**(1990) 11 MAD CK 0054**

**In the Madras High Court**

**Case No :** Criminal M.P. No. 3622 of 1988

Babu Rao APPELLANT

Vs

Inspector of Police and another RESPONDENT

**Date of Decision :** 20-11-1990

**Acts Referred:**
Criminal Procedure Code, 1973 (CrPC) — Section 451
Income Tax Act, 1961 — Section 132, 132A

**Citation :** (1991) 190 ITR 616

**Hon'ble Judges :** Janarthanam, J

**Bench :** Single Bench

**Advocate :** B. Kumar, for the Appellant; A. Shanmugham and K. Ramaswamy, for the Respondent

## Judgement

Janarthanam, J.—The Inspector of Police, B-2, Police Station, Madras, arrested one Sadhashiv Rao on April 14, 1988, when he was found

in possession of Rs. 3,25,506 u/s 101 read with s section 102 of the Code of Criminal Procedure, and registered a case in Crime No. 262 of

1988 (AFIR No. 548 of 1988) and produced him before the XV Metropolitan Magistrate, Madras, on April 15, 1988. He also handed over the

amount seized to the court and the said amount was credited to the criminal court deposit in that crime number. On his arrest, the said Sadhashiv

Rao is stated to have given a statement to the police that the amount had been handed over to him by one Janardhan Sait of Sowcarpet, Madras,

and he was later released on bail on April 18, 1988.

2. On April 25, 1988, the petitioner filed Criminal M.P. No. 248 of 1988 in the said Crime Number in AFIR No. 548 of 1988 praying for the

return of the amounts seized from Sadhashiv Rao and deposited into court.

 

3. The Assistant Director of Inspection, on his being authorised by the Director of Inspection, Income Tax Department, also filed an application u/s

451, Criminal Procedure Code, read with sections 132 and 132A of the Income Tax Act, 1961 (for short ""the Act""), praying for the return of the

amount to the Income Tax Department.

4. The learned Magistrate, on consideration of the materials available on record and on hearing the arguments of both sides, ordered the return of

the amount to the Income Tax Department. Aggrieved by the order, the petitioner has come forward with the present action, invoking the inherent

jurisdiction of this court, to set aside the order so passed by the learned Magistrate.

5. Learned counsel for the petitioner started his arguments in a flamboyant style by stating that the Income Tax authorities have no power to size

the amount in court deposit, even under the amended provisions as adumbrated in section 132A of the Act, inasmuch as ""authority"" as mentioned

in that section can, by no stretch of imagination, be construed to include ""court"" and, therefore, the order passed by the Magistrate is liable to be

set aside.

6. Learned counsel appearing for the Income Tax Department would, however, repel such a submission.

7. It is not as if the Assistant Director of Inspection filed the requisition in the court and seized the amount available from the custody of the court.

As already referred to in the statement of facts, he has filed an application u/s 451, Criminal Procedure Code, read with section 132 and 132A of

the Act praying for the return of the amounts seized by the police and deposited in the court, as such money is the undisclosed income of the

petitioner. The court passed an order only on such an application in ordering the return of the amount seized to the Income Tax Department. If the

amount had been seized from the custody of the court by filing of a requisition by the Assistant Director of Inspection, the matter has to be looked

at from a different angle, to see whether he had such power under the amended provisions of section 132A of the Act.

8. In such a situation there will be a necessity for the court to interpret the word ""authority"" and decide whether such a word would include ""court"".

The case on hand is not one reflecting such a situation. As such, there is no necessity to give any interpretation to the word ""authority"" as found

used in section 132A of the Act. Since the order has been passed by the learned XV Metropolitan Magistrate u/s 451, Criminal Procedure Code,

read with sections 132 and 132A of the Act, on a request emerging from the Income Tax Department, the legality of the order passed as such

cannot at all be canvassed, inasmuch as he is legitimately, entitled to pass an order u/s 451, Criminal Procedure Code, respecting the return of the

property seized and produced before the court to a person entitled to possession of the property seized. 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.

9. In this view of the matter, the petition deserves to be dismissed and is hereby dismissed.

 