HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL PETITION No.7325 of 2019

ORDER:

The petitioners/A1 and A2 field this petition seeking quashment of the proceedings against them in C.C.No.154 of 2017 on the file of the Special Judge for Economic Offences, Hyderabad.

2. The facts as can be gathered from the complaint in brief are as follows:

a. Petitioner No.1/A1 company was incorporated on 28.01.1999 under the Indian companies Act, 1956 and petitioner No.2 is the Director of petitioner No.1 company. Petitioner No.1 company, which is engaged in the business of software development, has filed its Income tax returns on 29.09.2012 for the assessment year 2012-13 in the office of DCIT/ACIT, Circle 16(1), Hyderabad, declaring Rs.Nil income under normal provisions after claiming exemption of Rs.16,49,02,089/- under Section 10 AA of the Income Tax Act (for short, "the Act") and after setting off brought forward and depreciation loss of

Rs.11,68,93,844/- and book profit of Rs.32,82,86,986/- under Section 115 JB of the Act, an amount of Rs.6,41,18,690/- to be paid as tax under Section 140A of the Act has not been paid at the time of filing of income tax returns.

3. After processing the returns of income on 13.03.2014, respondent No.2 issued notice under Section 143(2) dated 06.08.2013 to petitioner No.1 company and thereafter another notice under Section 142(1) of the Act along with questionnaire. Another notice was issued under Section 142(1) of the Act on 21.11.2014. After completion of assessment under the provisions of the Act, assessment order along with demand notice was issued under Section 156 of the Act for Rs.7,37,36,850/- and the same was served on petitioner No.1 company on 31.03.2016.

4. It is submitted that petitioner No.1 company failed to pay self-assessment tax. Therefore, the assessing officer initiated penalty proceedings under Sections 271(1)(c), 271AA and 271B of the Act on 29.03.2016 for the assessment year 2012-13. Though the assessment order

along with demand notice and other notices were served on petitioner No.1 company on 31.03.2016, petitioner No.1 willfully attempted to evade payment of tax and interest levied under the Act thereby committing an offence punishable under Section 276C of the Act.

5. Respondent No.2 filed a complaint under Section 200 Cr.P.C. and the same was taken cognizance of as C.C.No.154 of 2017 for the offence under Sections 276(C)(2), 278B and 278E of the Act.

6. Aggrieved by the same, the present petition is filed on the following grounds:

i. Even if the allegations made in the complaint against the petitioners are accepted to be true and correct, the same do not attract the offences alleged against the petitioners. The allegation that the petitioners have willfully attempted to evade payment of tax for the assessment year 2012-13, at any stretch of imagination would not attract the provisions of Sections 276C(2), 278B(1) and 278E of the Act. Respondent No.2 has accepted that the petitioners have filed their income tax returns and also the book profit of Rs.32,82,86,986/- shown by petitioner No.1 company.

ii. It is submitted that as per Section 276C(2) of the Act, non-payment of tax does not amount to willful attempt to evade tax and that petitioner No.1 company has clearly made all the necessary declarations of book profit and depreciation and exemptions claimed which itself establishes that petitioner No.1 company does not have any intention to evade payment of tax.

iii. It is further submitted that petitioner No.1 company is a genuine assessee and that the allegations in the complaint and charge sheet are vague and omnibus allegations and that there are no specific overt acts attributed to the petitioners to attract the offences alleged against them and therefore, prayed the Court to quash the proceedings in C.C.No.154 of 2017.

7. Heard both sides and perused the record.

8. Now, the point for determination is whether the proceedings against the petitioners in C.C.No.154 of 2017 can be quashed?

9. On perusal of the grounds urged by the petitioners to seek quashment of C.C.No.154 of 2017, one of the main ground is that the petitioners do not have culpable mental state and non-payment of advance tax is not intentional, but only on account of inability to procure the funds. It is also stated that the allegations mentioned in the complaint are very vague and no offence, as alleged, is made out.

10. The dispute raised by respondent No.2/de-facto complainant is that petitioner No.1 company, which was supposed to pay the tax liability of Rs.7,37,36,850/- should have been paid by petitioner No.1 company on or before 31.03.2016, which admittedly committed default.

11. In order to consider an application under Section 482 Cr.P.C., the petitioners are expected to make out a case that even if all the allegations levelled against the petitioners by respondent No.2 department are accepted to

be true, there shall not be an offence as contemplated by respondent No.2 department against the petitioners herein. On plain reading of the complaint would go to show that petitioner No.1 company, which is supposed to pay the self-assessment tax of Rs.6,41,18,690/- has committed default in payment of the same and in spite of the notices given, there was no response and therefore, it cannot be said on the face of it that there is no case against petitioner No.1 company.

12. Above all, it is to be noted that after filing this petition, as no stay orders were granted by this Court from proceeding with the trial, respondent No.2 department has proceeded with the trial and has examined PWs.1 to 3 and they were also cross-examined by the petitioners and the petitioners were also examined under Section 313 Cr.P.C., and the matter was posted for defence evidence and subsequently at that stage petitioner No.1 has filed Crl.M.P.No.197 of 2020/Crl.M.P.No.1764 of 2020 under Section 315 Cr.P.C., to adduce defence evidence. On considering both sides, the said petition was dismissed.

Aggrieved by the same, the petitioners have preferred Crl.P.No.4866 of 2020 and the said petition is allowed simultaneously along with this petition.

13. On considering the facts narrated above, it is clear that respondent No.2 department's evidence is completed and the witnesses under Section 313 Cr.P.C., were also examined. It is to be noted that in the present petition, as on the date of filing of this petition in the year 2017, the evidence by respondent No.2 department was not at all commenced. Now the evidence has already been commenced and trial came to almost concluding part. At this stage, C.C.No.154 of 2017 cannot be quashed.

14. During the course of hearing, learned counsel for the petitioners submitted that on account of COVID-19 pandemic in the year 2020-21, the petitioners could not process this petition. In any case, things as on today are that the trial in C.C.No.154 of 2017 has already been completed, the petitioners were also examined under Section 313 Cr.P.C., and except the arguments, nothing is left. Therefore, at this stage, the petition for quashment of

C.C.No.154 of 2017 cannot be considered, as it has become infructuous.

15. In the result, the criminal petition is dismissed.

Miscellaneous applications, if any, shall stand closed.

DR. D.NAGARJUN, J

Date: 08.11.2022
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