J. Jayalalithaa Vs. Assistant Commissioner of Wealth-tax

J. Jayalalithaa Vs. Assistant Commissioner of Wealth-tax

SooperKanoon Citation : sooperkanoon.com/836906

Court : Chennai

Decided On : Nov-29-2007

Reported in : [2008]300ITR399(Mad)

Judge : K. Mohan Ram, J.

Acts : Wealth Tax Act, 1957 - Sections 35B; Code of Criminal Procedure (CrPC) , 1973 - Sections 244, 245(1), 245(2) and 309

Appeal No. : Criminal Original Petition No. 35313 of 2007 and Miscellaneous Petition No. 1 of 2007

Appellant : J. Jayalalithaa

Respondent : Assistant Commissioner of Wealth-tax

Advocate for Def. : Ramaswamy K., Special Public Prosecutor

Advocate for Pet/Ap. : K. Venkataramani, Adv. for ;N. Jothi, Adv.

Judgement :

K. Mohan Ram, J.

1. The brief facts that are necessary for the disposal of the above criminal original petition are set out below:

(i) The respondent herein preferred a complaint against the petitioner under Section 35B of the Wealth-tax Act, 1957. The said complaint has been taken on the file as E.O.CC. No. 263 of 2007 and the same is pending for trial on the file of the Additional Chief Metropolitan Magistrate (Economic Offence-I), Egmore, Chennai-600 008. The petitioner filed a discharge application in Crl. M.P. No. 3457 of 2001 under Section 245(2) of the Criminal Procedure Code. The respondent has also filed its counter-statement and the petitioner herein has also filed a reply statement. It is also seen that the petitioner has filed additional grounds in Crl. M.P. No. 3457 of 2001.

2. According to the petitioner, the said criminal miscellaneous petition was posted for enquiry on November 12, 2007, and on that date the petitioner insisted that the petition should be taken up for hearing and to that effect a memo has also been filed. The petitioner has also filed a petition under Section 309 of the Criminal Procedure Code on November 12, 2007, praying the court not to examine the witnesses till the disposal of the discharge application. The said petition has been numbered as Criminal Miscellaneous Petition No. 3099 of 2007. By an order dated November 12, 2007, the learned Additional Chief Metropolitan Magistrate (E.CXI) has dismissed the said petition. Being aggrieved by the said order, the petitioner is before this court in the above criminal original petition.

Mr. Ramaswamy K., learned Special Public Prosecutor for Income-tax cases takes notice on behalf of the respondent.

Heard Mr. K. Venkataramani, learned senior counsel for Mir. N. Jothi, learned Counsel for the petitioner, and Mr. Ramaswamy K. learned Special Public Prosecutor for Income-tax cases for the respondent.

3. Learned senior counsel for the petitioner submitted that Crl. M.P. No. 3457 of 2001 was filed under Section 245(2) of the Criminal procedure Code on October 7, 2000, and from the year 2001 the same is pending and without disposing of the said petition the court below is insisting for the examination of witnesses. Learned senior counsel further submitted that when the petitioner insisted for the disposal of the discharge petition and prayed for the postponement of the examination of the witnesses after the disposal of the discharge petition, the learned Magistrate

has erroneously dismissed Crl. M. P. No. 3099 of 2007 filed under Section 309 of the Criminal Procedure Code by observing as follows:

Taking up the discharge petition prior to the commencement of trial under Section 245(2), Cr. P.C., is only an exception. The general rule is examination of witnesses under Section 245(1), Cr.P.C. Here also the defence counsel has not produced any documents that in this case also discharge petition may be taken up on priority, stating that charges are groundless.

4. Hence, this discharge petition may be taken up for disposal after recording the evidence under Section 245(1), Cr.P.C. Hence, at this stage this petition is dismissed.

5. According to learned senior counsel for the petitioner, the abovesaid order passed by the court below is against law and the learned Magistrate ought to have taken up the discharge application and disposed of the same one way or the other and without disposing of the discharge petition and keeping the same pending, the court below is insisting for the examination of the witnesses which, according to learned senior counsel, is against all canons of law and justice.

6. Countering the said submissions, learned Special Public Prosecutor for the respondent submitted that Crl. M.P. No. 3457 of 2001 filed under Section 245(2) of the Criminal Procedure. Code is not maintainable and the same can be taken up only after recording of the evidence of witnesses as contemplated in Section 244 of the Criminal Procedure Code. According to learned Special Public Prosecutor for the respondent, before examining the witnesses cited on behalf of the prosecution the above petition could not be considered.

7. I have carefully considered the abovesaid submissions made by learned Counsel on either side. Admittedly, the complaint came to be filed as early as on December 8, 1997, and for the past nearly ten years the case is kept pending. The petition in Crl. M.P. No. 3457 of 2001 seeking discharge under Section 245(2) of the Criminal Procedure Code came to be filed as early as on October 7, 2000, but yet the same is kept pending for the past seven years. According to learned senior counsel for the petitioner, the petition is maintainable under Section 245(2) of the

Criminal Procedure Code, whereas, according to the learned Special Public Prosecutor for the respondent, the petition is not maintainable under Section 245(2) of the Criminal Procedure Code. It is not understandable as to why the said petition filed under Section 245(2) of the Criminal Procedure Code as early as on October 7, 2000, is kept pending for the past seven years. As seen from the memo filed in Crl. M.P. No. 3099 of 2007 arguments on the discharge petition seem to have been advanced for about one-and-half hours and thereafter the petition seems to have been adjourned. The question regarding the maintainability of the petition under Section 245(2) of the Criminal Procedure Code and its acceptability on the merits could and ought to have been gone into by the court below and the said petition should have been disposed of on the merits, but instead the court below has posted the case for examination of the witnesses keeping the said petition pending. Such a procedure in the considered view of this court is against law and the same cannot be countenanced. When the petitioner seeks to get herself discharged contending that the charges levelled against the petitioner are groundless, it is incumbent on the part of the learned Magistrate to have considered the same on the merits and disposed of the petition at the earliest. The reasons stated for dismissing Crl M.P. No. 3099 of 2007 are not in consonance with law and the same are unsustainable and, therefore, the said order has to be set aside and accordingly set aside.

8. The above criminal original petition is disposed of with the following directions:

(i) The learned Additional Chief Metropolitan Magistrate (E.O.I), Egmore, Chennai-8, shall dispose of Crl. M.P. No. 3457 of 2001 on the merits and in accordance with law after hearing the petitioner and the respondent within a period of three (3) weeks from the date of receipt of a copy of this order positively.

(ii) The petitioner as well as the respondent shall co-operate with the court below in disposing of the said petition within the abovesaid stipulated time without seeking any adjournment.

(iii) Till the disposal of Crl. M.P. No. 3457 of 2001 the examination of witnesses in the case may be deferred.

9. It is made clear that this court has not expressed any opinion on the merits of the case. The learned Magistrate shall apply his judicial mind to the contentions put forth by either side without in any way being influenced by whatever is said in this order. Consequently, the connected MP is closed.