(2001) 10 DEL CK 0044

In the Delhi High Court

Case No : Criminal M. No. 2823 of 2001 15 October 2001

S.C. GUPTA APPELLANT

Vs

STATE and Another RESPONDENT

Date of Decision : 15-10-2001

Acts Referred:

Citation : (2002) 172 CTR 657

Hon'ble Judges : K.S. Gupta, J

Bench : Division Bench

Advocate : Vijay Bahuguna and Alok Aggarwal, for the assessed R.D. Jolly and Ajay Jha, for the Revenue, for the Appellant;

Judgement

K.S. Gupta, J.

In this petition filed u/s 482, Cr. PC the prayers made are as under :

"(a) Pass ad interim ex parte orders staying the operation of the orders passed by Sh. J.P.S. Malik, ACMM, Tis Hazari in Complaint No. 429 of 1990 bearing title Amit Jain, Assistant Commissioner v. Ocean Electronics (P) Ltd. issuing non-bailable warrants against the petitioner as well as proceedings under sections 82 and 83 of Cr. PC vide orders dated 17-1-2001, 1-5-2001 and 11-7-2001 and stay the arrest of the petitioner till the final disposal of this petition.

(b) Recall the orders dated 22-8-2000 (issuing non-bailable warrants and orders dated 17-1-2001, 1-5-2001 and 11-7-2001, issuing process under sections 82 and 83 of the Cr.PC.

(c) Quash the complaint and proceedings against the petitioner of Complaint No. 429 of 1990 bearing title-Amit Jain, Asstt CIT v. Ocean Electronics (P) Ltd. pending before Sh. J.P.S. Malik, ACMM, Delhi"

In the course of arguments the prayers as at (a) and (b) were not pressed by Shri Vijay Bahuguna, Sr. Advocate appearing for petitioner.

2. In regard to prayer at (c), the submission advanced on behalf of petitioner was that Ocean Electronics (P) Ltd. (hereinafter referred to as the ''OEPL) had 11 directors at the relevant time but in the complaint filed for the offence u/s 276CC read with section 278B of Income Tax Act (hereinafter referred to as the ''Act'') the concerned Assistant Commissioner, complainant had chosen to implead only the petitioner as accused No. 3 and Vijay Mehta as accused No. 2 in addition to OEPL as accused No. 1. Criminal liability for late submission of Income Tax Return by OEPL for the assessment year 1988-89 cannot be fastened against the petitioner as he was not involved in the management of affairs of the company and had also resigned as director on 25-3-1993. It was pointed out that neither Income Tax Return nor balance sheet filed along with complaint are signed by the petitioner.

3. Para No. 3 of the complaint Ex. PW 1/A which is material, is reproduced below :

"That as per the information available on the record, during the previous year, relevant to the assessment year 1988-89, accused No. 2 and 3 were the directors of accused No. 1. They were exercising all powers to control the day-to-day business of accused No. 1. They were also signing and filing documents on behalf of accused No. 1. They were, thus, in charge of and responsible to accused No. 1, for the conduct of its day-to-day business."

4. By way of pre-charge evidence, part statement of Amit Jain, Assistant Commissioner, complainant was recorded by the ACMM on 7-9-1992. It is in his deposition that accused Nos. 2 and 3 were the directors of accused company for the assessment year 1988-89 and were exercising all the powers to control day-today business of the company.

5. Section 278B(1) of the Act which deals with vicarious liability of directors, etc. says that where an offence under the Act is committed by a company, every person, who at the time of commission of offence was in charge and responsible to the company for the conduct of business of company as well as company shall be deemed to be guilty of the offence and liable to be proceeded against. At this stage what is to be seen is whether the allegations made in complaint and/or the statements of witnesses recorded in support thereof taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of the offence which is alleged against the accused (See : Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, and State of Haryana and others Vs. Ch. Bhajan Lal and others, Considering the allegations made in aforesaid para 3 and statement of PW-1 the complaint qua petitioner cannot be legally quashed u/s 482, Cr. PC non-joining of remaining 9 directors in the complaint as accused has no relevance whatsoever at this stage. Petition in regard to prayer (c), thus, deserves to be dismissed being without any merit.

Consequently, the petition is dismissed.

