

\$~8

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 06.11.2020

+ CRL.M.C. 2140/2020

PRINCIPAL DIRECTOR, INCOME TAX (INVESTIGATION-2)

..... Petitioner

Through Mr.Zoheb Hussain, Adv.

versus

RAJIV YADUVANSHI & ORS.

..... Respondents

Through Mr.Arun Khatri, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

The hearing has been conducted through video conferencing.

Crl. M.A. 15279/2020 (Exemption)

1. Allowed, subject to all just exceptions.

2. Application is disposed of.

Crl.M.C. 2140/2020 & Crl.M.A. 15278/2020

3. Present petition has been filed under section 482 Cr.P.C. seeking setting aside the order dated 24.09.2020, 05.10.2020, 21.10.2020 & 28.10.2020 passed by learned ACMM (Spl. Acts), Central District, Tis

Hazari Courts, Delhi in Misc. CrI. 102/2020 titled as “*Rajiv Yaduvanshi vs. Principal Director, Income Tax (Investigation-I) & Ors.*”.

4. The fact of the case are that on 20.07.2020, investigation unit of the Income Tax Department received a Tax Evasion Petition filed by Rajiv Yaduvanshi (Respondent No.1) against Vandana Sodhi and Sandeep Sumbly (Respondents Nos. 2 and 3 respectively). On 27.07.2020, the above-mentioned TEP was addressed to the Principal of Income Tax (Investigation-1) and as a part of the procedure and after following due process, the same was marked to the Dy. Director of Income Tax, Investigation Unit 8(4) on 27.07.2020 under the administrative control of Principal Director of Income Tax (Investigation-2). The Department thereafter commenced the proceedings as per the Standard Operating Procedure in this regard. On 23.09.2020, an “*Application for calling Status Report*” was filed by the Respondent no.1 before the Ld. ACMM arraying Principal Director of Income Tax (Inv.-1) as a Respondent along with Respondent Nos. 2 and 3 herein with the following prayer:

“It is therefore most respectfully prayed that a status report regarding the status of complaint of Applicant and investigation, if any, carried out on complaint of Applicant be called, in the interest of justice.”

5. The above-mentioned application filed by the Respondent No. 1 was registered as Misc. CrI. 102/2020 and listed before the Ld. ACMM and the following ex-parte order was passed:

"This application for calling status report has been uploaded on the email id of the court by Ld. counsel for applicant. Reader of the Court is directed to download the aforesaid application and place its copy on record. The present application be checked and registered as miscellaneous application.

Submissions heard. Application perused.

Considering the reasons mentioned in the application and the submissions made, the Action Taken Report be called electronically from Principal Director, Income Tax (Investigation-1) through Sh. Kanhaiya Singhal, Ld. SPP for Income Tax Department for the next date of hearing..."

6. On 05.10.2020, the said application was again listed before the Ld. ACMM and it was directed that a status report be filed. Thereafter, on 21.10.2020, the said application was again listed before the Ld. ACMM and time was sought on behalf of the petitioner as the concerned PDIT had been transferred. On 28.10.2020, the said application was again listed before the Ld. ACMM and the following order was passed:

"It is submitted by the SPP for the complainant department that time had been sought on last dates for filing status report as previous PDIT had initiated the process for filing the same. He further stated that the said

PDIT has been transferred and new incumbent PDIT has instructed him that no Court order has been officially received by him and the reply qua the said application if any, need not be filed as the present application is not maintainable.

Ld. Counsel for applicant submitted that contempt proceedings should be initiated against the incumbent PDIT as he is deliberately disobeying the directions of the court under the garb of non-availability of order. He further stated that necessary summary proceedings for contempt as per Cr.P.C. and penal proceedings as per IPC for deliberate disobedience of the orders of the court be initiated against the incumbent PDIT who either does not know the law of the land or considers him to be above the law of the land.

Heard. Perused.

The conduct of the worthy PDIT is highly deplorable. It appears that the PDIT has never dealt with Court cases or he is considering him to be appellate authority of this court. It is never expected from such a high ranking official to behave in such lawless manner while addressing court related issues.

Considering the aforesaid submissions made on behalf of both the parties and keeping in view the stand taken by the incumbent PDIT that he has not received any court order on the aforesaid aspect this court is of the view that one opportunity should be granted to complainant department/ concerned PDIT to file status report in compliance of previous order passed by this Court along with worthy observations of Ld. PDIT about the said order in writing.

.....

Put up for filing of status report on 06.11.2020"

7. Notice issued.

8. Learned counsel appearing on behalf of Respondent no.1 accepts notice and submits that respondent no.1 filed application before the court to know the status of the investigation and the petitioner department is duty bound to comply with the directions passed by learned ACMM.

9. Learned counsel appearing on behalf of the petitioner submits that the impugned orders passed by learned ACMM calling for a status report have been passed without jurisdiction as no provision of the Cr.P.C. gives such power to the learned ACMM. It is a settled principle of law that neither the ACMM nor any Court below, however, only this Court has inherent powers under Cr.P.C.

10. To strengthen his arguments, learned counsel for the petitioner has relied upon the case of ***Syed Nusrat Ali vs. State and Ors. in Crl.M.C. 2899 of 2009***, wherein it has been held as under:

"4...It is well settled that neither ACMM nor any Court below the High Court has inherent powers under Cr.P.C. The inherent powers under Criminal law are vested only in High Court. All courts below High Court can exercise statutory powers only in accordance with Cr.P.C. When a Court of ACMM or a Court of learned ASJ issues show cause notice to any person, it must be in accordance with

the provisions of Cr.P.C. Surprisingly, the learned ACMM has not even mentioned as to under which provisions of law, he had the authority or powers to issue show cause notice to an investigating officer or ACP to initiate proceedings under Contempt of Courts Act or to initiate proceedings for commission of offence. It is expected that when a matter comes before learned Metropolitan Magistrate, ACMM or Sessions Judge, during trial for exercise of its powers, it has to specify as to under which provision of Cr.P.C or Penal Code, the powers were being exercised. If there was no provision under Cr.P.C of issuing a show cause notice to an investigating officer or to his superior officer for contempt of court, such powers cannot be exercised by the subordinate courts."

11. Contrary to the principle as held by this Court in ***Syed Nusrat Ali*** (*supra*) that the Ld. ACMM has to specify as to under which provision of Cr.P.C. or Penal Code, the powers are being exercised, however, no such provision has been specified by the Ld. ACMM in the impugned orders.
12. It is submitted that there is no provision in the Cr.P.C. for calling for a status report/action taken report from the Investigation Wing of the Income Tax Department if no complaint/case is pending before the Court below.
13. It is not in dispute that the inherent powers vests with this Court only, however, not before the subordinate judiciary. As the case in hand is concerned, respondent no.1 had filed application without any procedure mentioned in Cr.P.C. or Income Tax Act. Moreover, learned Judge has

passed directions after directions without realizing even that he does not have inherent power under Cr.P.C.

14. From a perusal of the case history, it is seen that the said application has been filed under Section 51 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules Act, 2015 and the Ld. ACMM has not considered Section 55 of the said Act which provides as under:

"[Prosecution to be at instance of Principal Commissioner or Principal Director General or Commissioner or Director General or Principal Commissioner or Commissioner .']

55. (1) A person shall not be proceeded against for an offence under section 49 to section 53 (both inclusive) except with the sanction of the Principal Commissioner or Commissioner or the Commissioner (Appeals), as the case may be.

(2) The Principal Chief Commissioner or the Chief Commissioner [or the Principal Director General or the Director General] may issue such instructions, or directions, to the tax authorities referred to in sub-section (1) as he may think fit for the institution of proceedings under this section.

(3) The power of the Board to issue orders, instructions or directions under this Act shall include the power to issue orders, instructions or directions (including instructions or directions to obtain its previous approval) to other tax authorities for the proper initiation of proceedings of offences (including an authorisation to file

and pursue complaints by one or more Inspectors of tax) under this section."

15. In view of above, learned ACMM has usurped the inherent jurisdiction of this Court which is impermissible under the law. Moreover, in cases pertaining to Tax evasion petitions like the present case, this Court also exercises its powers sparingly and it is a well-settled principle that only the broad outcome of the Tax evasion petition may be communicated to the complainant, that too upon culmination of the investigation. The Income Tax Department has a specific framework of investigations dealing with the TEPs and information in respect of the investigation carried out by the office of Directorate General of Income Tax (Investigation) is not required to be intimated to the complainant as the said office is even outside the purview of the RTI Act, 2005.

16. Providing information regarding an ongoing investigation to its informer is not only inappropriate, but also injurious to the ongoing investigation. Reliance in this regard is placed on the decision of Hon'ble Central Information Commission in the case of ***S.K. Agarwalla v. Directorate General of Central Excise Intelligence: [2008] SCC OnLine 1781***, wherein the appellant therein vide an RTI application requested information relating to the progress of the case under investigation. It was

held as under:

"..although speedy investigations in matters of revenue-evasion is salutary goal, it would be inappropriate and even injurious, to ongoing investigations if informers are allowed to intrude into the investigative progress all in the name of enforcing a Right to Information. Intrusive supervision of investigation work of public authorities especially by interested parties has the effect of impeding that process, in the sense it exposes the officers to external pressures and constricts the freedom with which such investigations are to be conducted. Commission also felt that there is no reason why officers of public authorities should space their investigations to benefit informants. Intrusive interference in investigation work is not conducive to such investigations and, in that sense, impedes it."

17. Without observing much in the present petition, since the application filed by respondent no.1 before the learned ACMM was without the provisions of either Cr.P.C. or Income Tax Act which is bad in law. Moreover, the orders passed in such versions by learned Judge are also illegal, perverse and without jurisdiction.

18. In view of above discussion, I hereby set aside orders dated 24.09.2020, 05.10.2020, 21.10.2020 and 28.10.2020.

19. The petition is, accordingly, allowed and disposed of.

20. Pending application also stands disposed of.

21. The order be uploaded on the website forthwith.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 06, 2020/ab

