criminal proceedings is a premature one. In this regard, it is appropriate to refer the judgment of this Court already held in Crl.O.P. No.9732 of 2021. In the said case, it is held as under:

> *"...4.It is not in dispute that the local body is entitled to prosecute the assessee if the amount due on account of any tax is not paid. But then, the local body cannot straightway take recourse to criminal prosecution.*

5.Rule-30 of Schedule-4 of Tamil Nadu District Municipalities Act, 1920 reads as follows:

"30.(1) If the amount due on account of any tax is not paid within fifteen days from the service of the notice, or bail, or the giving of thedirection referred to in Section 95 and 102 and Rules 13 and 29 or withinthree days from the service of the notice referred to in Section 108, and if the person from whom the tax is due has not shown cause to the satisfaction of the executive authority why it should not be paid, the executive authority may recover by distraint under his warrant and sale of the movable property of the defaulter, the amount due on account of the tax together with the warrant fee and the distraint fee, and with such further sum as will satisfy the probable charges that will be incurred in connexion with the detention and sale of the property so distrained:

Provided always that movable property described in the proviso to section 60 of the Code of Civil Procedure, 1908 (Central Act V of 1908), shall not be liable to distraint.

(2)If for any reason the distraint, or a sufficient distraint, of the defaulter's property is impracticable, the executive authority may prosecute the defaulter before a magistrate.

6.It can be seen from the above that the local body must first initiate distraint process. If distraint or a sufficient distraint, of the property is impracticable, then the executive authority may prosecute before the Magistrate. The plain text clearly shows that

> *prosecution cannot be the first option. In this case, the impugned complaint filed by the Executive Officer is in stereo typed form. It does not indicate that any notice for destraint process was initiated. There is no averment in the complaint that distraint or sufficient distraint was impracticable."*

5. In the case on hand, the respondent, without resorting to due procedure, has straight away filed a criminal complaint and prosecuted the petitioner for the offences under Section 347 and 348 of Tamil Nadu Municipality Act. Hence, I feel that the proceedings against the petitioner are liable to be quashed.

6. In view of the above stated reasons, these Criminal Original Petitions are allowed and the proceedings in S.T.C. Nos.999 and 1001 of 2019 on the file of learned Judicial Magistrate V, Vellore are quashed as against the petitioner. This will not preclude the respondent from initiating other proceedings for recovering the tax due to the local body. Connected miscellaneous petitions are closed.

06.12.2022

Index : Yes/No
Internet : Yes/No
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To

1. The Judicial Magistrate V, Vellore

R.N.MANJULA, J.

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