(1998) 03 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 1981 of 1995 4 March 1998

DINESH CHANDRA and Others APPELLANT

Vs

STATE OF MADHYA PRADESH and Others RESPONDENT

Date of Decision : 04-03-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 102, 439, 482
Income Tax Act, 1961 — Section 132, 132A, 143, 144

Citation : (1998) 149 CTR 38

Hon'ble Judges : N.K. Jain, J;N. K. Jain, J

Bench : Division Bench

Judgement

N.K. Jain, J.

By this application u/s 482 of Criminal Procedure Code the applicants seek quashment of the seizure of certain cash amount and primary silver, made u/s 102 of Criminal Procedure Code by the Police, Industrial Area, Ratlam, as also the subsequent handing over of the seized property to the Income Tax department under sections 132 and 132A of the Income Tax Act (hereinafter reffered to as ''the Act'').

2. On 3-5-1994, Station House Officer, P.S. Industrial Area, Ratlam, intercepted the applicants Nos. 2 to 4 namely, Kalyan Singh, Ashok and Vishwanath near Sailana and recovered 15 kgs. of silver and cash amount of Rs. 8 lakh from their possession. Enquiries revealed that the seized property belonged to applicant No. 1 Dinesh Chandra Dave, a businessman of Indore dealing in silver and gold. He is also an assessee under the Income Tax Act. He made an application to the Chief Judicial Magistrate, Ratlam, for return of the seized property on supurdgi. His application was rejected by the Chief Judicial Magistrate on 23-6-1994. His revision against the said order preferred in Sessions Court as also the petition made u/s 482 of Criminal Procedure Code before this court, were also dismissed vide orders dated 5-12-1994 and 20-4-1995 respectively. In the meantime the

Income Tax Officer, Ward No. 1(1), Indore, took over possession of the seized property in pursuance of a warrant issued by the Commissioner, Bhopal, under sections 132 and 132A of the Act. It appears that after notice to applicant No. 1, the Assistant Commissioner, has on 8-5-1995 passed order u/s 132(5) of the Act estimating tax liability of applicant No. 1 to the tune of Rs. 17,19,014 and thus directing retention of the seized property pending final assessment under sections 143(3) and 144 of the Act.

3. The applicant No. 1 has also filed petition under article 226 of the Constitution of India challenging the aforesaid proceedings. However, the said petition was dismissed as withdrawn on 23-6-1995. The applicants have now again approached this court u/s 482 of Criminal Procedure Code.

4. I have heard Shri C.L. Yadav, learned counsel for the applicants, Shri G. Desai, learned governmet advocate for respondent No. 1-State and Shri V.K. Jain, learned counsel for the respondent Nos. 2 and 3-Union of India and Income Tax Officer, Indore.

5. The grievance of the applicants is two-fold. It is contended that the property in question was in no way concerned with commission of any cognizable offence and the same could not be, therefore, seized by the police u/s 102 of Criminal Procedure Code. Subsequently, it is contended that the police having seized the property u/s 102 of Criminal Procedure Code and reported the seizure to the magistrate, could not have handed over the property to the Income Tax department without orders of the magistrate. Reliance has been placed on a Supreme Court decision in J. R. Malhotra v. Additional Sessions Judge, Jullundur, (1976) 2 SCR 993 . I am not persuaded by the arguments and the ratio in Malhotra''s case (supra), I am afraid, is not available to the applicants in the instant case. In that case the seizure of property by the Income Tax authorities was held to be invalid by the High Court and the property was further required in connection with a criminal case.

6. u/s 102 of Criminal Procedure Code, any police officer may seize any property which may be alleged or suspected to have been stolen or which may be found under circumstances which creates suspicion of the commission of any offence. This section thus confers power on the police officer to seize property on mere suspicion. The power u/s 102 is exercised independently and without the assistance of the court. Under the circumstance, I am afraid, it is not within the power of the High Court to interfere with the seizure in exercise of powers u/s 482 of Criminal Procedure Code. The remedy lies in approaching the magistrate under various provisions of Chapter 34 of Criminal Procedure Code. In the instant case also the applicants unsuccessfully approached the Chief Minister and their prayer for return of property stood rejected by the Session Court as also by this court, as already pointed out above. The applicants cannot be, therefore, permitted to re-agitate the point by taking resort to section 482 of Criminal Procedure Code.

7. As regards handing over of the property to the Income Tax authorities, it may be noted that the property was never deposited in the court and is no more required by the court in connection with any case pending before it. The property has been taken away by the Income Tax department in pursuance of the warrant issued under sections 132 and 132A of the Act. Under the circumstances it is not open either for the criminal courts below or for this court to pass any order regarding disposal of the property under the Criminal Procedure Code.

8. This court in Union of India v. P.S. Janakganj 1990 JLJ 734 has under similar fact situation, held :

"9. According to us the police officer, who had seized the money from respondent No. 3, on being served with the order of the Income Tax authority and Warrant of Authorisation, and for the matter learned magistrate also suffered statutory handicap to deal with the money in any other manner than as contemplated under the special law enacted as aforesaid. Be it noted in this connection that the police had not registered any crime against respondent No. 3 and the Income Tax department on being apprised of the seizure had laid claim to that money and to custody thereof in accordance with provisions aforequoted. Neither SHO, Janakganj Police Station, nor learned magistrate, had any jurisdiction to enquire into the validity of the Warrant of Authorisation for delivery of that money to the Income Tax Officer concerned namely, Shri Khanduja, nor of the competence of the officer issuing that Warrant of Authorisation. Indeed, we are further of the view that this court also in this matter, is not at all concerned to the validity of the Warrant of Authorisation."

9. In In Re: Mohanlal, , the Madras High Court has held :

"(1) the statutory powers conferred on the Income Tax Authorities to deal with the seizure cannot be interfered with by exercise of powers u/s 439 or section 561A of the Criminal Procedure Code, as proceedings before the Commissioner are not criminal proceedings.

(2) A direction regarding disposal of the property can be passed by the magistrate only if the property is available either with the police or has been deposited in the court and as in the instant case the seized amount had been taken away by the Income Tax department, the amount was not available with the police and, hence, no orders regarding its disposal can be passed by the magistrate. "

10. As already pointed out, the Income Tax department has not only taken possession of the property but has also passed order u/s 132(5) of the Act. The remedy against the order is provided in the Act itself. I have no manner of doubt that inherent power of this court u/s 482 of Criminal Procedure Code cannot be invoked to challenge the said proceedings. As already pointed out, the original seizure u/s 102 of Criminal Procedure Code also cannot be termed as abuse of the process of the court. No case for invoking power u/s 482 of Criminal Procedure Code is thus made out.

11. The petition thus fails and is dismissed.