BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.R.C.(MD)No.817 of 2022

Solaimalai Kumari ... Petitioner

-vs-

State through Income Tax Department,
Office of the Principal Commissioner of,
Income Tax, Represented by,
Income Tax Officer, Ward – 1,
Karaikudi. ... Respondent

PRAYER : Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C., to call for the records of the impugned order dated 20.07.2022 passed by the learned Additional Chief Judicial Magistrate, Madurai, in Crl.M.P.No.559 of 2020 in C.C.No.11 of 2016 and to set aside the same as illegal.

For Petitioner : Mr.S.Renganathan
For Respondent : Mr.N.Dilipkumar

ORDER

This Criminal Revision Case is filed, challenging the order dated 27.07.2022 passed by the learned Additional Chief Judicial Magistrate, Madurai, in Crl.M.P.No.559 of 2020 in C.C.No.11 of 2016, whereby the discharge petition filed by the petitioner/accused under Sections 227 and

245 of the Code of Criminal Procedure, 1973, came to be dismissed.

Background Facts:-

2.The petitioner herein is the accused in C.C.No.11 of 2016 pending on the file of the learned Additional Chief Judicial Magistrate, Madurai. The respondent/complainant represented by the Income Tax Officer, filed a complaint under Section 200 of Cr.P.C., against the petitioner for not filing her income tax returns for the financial year 2012 – 2013, thereby allegedly committing offences punishable under Section 139(1), r/w. Sections 276, 276C(1) and 276CC of the Income Tax Act, 1961. It is the case of the complainant that despite the sale of immovable property situated at Krishnagiri during the financial year 2012 – 2013 for a consideration of Rs.1 Crore, the petitioner failed to file her return within the time prescribed under Section 139(1) of the Act. Consequently, the Income Tax Department initiated prosecution proceedings.

Discharge Petition before the Trial Court:-

3.The petitioner filed a discharge petition before the learned Trial Court primarily on the grounds that lack of territorial jurisdiction with the Madurai Court, as the petitioner was residing at Krishnagiri and the property transaction also took place there. The sanction order dated 13.07.2016, did not refer to all the penal provisions cited in the complaint, particularly Sections 276 and 276C. The petitioner had filed her income tax return belatedly on 27.01.2018 before the Assessing Officer, at Krishnagiri. The complaint was not in conformity with Sections 124 and 127 of the Income Tax Act, which deal with jurisdiction. The sanctioning authority/the Principal Commissioner of Income Tax at Madurai, lacked territorial authority to initiate prosecution.

Objections by the Respondent:-

4.The Income Tax Department opposed the discharge petition, submitting that at the time of initiation of proceedings, the petitioner's PAN card reflected an address at Karaikudi, which falls within the jurisdiction of the Madurai authority. The petitioner herself had applied for compounding of the offence before the Chief Commissioner of Income Tax, Madurai, thereby acknowledging the offence. The discharge petition was filed belatedly after 53 months and the issues raised are matters for trial, not discharge. Under Section 278E of the Income Tax Act, there is a presumption of culpable mental state and the burden lies on the accused to rebut the same.

Findings of the Trial Court:-

5.The learned Trial Court dismissed the discharge petition on the grounds that the petitioner appeared and participated in the proceedings and the matter had progressed to the stage of P.W.1's examination. The objections raised by the petitioner related to territorial jurisdiction and validity of sanction, both of which are matters of evidence, to be decided only at trial. *Prima facie* materials exist to proceed against the accused, and Section 245(2) Cr.P.C. does not mandate the discharge in the present scenario. Against which, the present Revision Case is filed.

Grounds for Revision:-

6.The Criminal Revision Case is filed, on the principal grounds that the learned Trial Court failed to consider the effect of Section 280B(a) of the Income Tax Act, 1961, which mandates that such offences are triable only by a designated Special Court. The cause of action arose entirely within Krishnagiri and therefore, Madurai Courts lack territorial jurisdiction. The sanction order is vitiated as it was issued by an authority without jurisdiction. The delay of 53 months is immaterial as no time limit is prescribed under Section 245 of Cr.P.C., for filing a discharge petition in complaint cases. The addition of Sections 276 and 276C in the complaint without their inclusion in the sanction order renders the complaint infirm.

Legal Analysis:-

6.1.**Territorial Jurisdiction -** As per Section 124(1)(b) of the Income Tax Act, the jurisdiction is determined by the location where the assessee resides or carries on business. In the present case, the petitioner claims residence at Krishnagiri and the assessment also took place there. The property sale also occurred within Krishnagiri. These facts raise a substantial doubt on the jurisdiction of the Madurai Court.

6.2.In ***Bhagatram v. State of Maharashtra***[1], the Hon'ble Supreme Court held that territorial jurisdiction is a fundamental issue and its absence vitiates proceedings.

6.3.**Sanction Order and Offences -** The sanction order marked as Ex.P1, mentions only Section 276CC, while the complaint includes Sections 276, 276C, and 276CC. In ***Mohd. Iqbal Ahmed v. State of Andhra Pradesh***[2], the Hon'ble Supreme Court held that prosecution without valid sanction is *void ab initio*. Thus, the inclusion of charges beyond the scope of the sanction makes the complaint legally untenable at the threshold.

6.4.**Presumption under Section 278E -** While Section 278E of the Income Tax Act provides for a presumption of culpable mental state, the same is rebuttable. In ***Prakash Nath Khanna v. CIT***[3], it was held that mere late filing of returns does not absolve an assessee of criminal liability. However, whether the delay was wilful or due to bona fide reasons is a matter for trial, not summary rejection at discharge stage.

1 AIR 1964 SC 1913
2 AIR 1979 SC 677
3 (2004) 266 ITR 1 (SC)

6.5.**Delay in Filing Discharge Petition -** The learned Trial Court erred in treating 53 month delay as fatal. In ***Smt.Nagawwa v. Veeranna Shivalingappa Konjalgi***[4], the Hon'ble Supreme Court held that discharge under Section 245 of Cr.P.C., can be sought at any time before charge is framed, especially in summons cases.

Conclusion:-

7.The learned Trial Court misdirected itself by rejecting the discharge petition without properly appreciating the jurisdictional objections and the infirmities in the sanction order. While this Court does not adjudicate on factual aspects requiring evidence, the foundational lack of territorial jurisdiction and invalid sanction make out a *prima facie* case for discharge under Section 245 of Cr.P.C.

Result:-

8.Accordingly, the impugned order dated 27.07.2022, passed by the learned Additional Chief Judicial Magistrate, Madurai, in Crl.M.P.No.559 of 2020 in C.C.No.11 of 2016 is hereby set aside and the Criminal Revision Case is allowed. The petitioner is discharged from the proceedings in C.C.No.11 of 2016. Liberty is granted to the respondent to file a fresh complaint before the competent Court at Krishnagiri after obtaining fresh sanction from the appropriate authority, in accordance with law.

4 AIR 1976 SC 1947

Directions:-

9.The Registry is directed to communicate this order forthwith to the learned Trial Court concerned. If a fresh complaint is filed, the same shall be considered independently, uninfluenced by any findings in this judgment. No Costs.

04.08.2025

NCC :Yes/No
Index :Yes/No
Internet : Yes
Mrn

To

1.The Additional Chief Judicial Magistrate, Madurai.

2.The Income Tax Officer,
Office of the Principal Commissioner of Income Tax,
Ward – 1,
Karaikudi.

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

L.VICTORIA GOWRI, J.

Mrn

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