IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2025

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.21676 of 2023
and
Crl.M.P.Nos.14997 and 14998 of 2023

Satish Varma Azad ... petitioner

Vs

A.Harikrishnan,
Income Tax Officer,
TDS Ward 2(1),
Chennai – 600034. ... Respondent

Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records of the E.O.C.C.No.106 of 2018, on the file of the learned Additional Chief Metropolitan Magistrate Economic Offence – I, Egmore, Chennai and quash the same as mechanically, arbitrarily and erroneously founded on the petitioner/3rd accused.

For petitioner : Mr.A.Ram Kumar

For Respondent : Mr.L.Murali Krishnan,
Special Public Prosecutor (Income Tax)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in E.O.C.C.No.106 of 2018, on the file of the learned Additional Chief Metropolitan Magistrate Economic Offence – I, Egmore, Chennai.

2. The respondent lodged a complaint for the offences punishable under Sections 276(a) read with 278B of the Income Tax Act, 1961, alleging that the accused committed default in paying TDS for the financial year 2012-2013 and assessment year 2013-2014. The petitioner is arrayed as the third accused. The first accused has its registered office at Chennai and presently has its registered office at 9th Floor, No.2, "The Residency", Residency Road, Bangalore. The second accused is one of its directors, and the petitioner has been implicated as the third accused as one of the directors of the first accused company.

3. According to the petitioner, he was appointed as an Additional

Non-Executive Director of the first accused only from 01.04.2013, and thereafter, he resigned on 13.03.2018. However, erroneously, the petitioner has been implicated as the third accused as one of the directors of the first accused. The petitioner was appointed by the first accused on 01.04.2013, i.e., subsequent to the commission of the alleged offences, in the capacity of Additional Non-Executive Director. The learned counsel for the petitioner has also relied upon Form 32 filed before the Registrar of Companies. According to the respondent, the commission of the alleged offences pertains to the financial year 2012-2013. During that period, G.Balasubramanian and Babu Krishnamoorthy were recorded as directors. Apart from that, the petitioner was not at all in charge or in control of the day-to-day affairs and operations of the first accused.

4. The learned Special Public Prosecutor (Income Tax) appearing for the respondent submitted that a letter was received from the first accused enclosing the director's details of the first accused, in which the petitioner was mentioned as one of the directors. Therefore, the respondent issued a show cause notice and lodged a complaint for the offences under Sections

276(a) read with 278B of the Income Tax Act, 1961.

5. Heard the learned counsel for both sides and perused the materials available on record.

6. An affidavit was filed by one of the directors of the first accused company before this Court, stating that the petitioner was appointed as an Additional Non-Executive Director only on 01.04.2013. Later, he was re-appointed as a Non-Executive Director on 28.09.2013. Subsequently, he resigned from the said post on 13.03.2018. Therefore, the petitioner was not a part of the company during the financial year 2012-2013. Hence, it is contended that the first accused company had committed a default in payment of TDS for the financial year 2012-2013.

7. On perusal of the first document, which is annexed along with the complaint, it is seen from the details of the statement of delayed remittance of tax deducted at source in the financial year 2012-2013 that the date of deposit was 06.03.2013, with a delay of three months. Therefore, the

first accused ought to have remitted the tax deducted at source on or before 31.03.2013. However, there was a belated payment of TDS with a delay of three months. Consequently, it is evident that the petitioner was not a director of the first accused company during the financial year 2012–2013. As such, no prosecution can be initiated against the petitioner. On this sole ground, the complaint cannot be sustained against the petitioner alone and is liable to be quashed.

8. In view of the above, this Criminal Original Petition is allowed, and the impugned proceeding in E.O.C.C.No.106 of 2018 is hereby quashed against the petitioner alone. The trial court is directed to proceed with the trial against the other accused persons in accordance with law. Consequently, the connected miscellaneous petitions are closed.

24.04.2025

Index:Yes/No
Neutral Citation/Yes/No
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To

1. The Additional Chief Metropolitan Magistrate
   Economic Offence – I,
   Egmore, Chennai.

2. The Income Tax Officer,
   TDS Ward 2(1),
   Chennai – 600034.

3. The Public Prosecutor,
   High Court, Madras.

G.K.ILANTHIRAIYAN, J.

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