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CRL.O.P.No.34570 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2023

CORAM:

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

Crl.O.P.No.34570 of 2019

and

Crl.MP.Nos.19165 & 19166 of 2019

Santhosh

.. Petitioner/2nd Accused

Versus

1. The Commercial Tax Officer
Commercial Taxes Department
Mini Civil Station, 2nd Floor,
Mahe.

.. 1st respondent / complainant

2. P.K.Ali

Proprietor Of M/s.Al-Safa
Chicken Agencies

... 2nd Respondent / 1st Accused

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in CC.No.7 of 2019 on the file of the Judicial Magistrate, Mahe and quash the same against the petitioner.

For Petitioner	:	Mr.Krishnaprasath for M/S.Sarvabhauman Associates
For Respondent-1:		Mr.Raj Sharath for Mr.V.Balamurugane Public Prosecutor for Puducherry.



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ORDER

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2.The 1st respondent has preferred a private complaint before the learned Judicial Magistrate, Mahe for the alleged offences committed by the accused 1 and 2 under Sections 59(1)(a), 59(2)(a), 559(2)(b) and 59(2)(d) of the Puducherry Value Added Tax Act-2007 read with Sec.34 of IPC and Sec.174 of the Puducherry Goods and Service Tax Act-2017 and for the offence of Breach of Rules under Rule 57,1945 and 49 of the Puducherry Value Added Tax Rules, 2007 and for the offences under Section 418 and 422 of IPC read with Section 34 IPC.

2.1.It is alleged that the first accused is a proprietor of a concern in the name and style of M/s.Al-Safa Chicken Agencies which is involved in selling chicken. The returns filed by the first petitioner for the year 2013-14 was not complete and the returns did not tally with the actual sales reported by the first accused. For the period of January 2013-February-2014 the first accused did not file any returns and pay the tax amount. The first accused



had submitted objections and proposal for paying tax for two periods i.e. 10/2012 to 3/2013 and 04/2013 to 07/2013 and for the remaining assessment period the first accused did not file any objections.

2.2.After giving sufficient opportunity, the tax has been imposed on the first accused as detailed under paragraph No.11 of the complaint. The second accused / petitioner herein had executed an undertaking on a stamped paper on 20.08.2012 by revealing his intention that he would pay the tax assessed on the first accused to the commercial tax department from time to time by standing as a guarantor to the extent of tax arrears in respect of the business done by the first accused. He had also stated that he would clear the tax due on behalf of the first accused on receipt of return intimation from the tax department.

2.3.In pursuant to the undertaking given by the second accused, the demand was made to him to pay the arrears of the tax of the first accused. Even then the second accused neglected the demand and did not come forward to pay the tax arrears of the first accused to the Commercial Tax Department. Hence the second accused is also equally liable along with the first accused for the offence under Sections 59(1)(a), 59(2)(a), 559(2)(b) and



59(2)(d) of the Puducherry Value Added Tax Act-2007 read with Sec.34 of IPC and Sec.174 of the Puducherry Goods and Service Tax Act-2017 for the offence of Breach of Rules under Rule 57, for contravening Rule 19,45 and 49 of the Puducherry Value Added Tax Rules-2007, and for the offences under Section 418 and 422 of IPC read with Section 34 IPC.

3.Heard the submissions made by the learned counsels on either side and perused the materials available on record.

4.The learned counsel for the petitioner/A2 submitted that the second accused is not an assessee within the meaning of Section 59(1)(a) and 59(2)(a) of the Act; the second accused who is not an assessee should not be mulcted with the criminal liability for the failure on the part of the first accused to file the correct returns or to pay any tax due.

5.The learned counsel attached to the Public Prosecutor office (Pondicherry) appearing for the first respondent police submitted that since the petitioner had given an undertaking to pay the tax due of the first accused, he is equally accountable and liable to face all the charges which might be taken against the first accused in the event of his failure to pay the tax in time.



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6. The sole reason for which these proceedings have been initiated against the second accused/the petitioner herein is because of the undertaking given by the petitioner on behalf of the first accused for paying tax arrears. The primary allegations that have been made against the first accused is that the returns filed by the first accused did not tally with the monthly returns filed by him against actual sales made by the concerned.

7. Though it is true that the second accused had given an undertaking to pay taxes, if the first accused fails to pay the same that cannot be the sole reason to fix the second accused also for the default committed by the first accused. Though it might be true that the second accused also liable to pay the tax arrears in view of his undertaking or guarantee given in favour of the 1st accused to the commercial tax department. However that can be done by taking civil action for recovery. Unless the second petitioner is the assessee in the eyes of the Act he cannot be implicated as an accused for the default committed on the part of the first accused, who alone is the assessee.

8. Since the complaint has been given against this petitioner by presuming culpability on his part for failing to pay the tax I feel there is no basis for this criminal case. The undertaking or the guarantee executed by



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the second accused in favour of the 1st accused to the department can be at the best called as an agreement and for which the petitioner can be attached with contractual liability but not criminal liability.

9. In view of the above stated reasons, I feel in order to serve the ends of the justice and to prevent the abuse of the process of the Court, the proceedings against the second accused alone should be quashed.

In the result, the Criminal Original Petition is **Allowed** the proceedings in CC.No.7 of 2019 on the file of the Judicial Magistrate, Mahe, as against the petitioner /A2 is quashed. Consequently, connected miscellaneous petitions are closed.

10.01.2023

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
Neutral: Yes /No

jrs



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To:

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- 1.The Judicial Magistrate, Mahe
- 2.The Commercial Tax Officer
Commercial Taxes Department
Mini Civil Station, 2nd Floor,
Mahe.
- 3.The Public Prosecutor(Puducherry).
High Court, Madras.



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R.N.MANJULA, J.,

jrs

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