IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.07.2018

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THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.18309 of 2018
and CRL.M.P.No.9580 of 2018

The Assistant Director of Income Tax [Investigation],
Unit 2[4], Central Revenue Building, (Annex)
Queens Road,
Bangalore 560 001. .. Petitioner

Vs

State Rep. by
The Inspector of Police,
B-2, R.S.Puram Police Station,(Law and Order)
Coimbatore.
[Cr.No.1259/2017] .. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records pertaining to the order dated 27.06.2018 made in Crl.M.P.No.1945 of 2018 in Cr.No.1259 of 2017 on the file of the learned Judicial Magistrate No.I, Coimbatore and set aside the same.

For Petitioner : Mr.A.P.Srinivas
For Respondent : Mr.C.Raghavan, Govt. Advocate

O R D E R

This petition has been filed by the Income Tax Department challenging the order dated 27.06.2018 in Crl.M.P.No.1945 of 2018 in B-2 R.S.Puram Police Station Crime No.1259 of 2017.

2.Heard Mr.A.P.Srinivas, learned counsel for the Income Tax Department; learned Government Advocate appearing for the respondent and Mr.G.RM.Palaniappan, learned counsel for the de facto complainant/ Dr.Aravindkumar R Shaw in Crime No.1259 of 2017.

3.The Income Tax Department registered a case of tax evasion against one Sukesh Chandrasekar @ Sekar, an assessee in Bangalore and investigation was taken up by the Department. During the course of investigation, the Income Tax Department

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conducted search on 09.11.2017 at the residence of one Nawaz in Ernakulam, Kerala, in which, a Rolls Royce car bearing registration No.DL 3 CAY 4199 was seized by the Department, on the reasonable belief that the said car has been purchased by Sekar in violation of the provisions of the Income Tax Act. Though the RC book of the car was in the name of one Dr.Aravindkumar R Shaw, yet the Income Tax Department was of the belief that it had nexus with the allegations of tax evasion by Sukesh Chandrasekar. While that being the case, Dr.Aravindkumar R Shaw gave a complaint on 21.11.2017 to the Inspector of Police, R.S.Puram Police Station alleging that one Karthik, a car broker approached him and negotiated with him to sell the car to one Sekar and that, he had handed over the said car in the third week of September 2017 to Karthik, on the latters representation that he would show the car to Sekar and if Sekar is willing to purchase it, a sum of Rs.80,00,000/- would be paid as sale consideration. It was further alleged by Dr.Aravindkumar R Shaw that after taking delivery of the car, Karthik and Sekar vanished in thin air. Hence, on the said complaint, the Inspector of Police, R.S.Puram Police Station registered a case in Crime No.1259 of 2017 under Sections 75[1][c] of the Tamil Nadu City Police Act, 1888 r/w Section 506[1] and 420 IPC against Karthik.

4.During the course of investigation in Crime No.1259 of 2017, it came to the knowledge of the Inspector of Police, R.S.Puram Police Station that the said car is in the custody of the Income Tax Department. Therefore, the Inspector of Police filed Crl.M.P.No.1945 of 2018 under Section 91 Cr.P.C. before the Judicial Magistrate No.I, Coimbatore for a direction to the Income Tax Department to produce the vehicle. The learned Magistrate issued notice to the Income Tax Department and the Department filed a counter in Crl.M.P.No.1945 of 2018 contending that they have seized the car for their investigation purposes and the same cannot be handed over to the Police.

5.On a reading of the counter filed by the Income Tax Department before the Magistrate, it is shorn of even minimum particulars and this Court strongly records its displeasure in the cavalier manner in which, the counter has been filed by the Income Tax Department before the Judicial Magistrate. The Department must learn to respect the Judiciary and should have placed all the facts before the learned Magistrate, in which case, the impugned order would not have been passed.

6.Be that as it may, this Court is indeed surprised with the conduct of the Inspector of Police, R.S.Puram Police Station in filing a petition under Section 91 Cr.P.C., knowing full well that the Income Tax Department has seized the car. This is not a case of theft under Section 380 IPC, where the corpus delicti

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is essential. The allegation by Dr.Aravindkumar R Shaw is that Karthik had cheated him and had vanished with the car. The question is whether Karthik had cheated Dr.Aravindkumar R Shaw or not, for which, the car is not an essential piece of evidence, especially, when it came to the notice of the Inspector that the Car has been seized by the Income Tax Department and it is in their lawful custody. Since the Inspector of Police, R.S.Puram Police Station and the Income Tax Department did not place the full facts before the learned Judicial Magistrate No.I, Coimbatore, the impugned order has been passed.

7.In the opinion of this Court, it is open to Dr.Aravindkumar R Shaw to workout his remedy before the Income Tax Department to take interim custody of the car and not use the services of the Inspector of Police, R.S.Puram Police Station to get custody of the car through the back door.

8.In the result, this petition is allowed and the impugned order dated 27.06.2018 passed by the Judicial Magistrate No.I, Coimbatore in Crl.M.P.No.1945 of 2018 is set aside. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.I, Coimbatore.

2.The Public Prosecutor, High Court, Madras.

3.The Inspector of Police,
B-2, R.S.Puram Police Station,(Law and Order)
Coimbatore.

4.The Assistant Director of Income Tax [Investigation],
Unit 2[4], Central Revenue Building, (Annex)
Queens Road, Bangalore 560 001.

+1cc to Mr.A.P.Srinivas, Advocate SR.No.48701
+1cc to Mr.G.RM.RPalaniappan, Advocate SR.No.48419

CRL.OP.No.18309 of 2018

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GN(01/08/2018)

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