BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT
DATED: 15.02.2022
CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.(MD)Nos.19340 of 2021 & 1241 of 2022
and
Crl.M.P(MD)No.10787 of 2021

Crl.O.P(MD)No.19340 of 2021:-

The Deputy Director of Income Tax (Investigation),
O/o.Joint Director of Income Tax (Investigation),
Room No.502, 5th Floor, Aayakar Bhavan,
Kowdiar P.O,
Thiruvananthapuram – 695 003. ... Petitioner/3rd Party

Vs.

1.Shri Sampath ... 1st Respondent/Petitioner

2.The State of Tamil Nadu,
Represented by,
The Sub-Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
(Crime No.43 of 2021) ... 2nd Respondent/Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the order passed by the learned Judicial Magistrate No.1, Padmanabhapuram, dated 03.03.2021 in Crl.M.P.No.1494 of 2021 in reference to Crime No.43 of 2021 (RP No.18 of 2021) on the file of Thuckalay Police Station and set aside the same and permit the petitioner to seek custody of the seized assets ie., cash of Rs.76,02,010/-.

For Petitioner	: Mr.N.Dilip Kumar, Advocate
For R – 1	: Mr.G.Mariappan, Advocate
For R - 2	: Mr.B.Thanga Aravindh Government Advocate (Crl. Side)

Crl.O.P(MD)No.1241 of 2022:-

Sampath ... Petitioner/Defacto Complainant

Vs.

State through
The Sub-Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
(Crime No.43 of 2021) ... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to allow the petition to set aside the impugned order passed in Crl.M.P.No.9990 of 2021 in Crl.M.P.No.1494 of 2021, dated 22.12.2021 on the file of the learned Judicial Magistrate No.1, Padmanabhapuram so that the petitioner may be directed to produce two sureties with original title document to the total value of Rs.76,00,000/- to execute the bond for the above amount.

For Petitioner : Mr.G.Mariappan, Advocate
For Respondent : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)

COMMON ORDER

Crl.O.P(MD)No.19340 of 2021 has been filed to set aside the order passed by the learned Judicial Magistrate No.1, Padmanabhapuram, dated 03.03.2021 in Crl.M.P.No.1494 of 2021 in reference to Crime No.43 of 2021 (RP No.18 of 2021) on the file of Thuckalay Police Station and and permit the petitioner to seek custody of the seized assets ie., cash of Rs.76,02,010/-.

2.Crl.O.P(MD)No.1241 of 2022 has been filed to allow the petition to set aside the impugned order passed in Crl.M.P.No.9990 of 2021 in Crl.M.P.No.1494 of 2021, dated 22.12.2021 on the file of the learned Judicial Magistrate No.1, Padmanabhapuram, so that the petitioner may be directed to produce two sureties with original title document to the total value of Rs.76,00,000/- to execute the bond for the above amount.

3.The petitioner in Crl.O.P(MD)No.1241 of 2021 is the defacto complainant (hereinafter referred to as 'the complainant') and he is running a jewelry mart in the name and style as 'Kerala Fashion Jewelry' at Neyyatin Karai at Trivandrum District, Kerala State. On 19.01.2021, at about 05.30 hours, when the complainant has entrusted 1-1/2 kgs gold ornaments with his driver along with two others to hand over to his son-in-law at Tirunelveli. The said gold ornaments have been handed over to his son-in-law on receipt of Rs.76,40,000/- as sale proceeds. At about 08.15 hours, on the same day, while they were returning in the car, waylaid by four unknown person at Karavilai, out of which, two were on police uniform, robbed the said sum of Rs.76,40,000/- from the inmates on the car on criminal intimidation. Subsequently, the said amount was recovered from the person committed robbery. Thereafter, it was deposited in the custody of the Court in R.P.No.18 of 2021. The petitioner, being the lawful owner of the said property, filed Crl.M.P.No.1494 of 2021 for return of the cash and by order, dated 03.03.2021, the learned Judicial Magistrate No.1, Padmanabhapuram, ordered to return the property as interim custody on condition that the complainant shall execute a bond for a sum of Rs.76,00,000/- and also to deposit the original title deeds to the said tune into the Court. Therefore, the complainant filed Crl.M.P.No.9990 of 2021 on the file of the learned Judicial Magistrate No.1, Padmanabhapuram to modify the condition imposed by the learned Judicial Magistrate No.1, Padmanabhapuram in Crl.M.P.No.1494 of 2021, dated 03.03.2021, while returning the property and by order, dated 22.12.2021, the learned Judicial Magistrate No.1, Padmanabhapuram, dismissed the petition.

Challenging the same, the complainant has filed Crl.O.P.No.1241 of 2021.

4.The petitioner in Crl.O.P.No.19340 of 2021, who is the Deputy Director of Income Tax (hereinafter referred to as 'the Income Tax Authority'), has filed this petition to set aside the order passed by the learned Judicial Magistrate No.1, Padmanabhapuram in Crl.M.P.No.1494 of 2021, dated 03.03.2021 on the ground that the Income Tax Authority issued summons under Section 131 (1A) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') to the complainant and in response, he appeared for enquiry and his statement was recorded under Section 131 of the Act on 19.04.2021. In the statement, the complainant deposed that the cash seized by the police authorities belonged to him and it is his unaccounted income which has not been reported to Tax. He had neither maintained proper accounts nor able to explain the source of obtaining the said cash. On the basis of the statement, on 18.06.201, the Income Tax Authority requested the learned Judicial Magistrate No.I, Padmanabhapuram, not to release the cash on the petition filed by the complainant under Section 451 of Cr.P.C. Further, the complainant filed an affidavit, dated 09.07.2021, offering the seized cash of Rs.76,40,000/- under Section 69A of the Act. Further, the case of the Income Tax Authority is that on various occasions, large quantum of cash was seized from the complainant, such as, on 04.03.2016, a sum of Rs.56,92,000/- was seized, on 20.08.2020, a sum of Rs.1.02 crores was seized by State Tax Officer (Intelligence), Intelligence Squad No.VII, State Goods and Services Taxes Department, Neyyattinkara, Thiruvananthapuram and the present seizure of cash.

5.The learned counsel appearing for the Income Tax Authority submitted that the Income Tax liability is a charge upon any sum for which there is no satisfactory explanation regarding the source. If the amount seized is without any legal source and forms part of the suppressed income, under the provisions of the Income Tax Act, the Income Tax Department entitled to confiscate the entire amount as liability. That apart, the Income Tax Department is vested with powers to seize unaccounted cash and documents that contain evidence of undisclosed income under Sections 132 and 132A of the Act. In support of his contention, he relied upon the Judgment reported in ***(1991) 190 (TR 616 (Madras) - Babu Rao Vs. the Inspector of Police*** and this Court held that the Income Tax Authorities, in the eye of law, can be construed as the person entitled to seize and to have custody of the property in the shape of undisclosed income.

6.The learned counsel appearing for the complainant submitted that though the seized amount was not disclosed to the Income Tax Authority and when the Income Tax Authorities initiated proceedings under Section 132 of the Act, they are entitled for the cash only after completion of the assessment proceedings. While pending proceedings, they are not entitled to seize the cash. In support of his contention, he relied upon the Judgment of the Honourable High Court of Kerala in the case of ***Union of India, represented by Assistant Director of Income Tax vs. Hashir and others in Crl.M.C.No.2348 of 2015***, in which held that the appropriate remedy open to the Income Tax Officer is to apply Section 226(4) of the Act for payment of money towards tax and other amounts due. That means, once the assessment proceedings have become final and conclusive, the authorities under the Act are entitled to apply to the learned Magistrate for release of the portion of amount due and recoverable from the first respondent therein under law. In other words, the amount necessary for satisfying the liability of the first respondent will have to remain in the custody of the Court despite any claim raised by parties demanding interim custody pending finalization of the assessment proceedings.

7.Heard the learned counsel appearing for the complainant, the learned counsel appearing for the Income Tax Authority and the learned Government Advocate (Criminal Side) appearing for the State and perused the entire materials available on record.

8.On a perusal of the materials available on record, it is seen that on the complaint lodged by the complainant, the second respondent/the Sub-Inspector of Police registered the case in Crime No.43 of 2021 for the offences under Sections 392 and 170 of I.P.C and now altered to Sections 392, 120, 120(b) and 406 of I.P.C, on the allegation that the accused persons has robed a sum of Rs.76,40,000/- belonged to the complainant from his employees. During the course of investigation, the second respondent had arrested the accused persons and recovered a sum of Rs.76,02,010/- and deposited the amount before the learned Judicial Magistrate No.1, Padmanabhapuram in R.P.No.18 of 2021. The complainant being the owner of the property filed petition in Crl.M.P.No.1494 of 2021 for return of cash and the same was allowed on condition that the complainant shall execute a bond for a sum of Rs.76,00,000/- and also to deposit the original title deeds for the said value, by order, dated 03.03.2021. Further, the complainant filed Crl.M.P.No.9990 of 2021 on the file of the learned Judicial Magistrate No.1, Padmanabhapuram to modify the condition imposed in Crl.M.P.No.1494 of 2021, dated 03.03.2021, while returning the property and by order, dated 22.12.2021, the learned Judicial Magistrate No.1, Padmanabhapuram, dismissed the petition. Though the Income Tax Authority, by letter dated 18.06.2021 requested the learned Judicial Magistrate No.1, Padmanabhapuram, not to release the cash, they failed to file any application to implead themselves as a party in the petition for return of the cash.

9.Admittedly, the Income Tax Authority initiated proceedings under Section 132 of the Act and issued summons under Section 131 (1A) of the Act and in response, he appeared for enquiry and his statement was recorded under Section 131 of the Act on 19.04.2021.

In the statement, the complainant admitted that the cash belonged to him and it is his unaccounted income which has not been reported to tax.

10.As rightly pointed out by the learned counsel for the complainant, the Income Tax Authority initiated proceedings under Section 132 of the Act as against the complainant for non-disclosure of the income to the tune of Rs.76,02,010/- and the said proceeding is pending. Once the assessment procedure have become final and concluded, the Income Tax Authority is entitled to get the portion of the amount due and recoverable from the complainant.

11.In the judgment relied upon by the Income Tax Authority reported in ***(1991) 190 (TR 616 (Madras) - Babu Rao Vs. the Inspector of Police,*** already the learned Judicial Magistrate released the cash in favour of the Income Tax Authority and the same was challenged by the owner of the cash and the same was dismissed saying that the Income Tax Authorities, in the eye of law, can be construed as the person entitled to seize and to have custody of the property in the shape of undisclosed income. Whereas in the case on hand, the Income Tax Authority did not file any petition under Section 451 of Cr.P.C for return of cash. The complainant filed a petition for return of cash and the same was allowed and imposed conditions. The complainant challenging the conditions imposed by the learned Judicial Magistrate No.1, Padmanabhapuram, filed Crl.M.P.No.9990 of 2021 in Crl.M.P.No.1494 of 2021. Therefore, the above Judgment cited by the learned counsel for the Income Tax Authority is not helpful to the case on hand. Further, the complainant is not entitled to have custody of the cash, since the Income Tax Authority already initiated proceedings under Section 132 of the Act as against the complainant.

12.In view of the above, the order passed in Crl.M.P.No.1494 of 2021, dated 03.03.2021 on the file of the learned Judicial Magistrate No.1, Padmanabhapuram is set aside. The property, namely, the cash of Rs.76,02,010/- deposited in R.P.No.18 of 2021 in Crime No.43 of 2021 on the file of the second respondent police will have to be remained in the custody of the learned Judicial Magistrate No.1, Padmanabhapuram, pending finalization of the assessment proceedings raised by the Income Tax Authority. The learned Judicial Magistrate No.1, Padmanabhapuram, is directed to deposit the cash property in any one of the Nationalized Bank in the form of fixed deposit. After completing the assessment proceedings, the Income Tax Authority is at liberty to approach the learned Judicial Magistrate No.1, Padmanabhapuram to release the portion of the amount due recoverable from the complainant.

13.Accordingly, both the Criminal Original Petitions are disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Judicial Magistrate No.1,
Padmanabhapuram.

2.Do Through The Chief Judicial Magistrate,
Kanyakumari District at Nagercoil.

3.The Sub-Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.

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

+2 CC to M/s.G.MARIAPPAN, Advocate (SR-6609[F], SR-6611[F] dated 16/02/2022)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-6630[F] dated 16/02/2022)

Order made in
Crl.O.P(MD)Nos.19340 of 2021 & 1241 of 2022
15.02.2022

RS(25.02.2022) 6P-8C