BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.10.2024

DELIVERED ON : 14.11.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGOVAN

Crl.O.P.(MD).No.9419 of 2024
Crl.M.P.(MD).No.6441 of 2024

1.G.Kanagaraj

2.K.Indrani ... Petitioners/Accused Nos.2 & 3

Vs.

1.The Inspector of Police,
Vigilance & Anti-Corruption Department,
Virudhunagar District.
In Crime No.1 of 2006. ... 1st Respondent/Complainant

2.E.Mecclarine Eskhol,
Inspector of Police,
Vigilance & Anti – Corruption Department,
Virudhunagar District. ... 2nd Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in Spl.C.No.17 of 2014 on the file of the learned Chief Judicial Magistrate, Virudhunagar at Srivilliputhur and quash the same.

For Petitioner : Mr.N.Anantha Padmanabhan,
Senior counsel for M/s.APN Law Associates

For Respondents : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Spl.C.No.17 of 2014 on the file of the learned Chief Judicial Magistrate, Virudhunagar at Srivilliputhur in respect of the petitioners.

2.The case of the prosecution in brief:

2.1.The accused No.1 namely P.Subburaman, was the Deputy Commercial Tax Officer – II, Rajapalayam from 06.08.2001 to 05.08.2004. G.Kanakaraj, who is the accused No.2, was the Managing Director of M/s.Sathya Bala Auto Power Bikes Private Limited at Rajapalayam. Indirani, who is the accused No.3, is the wife of the accused No.2 and was the Director of that company. The Sathya Bala Auto Power Bikes Private Limited at Rajapalayam was the authorized dealer of Hero Honda Motors limited Company, New Delhi and they purchased Motor Cycles, Spares and Accessories from the Hero Honda

Motors limited Company at New Delhi and sold them in and around Rajapalayam. Accused No.1, the Deputy Commercial Tax Officer II at Rajapalayam was the Commercial Tax Collecting authority for that company.

2.2.With intention to obtain wrongful gain the petitioners/A2, A3 prepared false tax returns containing false particulars with regard to the number of Motor Cycles and Spare parts actually purchased and the place of purchase of motor cycles etc., in order to evade entry tax and sales tax, concealed the real facts created forged documents used them as genuine evade entry tax and sales tax payable to the government, submitted those documents in Commercial Tax Officer – II, Rajapayalam. Accused No.1 in the capacity as Deputy Commercial Tax Officer II without verifying the purchase bills and sales bills of M/s. Sathya Bala Auto Power Bikes Private Limited at Rajapalayam, accepted the false returns and passed assessment orders for the financial year 2000-2001, 2001-2002, 2002-2003 and caused monitory loss to the tune of Rs.12,59,07,189/- by evading entry tax and a loss of Rs.14,17,93,512/- by evading sales tax payable to the government and thereby, the petitioners/A2, A3 colluded with Accused No.1 cheated the Government.

2.3.The petitioners/A2, A3 being the dealers of M/s. Sathya Bala Auto Power Bikes Private Limited at Rajapalayam have effected purchase of Hero Honda Two Wheelers from Haryana State and sold them within the State of Tamil Nadu by collecting 12.6% sales tax and surcharge without paying the same to the Government of Tamil Nadu. The petitioners also not paid the entry tax properly.

2.4.The petitioners though have collected sales tax on their local sales, they have paid 1% RST only as if they have sold the said two wheelers which have been purchased within the State of Tamil Nadu. Further the petitioners, also have purchased accessories and spares from other states and sold them within the state and collected tax in their sale bills, but they have not paid the tax due thereon for the first sales effected by them.

3.Original report was filed charge sheeting the accused that in furtherance of the criminal conspiracy by the above said process A1 caused loss of Rs.12,59,07,189/- by evading entry tax and also caused loss of Rs.14,17,93,512/- by evading sales tax for the financial years 2000-2001, 2001-2002 and 2002-2003. So they were charges under

Sections 13(1)(c) & (d) r/w 13(2) of the Prevention of Corruption Act, 1988 and the first accused the employee of the commercial Tax Department by misusing his official position, dishonestly, helped accused Nos.2 and 3 in furtherance of the above said criminal conspiracy, passed assessment orders without verifying the genuineness of the tax returns and thereby the first accused committed the offence punishable under Sections 120(b), 420, 467, 468, 471 of IPC.

4.On the side of the prosecution all the witnesses were examined except the Investigating Officer. At this stage, this petition is filed seeking quashment of criminal proceedings by the accused Nos.2 and 3.

5.Without going into the petition averments we can directly go to the arguments advanced by these petitioners to sustain this petition.

6.He would submit that the issue involved herein is the alleged evasion of entry tax, sales tax. Under Tamil Nadu Taxes settlement of Arrears Act, 2023, by virtue of which, as per the power conferred upon the competent authority and the right of the assessee to make a settlement, he paid the entire tax along with penalty, etc., Evidencing the same, he has produced the Certificate of settlement for assessment period 2000-2001, 2001-2002, 2002-2003, 2003-2004 and 2004-2005 and the proceedings of the Assistant Commissioner, Rajapalayam, dated 21.03.2024, is relied.

7.Section 10 of the Tamil Nadu Taxes Settlement of Arrears Act, 2023 reads as under

> *"10. (1) The designated authority shall, on being satisfied about the payment of the amount determined under sub-section (1) of section 6, by an order, settle the arrears of tax, penalty or interest and issue a certificate of settlement in such form as may be prescribed, and thereupon, the applicant shall be discharged from his liability to make payment of such arrears of tax, penalty or interest. A separate certificate of settlement shall be issued in respect of each application: Settlement of arrears and issue of certificate.*
>
> *Provided that where certificate of settlement is issued in a case, wherein appeal filed by the Government is pending before any authority, tribunal or court, the Government shall withdraw*

the appeal forthwith.”

8.He would submit that since the entire amount is settled, he is entitled for the discharge even in respect of the criminal liability and for that purpose, he would rely upon the Judgment of the Honourable Supreme Court in the case of ***Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi*** reported in ***2003 0 AIR (SC) 2545***, wherein according to him, similar situation arose. The prosecution was initiated for evasion of customs duty. A samadhan scheme was introduced by the Central Government called “Kar Vivad Samadhan Scheme 1998”, which is in parimateria with the Tamil Nadu Act XXIV of 2023. So after considering the scheme of the central Government, for settlement of dues, the criminal prosecution was sought to be quashed. The following observation is made.

> *“44.It appears that despite the statement of settlement having been filed under Section 88 of the Act of 1998, an FIR was lodged and a case was registered on 6.1.1999 on the basis of which, later on a charge sheet was also submitted. On the one hand final settlement was made after determining the tax liability on the premises that the appellants*

were neither convicted nor criminal proceedings were pending, relating to any offence under Chapter IX or XVII of the IPC, yet the criminal proceedings are being prosecuted which is apparently against the very spirit of the Scheme promulgated under the Finance (2) Act of 1998. If a person against whom criminal proceedings were pending, relating to offence under Chapter IX or XVII of the IPC or who stood convicted under any of the provisions of those chapters, he would not have been eligible to seek benefit under the Scheme and after accepting that position and the due settlement, there was no occasion to initiate and continue the criminal proceedings, which could bring about the conviction of the same persons, in case prosecution ended successfully in favour of the State and against the appellants. If such a condition is provided that on a particular date a criminal proceeding should not be pending against a person nor he should have been convicted of an offence, as a condition precedent for a settlement, and on that basis a settlement is brought about, it does not mean that later on, one could turn around and get the declarant convicted for a criminal offence too, after settlement of the liability. More so, when in view of Section 90 clause (iv) of the Scheme the *declarant is obliged to withdraw an appeal or proceedings regarding tax liability pending before the High Court or the Supreme Court, which had also been done in the case in hand. That is to say on one hand declarant is not permitted to pursue the remedy, regarding tax liability, which is already pending before the courts of law, as they are either deemed to be withdrawn by operation of law or they have to be withdrawn by a positive act of the party and yet prosecute such persons for their conviction as well. The declarant could not be dragged and chased in criminal proceedings after closing the other opening making it a dead end. It is highly unreasonable and arbitrary to do so and initiation and continuance of such proceedings lack bonafides.*

45.In the background given above, there is every reason to legally infer that the position as it stood, in regard to the criminal prosecution and conviction on the date the declaration was filed, as conditions precedent to settlement under the Scheme, would also stand finalized on full and final settlement of the matter under the Scheme. That is to say the position that no criminal prosecution was pending against the declarant on the date of filing of the declaration nor he stood convicted for such *an offence in relation to the matter covered under the declaration, it would stand finalized with acceptance of the declaration and settlement of the matter fully and finally. Later on, the declarant could not be or continued to be subjected to criminal prosecution to alter the position as it stood on the relevant date of the submission of declaration and get him convicted for such offences in respect of which, if he stood convicted earlier while filing statement he would not have been entitled to seek the benefit under the Scheme. The appellants virtually foreclosed their right to further pursue the proceedings before the authorities or courts of law challenging the legality, validity or the tax liability in terms of the Scheme. Undoubtedly, if the appellants' appeal which was pending in this Court against the order of CEGAT relating to the tax liability, had been allowed it might have affected the criminal proceeding too on merits. In certain circumstances, it could be put up as a defence by the declarant, in the criminal case but in terms of the scheme he was bound to withdraw his appeal. The criminal prosecution could not be allowed to proceed by putting an end to a possible defence, before hand. It certainly amounts to abuse of process of law. The appeals* *thus deserve to be allowed."*

9.By pointing out this judgment, the learned senior counsel appearing for the petitioner would submit that continuation of the criminal proceedings against this petitioner, will amount to clear abuse of the process of the court. So according to him, it must be quashed.

10.Per contra the learned Additional Public Prosecutor would submit that as mentioned above, the prosecution evidence is almost over except the examination of Investigating Officer. Apart from the penal provisions, concerning the context the offences under Section 120(b), 420, 467, 468, 471 of IPC, under the relevant provisions of IPC are initiated and first accused is facing charges under Sections 13(1)(c) & (d) r/w 13(2), under the provisions of Prevention of Corruption Act. More particularly, according to him, when criminal conspiracy is alleged and charges are also framed at the fag end of the trial process, this petition is bad under law.

11.When this was put to this Court by the learned Additional

Public Prosecutor as to the involvement of the first accused and the offences punishable under Sections 13(1)(c) & (d) r/w 13(2) of the Prevention of Corruption Act are indicated, how the charge sheet can be quashed against these petitioners alone was again put to the learned senior counsel appearing for the petitioner.

12.He would submit that absolutely no role is played by the first accused. Mere submission of incorrect returns will not partake the character of falsification of records, documents, warranting conviction under Sections 467, 468, 471, 420 and 420B of IPC. According to him, he can be prosecuted only for filing the incorrect returns and certainly not for fabrication of records.

13.But, I am unable to convince with this line of arguments for the simple reason that whether in the light of the scheme introduced by the Government of Tamil Nadu as noted above, the entire criminal liability even with regard to the offences under Sections 13(1)(c) & (d) r/w 13(2) of Prevention of Corruption Act and Sections 120(b), 420, 467, 468, 471 of IPC can be absolved is a matter for consideration by the trial Court, that too, when entire evidence is let in whether it is a mere incorrect filing of returns or willful creation of false records can be considered only on the basis of the evidence now let in. So this Court cannot undertake the process of assessing the evidence on record now, so far let in by the prosecution. More particularly, when offence under Section 120B IPC is charged apart from the offence under the provisions of the prevention of corruption Act against the first accused, I am of the considered view that it is not the fittest case to exercise the discretionary power at the fag end of the trial process. As mentioned above, the petitioners are at liberty to produce all those certificates of settlement, the scheme introduced by the Government of Tamil Nadu, etc., on their side at the relevant point of time. Except that opinion, no other ground is available to the petitioners to quash the proceedings.

14.For that purpose, I am not concentrating much upon the issue of whether the offences now alleged, can be quashed by exercising the extraordinary power conferred upon this Court under Section 482 Cr.P.C. and the judgment cited by the petitioner.

15.With the above said observation, this criminal original petition stands dismissed.

14.11.2024

Index : Yes / No
Internet : Yes / No
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To

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2.The Inspector of Police,
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Virudhunagar District.
In Crime No.1 of 2006.

3.E.Mecclarine Eskhol,
Inspector of Police,
Vigilance & Anti – Corruption Department,
Virudhunagar District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN,J.

TM

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