IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2024

DELIVERED ON : 04.06.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.R.C.No.1761 of 2023

S.Siva ... Petitioner/Complainant

Vs.

1.The Inspector of Police,
J-2, Adyar Police Station,
Adyar, Chennai – 600 020.

2.W.S.Ravichandran

3.M/s.SVS Oil Mills,
Rep. by its Partner,
Mr.K.Baskaran
S/o.Kasilingam Nadar
having its registered office at
New No.11, Thiruvottriyur High Road,
Chennai – 600 019.

4.Shyam
5.D.S.Velayudham ... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for entire records in respect of order passed in Crl.M.P.No.13996 of 2023 dated 31.08.2023 on the file of IX Metropolitan Magistrate, Saidapet, Chennai and to set aside the same, direct the respondent police to register the case on the basis of the complaint filed by the petitioner.

For Petitioner : Ms.T.Sreelekha

For Respondent-1 : Mr.S.Raja Kumar
Additional Public Prosecutor

For Respondent-3 : Mr.J.Kalidas

ORDER

This revision has been filed by the petitioner challenging the order passed in Crl.M.P.No.13996 of 2023 dated 31.08.2023 by the learned IX Metropolitan Magistrate, Saidapet, Chennai and for a consequential direction to the respondent police to register the case on the basis of the complaint filed by the petitioner.

2.This Court, on 15.11.2023 and 06.12.2023, had passed the following order:

"Proceedings dated 15.11.2023:

The contention of the petitioner is that the petitioner lodged a complaint to the respondent Police on 30.03.2023. The complaint is that the petitioner along with one Velayutham/5th respondent were having interest in two acres of land. This land owned by forty persons. The petitioner entered into an agreement with nine of them and the same registered in Sub Registrar Office. During the month of June, 2021, one Ravichandran/2nd respondent of Old Washermentpet, Chennai, who is one among the nine, entered into an agreement on behalf of his relatives Shyam/4th respondent and they had come for negotiation of the property five times to the petitioner's residents at Adyar. At that time, since there was likely of sale of the property, the petitioner's photostat copy of Aadhar and PAN card were given to Shyam/4th respondent. Thereafter, due to COVID-19 pandemic restrictions. The negotiation not progressed. What had happened thereafter, the petitioner is not aware. This being so, during the month of August 2022, the petitioner went to his Auditor office to submit his Income Tax Returns for the financial year 2021-22, at that time, his Auditor informed that in his account, *there is a credit of one percent TDS of Rs.17,000/- denoting the petitioner received Rs.17,00,000/- as income. The petitioner was shock to know about the same because had not received such huge amount. His Auditor informed that unless the petitioner pays Rs.5,00,000/- to the Income Tax account, his returns could not be filed since it is an online filing. The petitioner thereafter lodged the complaint with the respondent Police, C.S.R.No.131 of 2023 assigned on 01.04.2023. Since no action taken, the petitioner sent representation to the Commissioner of Police, Chennai on 03.07.2023. Thereafter too, no action taken. Hence, the petitioner filed the petition under Section 156(3) Cr.P.C., before the IX Metropolitan Magistrate, Saidapet, Chennai, who by order, dated 31.08.2023 found that the original title owner executed a sale deed in the year 2021 after a period of 16 years from the date of sale agreement. With regard to the complaint of misuse of Aadhar and PAN Card and other details, there is no sufficient material, hence, dismissed the petition, against which the present Criminal Revision Case.*

2.The learned Additional Public Prosecutor was directed to produce the material to show that during CSR enquiry whether parties were called for enquiry and any statements recorded. Today, the learned Additional Public Prosecutor produced the letter of SVS

Oil Mills, dated 25.04.2023 addressed to the Income Tax Officer, Non Corporate Ward 15(1), Chennai. From the letter, it is seen that the SVS oil informed to Income Tax authorities that though a sale agreement was agreed for Rs.17,00,000/- and anticipating purchase and expenditure, TDS of Rs.17,000/- was deducted and credited to PAN number of the petitioner, but later the sale could not fructify, hence, the amount for sale consideration of Rs.16,83,000/- cancelled and they had also written to the Income Tax authorities to reverse the TDS amount of Rs.17,000/- credited to the account of the petitioner.

3.In view of the same, the grievance of the petitioner had been addressed and now, the Income Tax Authorities to reverse the credit. Today, the learned Additional Public Prosecutor handed over the letter of SVS Oil Mills to the learned counsel for the petitioner, who to verify the same with the petitioner and his Auditor and get clarified.

4.Post the matter on 24.11.2023.

Proceedings dated 06.12.2023:

In continuation and in conjunction with the earlier order dated 15.11.2023, the following order is passed.

2.The petitioner submits that from the sale deed document No.4535 of 2021, it is seen that the sale deed is dated 16.06.2021. According to the admission letter dated 25.04.2023, it is seen that the demand draft had been taken for sale consideration on 15.06.2021. Further, it was clearly proved that this demand draft has been recorded in the sale deed document. It is known to SVS Oil Mills that the petitioner is the agreement holder of the property, showing the sale deed and deceiving the petitioner. Proceeded immediately on the next day, on 16.06.2021 and sale deed executed by Vijayakumari Ramalingam and Devamanohari Santhanam in favour of S.V.S. Oil Mills. This will clearly prove that how deception had been committed, but for the projection of such sale deed, the sale agreement would not have entered. Further from the encumbrance certificate, the sale of the property in the name of SVS is reflected.

3.Learned Public Prosecutor submits that in this case, SVS Oil Mills are ready to pay the petitioner, but the petitioner was making unreasonable demand and showing defiance in not willing to conclude the sale. Thereafter, only SVS Oil Mills had entered into the sale deed with Vijayakumari Ramalingam and Devamanohari Santhanam. The petitioner's attitude is the reason for not paying the sale benefits. The learned counsel for the petitioner submits that SVS *oil mills are willing to settle the petitioner all his dues, but now have become complacent with the police and refusing to make the payments to the petitioner.*

4.Learned Additional Public Prosecutor submits that such allegations are unwarranted. The Assistant Commissioner shall conduct the enquiry in this regard.

5.Learned counsel for the petitioner is directed to appear before the Assistant Commissioner, Adyar on or before 16.12.2023. The Assistant Commissioner, Adyar shall conclude the enquiry and report before this Court on 05.01.2024.

6.Post the matter on 05.01.2024."

3.In continuation and conjunction to the earlier order passed on 15.11.2023 and 06.12.2023, a status report has been filed by the Assistant Commissioner of Police, Adyar Range, Greater Chennai Police on 05.01.2024, which reads as follows:

1. It is submitted that I am presently working as Assistant Commissioner of Police, Adyar Range, Adyar District of Greater Chennai Police. Even though, I was not cited as a respondent in the above petition filed by the petitioner, I am well acquainted with the *facts and circumstances of the petition from the available records and as per the order of the High Court, I conducted enquiry and filing this Status Report before this Hon'ble High Court of Madras.*

2. It is further submitted that, with respect to the property measuring 2 Acre and 4 cents in Sathangadu Village, Tondiarpet Taluk, Chennai, a deed of agreement of sale was registered at Sub-Register office, Thiruvotriyur in the name of one Velayutham and the petitioner S.Siva and a total Sum of Rs. 1,54,000/- was paid as advance by both to purchase the property which was agreed by 9 owners in the year 2005.

3. It is submitted that, the current heirs of the said property approached one Velayutham and the petitioner S. Siva to cancel sale agreement which was registered in 2005, as they planned to sell the property to SVS Oil Mill Company who were currently at lease on the above said property for 75 years from 1975 to 2050. So both agreed to cancel sale agreement and for that, the property owners were ready to pay the sum of Rs. 17,00,000/- each. The property was sold to SVS Oil Mill Company as planned. During registration Mr.Velayutham came and handed over the original sale agreement executed in 2005 as promised and the petitioner Tr.Siva failed to appear. Hence the cancellation of sale agreement was not effect. The petitioner was making unreasonable demand and showing defiance in not willing to *conclude the sale even though SVS Oil Mills are willing to settle the petitioner all his dues.*

4. It is submitted that, during the course of investigation, it came to know that the 9 owners who did the sale deed in 2005, out of them 6 expired and the whereabouts of their legal heir could not be traced. A letter was sent to SRO, Thiruvottiyur, on 03.01.2024 requesting the possibility of cancelling the deed made in the year 2005 by the petitioner and his partner.

5. It is submitted that both parties were called to appear for enquiry on 18.12.2023. During the enquiry the buyer SVS Mills stated that they are ready to settle entire the amount to the petitioner as promised earlier but demanding to cancel the agreement made in the year 2005. Further in this regard V.R.Jayakumaran partner SVS Oil Mills has given a letter stating that since the transaction did not materialize, they contacted their auditor to obtain the refund of the said sum of Rs.17.000/-. But our auditor informed that there is no form in the Income tax portal for getting the refund. But they have given a letter dated 25-04-2023 to the Income Tax Officer, Non- Corporate Ward15(1) Chennai-600 034 requesting him to reverse the said TDS to our PAN account. But no action was taken. With regard to the grievance raised by the said Mr.Siva before the Income Tax Department, they offered their explanation by email dated 07- 11-2023.

Apart from the above, they have also raised their grievance in the income tax portal on 08-11-2023 for reversal of the said TDS. The auditor has informed that the grievance of the said Mr.Siva has been redressed.6. Further it is stated in the said letter that even now if the said Mr.Siva cancels the aforesaid sale agreements, before the Sub-registrar, Thiruvottiyur by a valid deed of cancellation, SVS Oil Mills is ready and willing to pay the sum of rs- 17 ,00,000/ On the other hand, if the said Mr.Siva is harassing us by giving complaint after complaint, we are ready to take judicial recourse against the said Mr.Siva for vexatious prosecution.

For the reasons well stated above, and in view of the letter supra mentioned it is most humbly prayed that this Hon'ble Court may be pleased to accept my Status Report and pass necessary orders and thus render justice."

4.The learned counsel for the third respondent appeared and made his submissions, which was recorded in the proceedings dated 05.01.2024, the same reads as follows:

"Today, Mr.J.Kalidas, learned counsel is appeared for the 3rd respondent and filed vakalat to that effect. He fairly submitted that

even today, the 3rd respondent is ready to pay Rs.17,00,000/- by way of demand draft to the petitioner but his only concern is that the registered sale agreements in document Nos.1797, 1798, 1879 & 1937 of 2005 and 4535 of 2021 stand as encumbrance to the property purchased by the 3rd respondent. He further submits that already the 3rd respondent already written to the Income Tax Department with regard to TDS debit in the petitioner's account by letter, dated 25.04.2023, for which, Email from Income Tax Department received on 07.11.2023. He further submitted that the 3rd respondent will give an undertaking affidavit to the effect that the Income Tax liability if any created with regard to the earlier cancelled cheque, the same shall be cleared by the 3rd respondent.

2.The learned Government Advocate (Criminal Side) appearing for the 1st respondent Police filed status report on the enquiry conducted by the Assistant Commissioner of Police, Adyar Range, Chennai wherein it is seen that the 3rd respondent is ready to pay a sum of Rs.17,00,000/- and with regard to other objections of the petitioner, the same can be addressed.

3.At this stage, the learned counsel for the 3rd respondent sought some time to produce the demand draft of Rs.17,00,000/- in the name of the petitioner.

4.Post the matter on 06.02.2024."

5.The learned counsel for the third respondent also produced a letter dated 23.03.2023 addressed to the first respondent, which reads as follows:

SVS OIL MILLS

Mfrs. : Refined Edible Oil & Vanaspati

No. 11, THIRUVOTTIYUR HIGH ROAD, THIRUVOTTIYUR, CHENNAI - 600 019

TAMILNADU, INDIA, POST BOX : NO.2799

e-mail : svsoilmills@yahoo.com

website : www.svsoilmills.com

☎ 2599 21 91, 2599 41 98, 2599 21 77, 2599 20 23, 2599 55 72, 2599 52 82, 4857 87 80 Fax : 2599 34 68

Bankers :
TAMILNAD MERCANTILE BANK LTD., Chennai - 21.

GST No. 33AAKFS7612D2ZD

Ref :

Date 23-03-2023

From:
M/s. SVS Oil Mills,
Rep. by its Partner,
Mr.V.R.Jayakumaran,
New No.11, Thiruvottiyur High Road
Chennai 600019

To,
The Inspector of Police (Crime)
Thiruvottiyur Police station.
Thiruvottiyur, Chennai 19

Sir,

With regard to the complaint preferred by one S.Siva alleging as if his PAN card has been misused, and a sum of Rs.17,000/- which was deducted by way of TDS has been credited to his PAN account. In this regard I wish to offer the following explanations:

I state that in respect of the property measuring 2 Acre 4 Cents in Sathangadu Village, Tondiarpet Taluk, Chennai District following agreements were registered;

(i) Deed of Agreement of sale Dated 01-01-2005 Registered as Doc.No.1798 of 2005 with S.R.O Thiruvotriyur by paying a sum of Rs.1,00,000/- towards advance.

(ii) Deed of Agreement of sale Dated 01-02-2005 Registered as Doc.No.1797 of 2005 with S.R.O Thiruvotriyur by paying receiving a sum of Rs.25,000/- towards advance.

(iii) Deed of Agreement of sale Dated 05-04-2005 Registered as Doc.No.1879 of 2005 with S.R.O Thiruvotriyur and paid a sum of Rs.14,500/- towards advance.

SVS OIL MILLS

Mfrs. : Refined Edible Oil & Vanaspati
No. 11, THIRUVOTTIYUR HIGH ROAD, THIRUVOTTIYUR, CHENNAI-600 019.
TAMIL NADU, INDIA, POST BOX - NO 2288
e-mail : svsoilmills@yahoo.com / svsoilmills@bsnl.in
website : www.svsoilmills.com
2599 21 91, 2599 41 98, 2599 21 77, 2599 20 23, 2599 55 72, 2599 52 02, 4857 67 86 Fax : 2599 34 68

Bankers :
TAMILNAD MERCANTILE BANK LTD., Chennai - 21.

GST No. 33AAKFS7512D2ZD

Ref :

Date.............................

(iv) Deed of Agreement of sale Dated 05-04-2005 Registered as Doc.No.1937 of 2005 with S.R.O Thiruvottiyur by receiving a sum of Rs.14,500/- towards advance.

A total sum of Rs.1,54,000/- was shown as to be the advance in the said agreements. One Velayudham and the complainant S.Siva have entered into those agreements knowing fully well that our lease in respect of the said property was subsisting and a suit in C.S.243 of 2003 was pending before the Hon'ble High Court, Madras.

I state that the so called Agreements entered by the said Velayudham and S.Siva are all time barred.

I state that the said Velayudham informed to one Ravichandran and Shyam that himself and the said S.Siva were willing to cancel the aforesaid agreements and surrender the original agreements. But the said S.Siva did not turn up for registration on 16-06-2021. Hence we proceeded with the registration of the sale deed. The said Ravichandran and Shyam are related to the vendors of the property and are notconnected with our company.

I state that our office accountant inadvertently deposited a sum of Rs.17,000/- instead of depositing into some other person's PAN account. The said fact came to our knowledge only when the said S.Siva sent a letter dated 01-09-2022. Immediately we contacted our auditor to obtain the refund of the said sum of Rs.17,000/-. But our auditor informed that there is no form in the Income Tax portal for getting the refund.

SVS OIL MILLS

Mfrs. : Refined Edible Oil & Vanaspati
No. 11, THIRUVOTTIYUR HIGH ROAD, THIRUVOTTIYUR, CHENNAI-600 019.
TAMILNADU, INDIA. POST BOX - NO.2299.
e-mail : svsoilmills@yahoo.com / svsoilmills@bsnl.in
website : www.svsoilmills.com
☎ 2599 21 91, 2599 41 98, 2599 21 77, 2599 20 23, 2599 55 72, 2599 52 82, 4857 87 88 Fax : 2599 34 68
Bankers :
TAMILNAD MERCANTILE BANK LTD., Chennai - 21. GST No. 33AAKFS7512D2ZD

Ref :

Date.................................

Since the said S.Siva did not turn up for registration of the cancellation of the said time barred agreements, he is liable to refund the said sum of Rs.17,000/- illegally withheld by him. But without refunding the said sum, the said S.Siva has preferred a false complaint.

Hence having no other option, I am contemplating to file a writ petition before the Hon'ble High Court, Madras against the income tax department as well as the complainant herein for refund of the said TDS amount wrongly credited to the PAN account of the complainant.

The complainant and myself were enquired by you and we were unable to reach any amicable settlement and hence I have decided to work out my remedy before the court having competent jurisdiction.

For SVS OIL MILLS

Y. R. Jayakumaran

PARTNER

6.The learned counsel for the third respondent submitted that he is ready with the demand draft and he will hand over the same to the petitioner herein in full and final settlement, which is agreeable to the petitioner. He further submitted that third respondent had already written to the Income Tax Authorities on 07.11.2023 and 25.04.2023, which are as follows:

SVS OIL MILLS

Mfrs. : Refined Edible Oil & Vanaspati
No. 11, THIRUVOTTIYUR HIGH ROAD, THIRUVOTTIYUR, CHENNAI 600 019
TAMILNADU, INDIA, POST BOX : NO.1209
e-mail : svsoilmills@yahoo.com / svsoilmills@bsnl.in
Website : www.svsoilmills.com
Fax : 2599 34 68 ☎ 2599 21 81, 2599 41 98, 2599 21 77, 2599 20 23, 2599 66 72, 2599 52 82
Bankers : TAMILNAD MERCANTILE BANK LTD., Chennai - 21.

579

Date 25.04.2023

The Income tax Officer
Non Corporate Ward 15(1)
Chennai 600 034.

Sir

Sub: In the case of Shanmugam Siva – PAN BANPS0350F – Tax deducted at source under Section 194I – Assessment year 2022-2023 – Reg.

We are assessed to income under PAN No: AAKFS7512D and presently our assessment jurisdiction is Central Circle 3(4), Chennai

During the financial year 2021-22, we have purchased land at No.5, T.H. Road, Chennai which was under lease to us for more than five decades. The said property was owned by many persons, and it appears that your assessee Mr. Shanmugam Siva was along with one Mr.Velayutham had entered into an agreement of sale with two co-owners of the said property pendente lite during the year 2005. Though the said agreements were time barred, with a view to give a quietus to the issue and on the instructions of the land owners we agreed to pay a sum of Rs.17,00,000/- and a D.D. for a sum of Rs.16,83,000/- (DD No. 549040 Dated: 15.06.2021, DD No. 549041 Dated: 15.06.2021, DD No. 549042 Dated: 15.06.2021 issued by Tamilnad Mercantile Bank Ltd., Chennai) was taken in the name of the said Mr. Shanmugam Siva. A sum of Rs.17,000/- was deducted towards TDS and deposited to the credit of his PAN. But the transaction did not materialize due to his reluctance and non-cooperation. Since the alleged agreement of sale referred to above became time barred and Mr. Shanmugam Siva was reluctant and non-cooperative, he has no role in the whole transaction. Hence no amount was payable to him. Further we did not have any liability or privity of contract to pay the said Mr.Shanmugam Siva any sum and the said sum was agreed to be paid only on the instructions of the land owners as Ex Gratia. Hence the said D.D. was cancelled and the sum covered under the D.D. has been re-credited into our Account.

We would therefore like to inform you that though the TDS was made on the said sum and such TDS was remitted to Government account on 29.07.2021, the said sum amount is not due to Mr. Shanmugam Siva as detailed above. We have not claimed any amount as paid or payable to Mr. Shanmugam Siva as an expenditure or otherwise.

This is for your kind information. We may also add that the payments made to the land owners including the TDS, stamp duty and registration charges have been shown in our books of accounts and no liability has been provided for the sum payable

Thanking you
Yours faithfully
for S.V.S. Oil Mills

V. R. Gopalaswamy

Partner

Re: Grievance - E-Nivaran - filed by Shri. SHANMUGAM SIVA - PAN: BANPS3150F reg

From: [illegible]

To: [illegible]@incometax.gov.in

Date: Tuesday, November 7, 2023 at 03:48 PM GMT+5:30

To

07.11.2023

The Deputy Commissioner of Income tax

TDS Circle I

Chennai.

Sir

Sub: Grievance Petition filed by Shri Shanmugam Siva – PAN - BANPS3150F - Reg.

Ref: Your Office e-mail dated 13th October 2023

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Please refer to your e-mail cited above. The mail relates to a grievance petition said to have been filed by Shri Shanmugam Siva, PAN – BANPS3150F. The circumstances under which an amount of Rs.17,000/- was paid towards TDS under the said PAN – BANPS3150F are explained below -

During the financial year 2021-22, we have purchased land at No.3, T.H. Road, Chennai which was under lease to us for more than five decades. The said property was owned by many persons, and it appears that your assessee Mr. Shanmugam Siva was along with one Mr.Velayutham had entered into an agreement of sale with few co-owners of the said property pendente lite during the year 2005. Though the said agreements were time barred, with a view to give a quietus to the issue and on the instructions of the land owners we agreed to pay a sum of Rs.17,00,000/- and a D.D. for a sum of Rs.16,83,0000/- **(DD No. 549040 Dated: 15.06.2021, DD No. 549041 Dated: 15.06.2021, DD No. 549042 Dated: 15.06.2021 issued by Tamilnad Mercantile Bank Ltd., Chennai)** was taken in the name of the said Mr. Shanmugam Siva. A sum of Rs.17,000/- was deducted towards TDS and deposited to the credit of his PAN. But the transaction did not materialise due to his reluctance and non-cooperation. Since the alleged agreement of sale referred to above became time barred and Mr. Shanmugam Siva was reluctant and non-cooperative, he had no role in the whole transaction. Hence no amount was payable to him. Further we did not have any liability or privity of contract to pay the said Mr.Shanmugam Siva any sum and the said sum was agreed to be paid only on the instructions of the land owners as Ex Gratia. Hence the said D.D. was cancelled and the sum covered under the D.D. has been re-credited into our Account.

We would therefore like to inform you that that though the TDS was made on the said sum and such TDS was remitted to Government account on 29.07.2021, the said sum amount is not due to Mr. Shanmugam Siva as detailed above. We have not claimed any amount as paid or payable to Mr. Shanmugam Siva as an expenditure or otherwise.

We are advised that since the TDS has been remitted under Form 26QB and there is no way that the credit for the said amount of Rs.17,000/- would be transferred to any other PAN number, hence we are helpless in this matter. You may kindly advise us as to how to transfer such credit to some other PAN number.

We would also like to add that we have informed the Income Tax Office having jurisdiction over the PAN – DANPS[illegible] explaining the same circumstances and brought to his notice that the said grievance petitioner Shri Shanmugam Siva was not paid any amount by us and the TDS entry appearing in Form 26AS represents amount paid by mistake. A copy of the said letter addressed to Income Tax Officer, Non-Corporate Ward 15(1) on 26/04/2023 is enclosed herewith for your ready reference. We hope that our communication to the jurisdictional assessing officer would explain the discrepancy, if any, in respect of which the grievance petitioner has explained his apprehension.

You may kindly note that we have done whatever is possible under the circumstances explained above and there is nothing more we would do in this regar

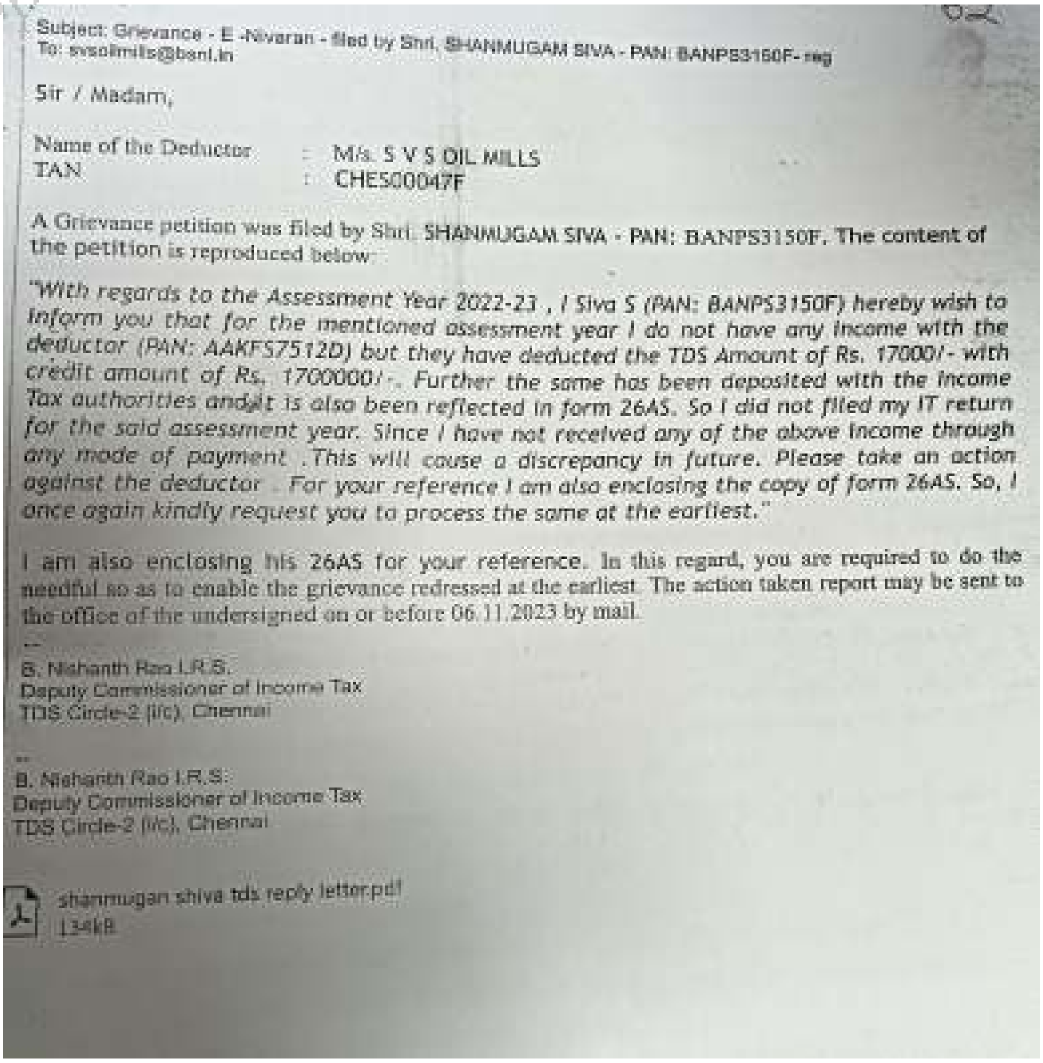
Thanks,
With best regards

SVS OIL MILLS
No.11, T.H. Road, Tollgate,
Chennai - 19 044-25992191 / 2177
e-mail: svsoilmills@yahoo.com

On Monday, October 30, 2023 at 11:43:35 AM GMT+5:30, chennai.dcit.tds2.1 <chennai.dcit.tds2.1@incometax.gov.in> wrote:

Sir/Madam,
Please find the trailing mail

------ Original Message ------
From: "chennai.dcit.tds2.1" <chennai.dcit.tds2.1@incometax.gov.in>
Date: Oct 30, 2023 11:43:15 AM



Subject: Grievance - E -Nivaran - filed by Shri. SHANMUGAM SIVA - PAN: BANPS3150F- reg
To: svsoilmills@bsnl.in

Sir / Madam,

Name of the Deductor : M/s. S V S OIL MILLS
TAN : CHES00047F

A Grievance petition was filed by Shri. SHANMUGAM SIVA - PAN: BANPS3150F. The content of the petition is reproduced below:

"With regards to the Assessment Year 2022-23 , I Siva S (PAN: BANPS3150F) hereby wish to inform you that for the mentioned assessment year I do not have any income with the deductor (PAN: AAKFS7512D) but they have deducted the TDS Amount of Rs. 17000/- with credit amount of Rs. 1700000/-. Further the same has been deposited with the Income Tax authorities and it is also been reflected in form 26AS. So I did not filed my IT return for the said assessment year. Since I have not received any of the above income through any mode of payment .This will cause a discrepancy in future. Please take an action against the deductor . For your reference I am also enclosing the copy of form 26AS. So, I once again kindly request you to process the same at the earliest."

I am also enclosing his 26AS for your reference. In this regard, you are required to do the needful so as to enable the grievance redressed at the earliest. The action taken report may be sent to the office of the undersigned on or before 06.11.2023 by mail.

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B. Nishanth Rao I.R.S.
Deputy Commissioner of Income Tax
TDS Circle-2 (I/c), Chennai

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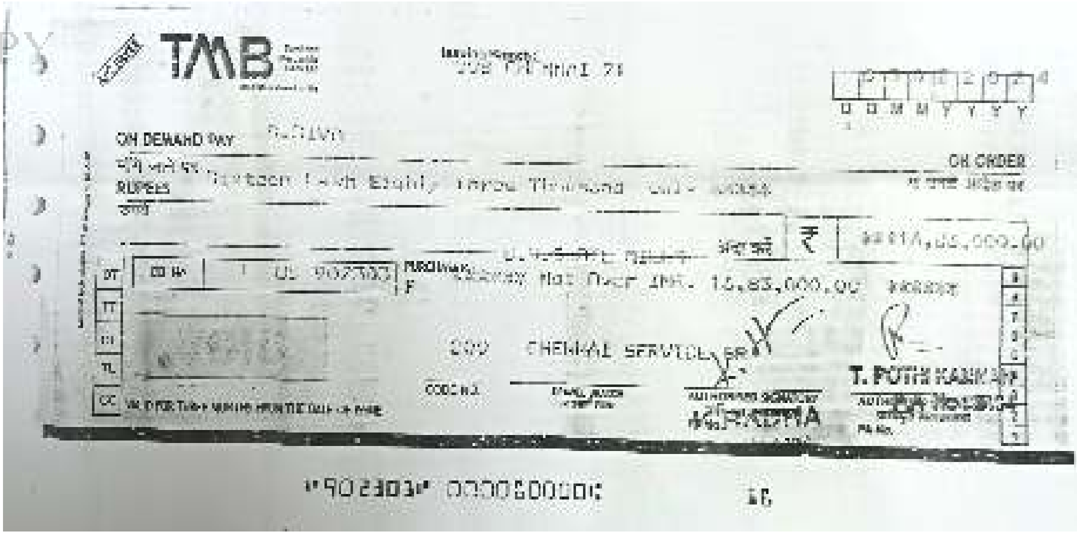
B. Nishanth Rao I.R.S.
Deputy Commissioner of Income Tax
TDS Circle-2 (I/c), Chennai

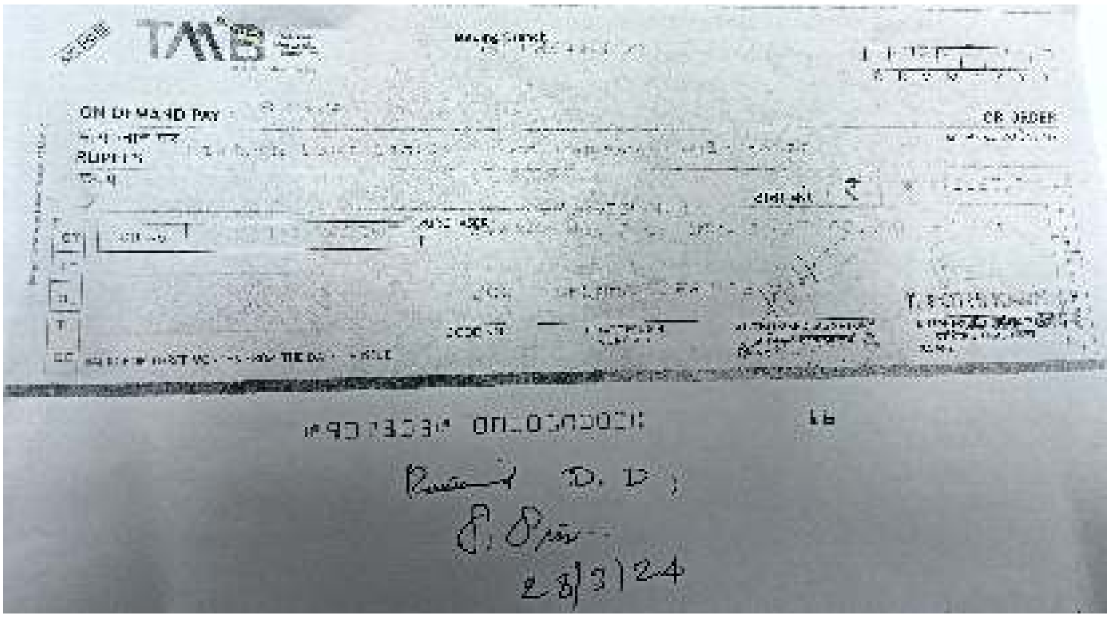
shanmugan shiva tds reply letter.pdf
134kB

7.The learned counsel for third respondent submitted that the property situated in Survey No.222/1 in Old Patta No.118 (New Patta No.325) at No.28, Sathangadu Village, Thiruvallur District originally belongs to the ancestors of W.S.Siva Chakravarthy, W.S.Girija Sankaran, W.S.Siva Baskaran, W.S.Sarojini Ammal, W.S.Sivarani, W.G.Devamanohari, Jayakrishnan @ Prashanth, Radhika and W.S.Ravichandran and by way of succession, the property got devolved upon the above mentioned persons. On 01.04.2005, the original title holder of the above said property executed a registered sale agreement in Document No.1798/2005 before the Sub Registrar Office, Tiruvottiyur in favour of the petitioner and his business partner. On 05.04.2005, W.G.Devamanohari executed a registered sale agreement in Document No.1879/2005 before the Sub Registrar Office, Tiruvottiyur in favour of the petitioner and his business partner. Similarly, on 05.04.2005, Jayakrishnan, Prashanth and Radhika executed a registered sale agreement in Document No.1937/2005 before the Sub Registrar Office, Tiruvottiyur in favour of the petitioner and his business partner. The second respondent also executed a registered sale agreement in Document No.1797/2005 before the Sub Registrar Office, Tiruvottiyur in favour of the petitioner and his business partner. The petitioner is only a agreement holder and their understanding was that the petitioner to be paid Rs.17,00,000/- deducting TDS which was not paid earlier. The petitioner as agreement holder intend to frustrate the sale for his demands. Since it was not acceptable, the third respondent directly approached the land owner and executed the sale deed Document Nos.4535/2021, 4512/2021, 4551/2021 and 4552/2021 in favour of the third respondent. The only apprehension of the third respondent is that the sale agreement of the year 2005 still reflects in the Encumbrance Certificate of the property in S.No.222/1.

8.The learned counsel for petitioner submitted that since the petitioner is only a agreement holder, the owners of the property have executed the sale deed in favour of the third respondent and they are not coming forward to cancel the sale agreement even though the petitioner is ready. He further submitted that the parties to the sale agreement in Document Nos.4535/2021, 4512/2021, 4551/2021 and 4552/2021 are not cooperating with the petitioner and coming forward to cancel the sale agreement in Document Nos.1797/2005, 1798/2005, 1879/2005 and 1937/2005. Further it is learnt by the petitioner that some of the parties to the sale agreement are not available. Hence, though he is ready to cancel the agreement, he is unable to do so due to the non availability of parties to the agreement. Further, the petitioner has got no objection for the sale entered between the third respondent with the land owners and confirms the genuineness of the sale deed Document Nos.4535/2021, 4512/2021, 4551/2021 and 4552/2021.

9.Today, the learned counsel for the third respondent handed over the Demand Draft bearing No.902303 dated 05.02.2024 for a sum of Rs.16,83,000/- drawn in favour of the petitioner, in Tamil Nadu Mercantile Bank Limited, Chennai. The petitioner had received the same, a scanned reproduction of the Demand Draft reads as follows:


TMB
ON DEMAND PAY
Sixteen Lakh Eighty Three Thousand Only
RUPEES
ON ORDER
₹
Amount Not Over INR. 16,83,000.00
CHENNAI SERVICE BR
CODE NO.
AUTHORISED SIGNATORY
T. POTHI RAJAN
AUTHORISED SIGNATORY
PADMA
902303


TMB
ON DEMAND PAY
RUPEES
ON ORDER
₹
Received D.D;
28/3/24

10.The petitioner has also filed an affidavit reiterating that no right or any claim over the property for which he earlier entered into a sale agreement. He confirms the ownership and title of the third respondent, who purchased the same from the original owners in Document Nos.1797/2005, 1798/2005, 1879/2005 and 1937/2005. A scanned reproduction of the affidavit reads as follows:

AFFIDAVIT OF S.SIVA

I S.Siva S/o Shanmugam, hindu aged about 76 years permanently residing atNo.38/105, Dr.Muthulakshmi salai, Adyar, Chennai - 600 020, do hereby solemnly affirm and sincerely state as follows-

1. I am the petitioner herein as such Iam well acquainted with the facts of the case.

2. I state that, in the month of April 2005 the following sale agreements were executed between 2nd respondent and his family members and my partner Velayutham and myself to sell the land. Subsequently they have not performed the contract. So dispute arose between us. In the meantime the executants sold the property to some 3rd respondent. So aggrieved against the same I have lodged a complaint before police authorities and filed private complaint before Metropolitan Magistrate, Saidapet in CMP No.13996/2023. Then on 31.8.2023 the Learned Metropolitan Magistrate passed an order by dismissing the said petition. Hence I have preferred Criminal Revision Petition before this Hon'ble Court in Crl.R.C.No.1761/2023. The following are the sale agreements.

S.No.	Date	Executed by	In favour of	Document No.
1.	1.4.2005	W.S.Sivashankaran	1. S.Siva 2. D.S.Velayutham	1797/2005 SRO Thiruvotriyur

S.Siva

2.	1.4.2005	W.S. Sivachakravarthy W.S. Girija Sankaran W.S. Siva Baskaran W.S. Sarojini Ammal W.S. Sivarani	1. S.Siva 2. D.S. Velayutham	1798/2005 SRO Thiruvottiyur
3.	6.4.2005	W.G.Devamanohari	1. S.Siva 2. D.S.Velayudham	1879/2005 SRO Thiruvotriyur
4.	5.4.2005	1. Jeyakrishnan @ Prashanth 2. Radhika	1. S.Siva 2. D.S. Velayudham	1937/2005 SRO Thiruvotriyur

3. I state that, pending Criminal Revision there was negotiable talks between me and the sale agreement executants and SVS Oil Firm. Now the above mentioned sale agreement executants and myself have decided to cancel the registered sale agreements and settle the issues amicably with each other. In turn the SVS Oil Firm agreed to pay Rs.17,00,000/- (Rupees Seventeen lakhs) to me and I have accepted the same. Hence I agree to cancel the registered sale agreements registered as Documents No. 1797/2005, 1798/2005, 1879/2005, 1937/2005.

4. I state that, I undertake to co-operate with the sale agreement executants namely W.S.Sivasankaran, W.S.Girija Sankaran, W.S. Siva Baskaran or their legal heirs or their representatives or their agents or any other person acting on their behalf with regard to cancellation of sale agreements of the year 2005. I further undertake to appear before the concerned Sub Registrar Office for cancellation of tabular mentioned sale agreements after receipt of the agreed amount of Rs.17,00,000/-.

5. I state that, I undertake to withdraw the complaint lodged by me as against 2nd, 3rd, 4th, 5th respondents herein before the 1st respondent police.

S. Siva

6. I agree that myself or my legal heirs or any other persons on my behalf will not file in future any Criminal complaints or any other Civil case as against SVS Oil Firm or its representative or the tabular mentioned sale agreement executants.

7. I undertake to consent that, on receipt of Rs.17,00,000/- from SVS Oil Firm I will not demand any other amount from SVS Oil Firm or sale agreement executants to extend my co-operation in the process of cancellation of sale agreements of the year 2005.

8. I state that, I will not do any act, deed or thing with respect of the property situated in survey No.222/1 as per patta No.118, present new TS No.77 and TS No.78 in Ward No.F, Block No.27, Sathangadu Village, Thiruvotriyur, Thiruvallur District which will in any way be hindrance to SVS Oil Firm.

9. I am filing this Affidavit out of my own consent and without any one's compulsion, threat or coercion.

Therefore, it is prayed that this Hon'ble Court may be pleased to record this Affidavit and pass necessary order and thus render justice.

S. Sri...

Solemnly affirmed at Chennai this the 28th day of March 2024 and signed his name in my presence.

Before me

M. Dhivya 28/3/24

379, NLC, HC, Ch-104.

Advocate, Chennai

11.The third respondent's contention is that in the records of Sub Registrat Office, Tiruvottiyur, the sale agreement of the year 2005 still reflects in the Encumbrance Certificate of the property in S.No.222/1. When they approached the SRO to remove the same, it was informed that there is no provision in the Registration Act, to enable the registration authorities to cancel any document or made any entries in the records and it is for the third respondent to go before the Civil Court to cancel the said registration.

12.This Court finds that the issue had been amicably settled between the petitioner and third respondent and the petitioner's contention based on the sale agreement no more exists in view of petitioner receiving the agreed amount. The sale agreements in Document Nos.1797/2005, 1798/2005, 1879/2005 and 1937/2005 not acted upon, further it is time barred and are *non-est* in the eye of law. The third respondent shall produce this order before the Sub Registrar Office, Tiruvottiyur. The Sub-Registrar to make the entry in the Index Book-I in the sale agreements in Document Nos.1797/2005, 1798/2005, 1879/2005 and 1937/2005 which are time barred, not acted upon and no more a valid document in the eye of law. This entry to be reflected in the encumbrance certificate.

13.With the above directions, the Criminal Revision Case is disposed of.

04.06.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
rsi

To

1.The Inspector of Police,
J-2, Adyar Police Station,
Adyar, Chennai – 600 020.

2.The IX Metropolitan Magistrate,
Saidapet, Chennai.

3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

rsi

Pre-delivery order in
Crl.R.C.No.1761 of 2023

04.06.2024