HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL PETITION No.7330 of 2019

ORDER:

The petitioners/A1 and A2 field this petition seeking quashment of the proceedings against them in C.C.No.329 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 30.09.2016 for the assessment year 2014-15.

b. Petitioner No.1 company has filed its returns, wherein though the total tax payable was determined at Rs.4,36,52,738/-, the same has not been paid at the time of filing of income tax returns.

3. Since petitioner No.1 company has failed to satisfy the conditions laid down in the provisions of Section 139(1) read with Sections 208 to 2019 and 140A of the Act, the Assessing Officer has issued letter dated 05.01.2015 giving opportunity to petitioner No.1 company to rectify the defect of the return within 15 days from the date of receipt of letter and though the said letter was dispatched on 23.01.2017, petitioner No.1 company did not respond to the said letter. Thereafter, the Commissioner of Income Tax has issued show cause letter dated 11.09.2017 giving opportunity of hearing on 26.09.2017 to the petitioners, but the petitioners did not respond.

4. Respondent No.2 filed a complaint under Section 200 Cr.P.C. and the same was taken cognizance of as C.C.No.329 of 2017 for the offence under Sections 276CC and 278B of the Act.

5. 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 2014-15, at any stretch of imagination would not attract the provisions of Sections 276CC and 278B of the Act. Respondent No.2 has accepted that the petitioners have filed their income tax returns.

ii. It is submitted that Section 276CC of the Act does not relate to payment of tax, but it relates to filing of return with the authorities.

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.329 of 2019.

6. Heard both sides and perused the record.

7. Now, the point for determination is whether the proceedings against the petitioners in C.C.No.329 of 2019 can be quashed?

8. On perusal of the grounds urged by the petitioners to seek quashment of C.C.No.329 of 2017, one of the main grounds is that the petitioners do not have culpable mental state. It is also stated that the allegations mentioned in the complaint are very vague and no offence, as alleged, is made out.

9. 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.4,36,52,738/- should have been paid by petitioner No.1 company on or before 30.09.2016, which admittedly committed default.

10. 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.4,36,52,738/- 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.

11. 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 PW.1 and he was 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.195 of 2020/Crl.M.P.No.1765of 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.4867 of 2020 and the said petition is allowed simultaneously along with this petition.

12. 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 2019, 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.329 of 2017 cannot be quashed.

13. 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.329 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.329 of 2017 cannot be considered, as it has become infructuous.

14. 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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