(1998) 01 KL CK 0029

In the High Court Of Kerala

Case No : Criminal R.P. No''s. 571, 574, 575, 576 and 577 of 1996

Ibrahim Othayoth APPELLANT

Vs

Sub-Inspector of Police and Others RESPONDENT

Date of Decision : 05-01-1998

Acts Referred:
Income Tax Act, 1961 — Section 132A

Citation : (1998) 232 ITR 320

Hon'ble Judges : P.V. Narayanan Nambiar, J

Bench : Single Bench

Advocate : K.T. Sankaran, Preethy Karunakaran and C. Raman, for the Appellant; P.K. Ravindranatha Menon and N.R.K. Nair for respondent No. 2 and C.M. Suresh Babu, Public Prosecutor, for the Respondent

Judgement

P.V. Narayanan Nambiar, J.—The revisions are directed against the judgment in Criminal Appeal No. 126 of 1996, of the Court of Sessions, Kozhikode Division, by which the court set aside the order of the Judicial First Class Magistrate''s Court, Kozhikode, and directed the magistrate to release the gold biscuits and currency seized in Crime No. 73 of 1996 of Kasaba Police Station to the appellant Assistant Director of Income Tax, Calicut. The bare minimum facts which are essential for disposing of these revisions are as follows :

On getting secret information, the Assistant Commissioner of Police, Calicut, raided house No. 17/1255 at Puthiyara on March 10, 1996, and seized 126 gold biscuits and currency worth Rs. 14,86,500 from the house. Ten persons were arrested on the spot and Crime No. 73 of 1996 was registered by the Kasaba police under Sections 41(d) and 102, Criminal Procedure Code. Out of the 126 gold biscuits, two were seized from the fourth accused and the remaining 124 were seized from the house itself. Currency was seized from the 1st, 5th and 6th accused. As none of the arrested persons were able to produce any documents regarding the gold biscuits or the currency, those were suspected to be stolen property or involved in an offence. Requisition was made by the Income Tax officials who questioned some of the accused and recorded their statements. The accused and the seized articles were produced before the magistrate. Later, some documents showing payment of duty for 126 gold biscuits were produced before the police by accused Nos. 1 to 3. But, those documents were suspected to be spurious or forged. Other departments like the Sales Tax Department, Customs, Enforcement; etc., were informed about the seizure of the gold biscuits and currency.

Claim applications were filed by the revision petitioners and officers of the Income Tax and Sales Tax Departments under Sections 451 and 457 of the Criminal Procedure Code, for release of the articles seized. Before disposing of the same, a final report was filed by the police referring the case. So, the applications were treated as filed u/s 452, Criminal Procedure Code, and were disposed of by the learned magistrate who allowed the applications filed by the revision petitioners and rejected those filed on behalf of the Income Tax and Sales Tax Departments. An appeal was preferred by the Assistant Director of Income Tax against rejection of his application C. M. P. No. 1097 of 1996.

2. The question to be decided in these revisions is whether the judgment in Criminal Appeal No. 126 of 1996 is liable to be revised or requires any modification.

3. The rival claimants are accused Nos. 1 to 3, 6 and 7 in the crime and the Assistant Director of Income Tax. It is the case of the Income Tax Department that the gold biscuits and the currency seized represent the undisclosed assets/ income of one Shamsudheen and that they have already commenced investigation to ascertain the same. They also relied on Section 132A of the Income Tax Act, 1961, (for short "the Act"). A requisition has already been made for custody of the gold biscuits and currency now in the possession of the court. The court below, without deciding the question whether the case of the Income Tax Department will come u/s 132A of the Act, considered the appeal and held that the Assistant Director of Income Tax is the person entitled to possession of the said articles.

4. Various authorities were cited before me by counsel on either side. Counsel for the revision petitioners mainly relied on the decision in Commissioner of Income Tax, Allahabad and Others Vs. Vindhya Metal Corporation and Others, . On the other hand, counsel for the Revenue placed reliance on the decision in UNION OF INDIA Vs. JUDICIAL MAGISTRATE (EASTERN RAILWAY), MUGHALSARAI, AND ANOTHER., . In the latter case, it is held by the Allahabad High Court that the Income Tax Act is a specialised law which has been enacted for specific purposes of realisation of taxes due from the citizen. The provisions of a specialised law always override the provisions of a general law. So, it was further held that the "requisitioning officer u/s 132A of the Act would be the person entitled to the seized assets as the assets have been seized by an officer or authority which, in the instant case, is the S. H. O." So, the property was ordered to be released to the Income Tax Department.

5. From the discussion contained in the judgment of the appellate court, it is seen that investigation by the Income Tax Department is already on to assess whether the seized articles represent the undisclosed assets/ income of Shamsudheen. The final report filed by the Assistant Commissioner of Police on March 21, 1996, before the learned magistrate shows that one Jaffer who is the brother of Shamsudheen has something to do with the seized articles. The documents showing the ownership of the gold biscuits and currency which were produced not at the time of seizure, but produced later are suspected to be not genuine. The statements of accused Nos. 1 to 3 and one Ibrai which were recorded by the Assistant Director of Income Tax, Calicut, were produced before the court below. All the statements are to the effect that they are employees of Shamsudheen, Poomukkath House, Eranhikkal, and that they carried the gold biscuits belonging to him from the Karippur Airport. The statements also show that the articles were carried in a jeep which belongs to the said Shamsudheen. The appellate court while disposing of the application u/s 452 of the Criminal Procedure Code, was perfectly justified in looking into the statements recorded in the course of investigation including the statement recorded u/s 161, Criminal Procedure Code. The statements will go a long way to decide the claim made by the revision petitioners and the second respondent. The appellate court considered all the aspects and came to the conclusion that the articles should be released to the Income Tax Department. It cannot be said that the conclusion arrived at by the appellate court is legally unsustainable or perverse. So, no interference is called for under the revisional powers of this court.

6. In the result, all the revisions are dismissed, confirming the judgment in Criminal Appeal No. 126 of 1996. Direction is issued to the Income Tax Department to complete the enquiry/investigation and the assessment within four months from the date of receipt of the seized articles from the court and pass appropriate orders regarding the gold biscuits and the currency.