

(1972) 04 MAD CK 0038

In the Madras High Court

Case No : Criminal Revision Case No. 1608 of 1970, Criminal Revision Petition No. 1597 of 1970 and Criminal M.P. No. 3957 of 1970

In Re: Mohanlal

Date of Decision : 07-04-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 439, 517, 523, 561A
Income Tax Act, 1961 — Section 132

Citation : (1973) 87 ITR 253

Hon'ble Judges : Somasundaram, J

Bench : Single Bench

Advocate : app, C.K. Venkatanarasimhan, K. Ramaswami, for C. Jose Ukkur and M.V. Kuriakku, for the Appellant;

Judgement

Somasundaram, J.—On the 19th of November, 1970, the inspector of police attached to the P.I.B., C.I.D., Madras, stopped the bus No. MDJ. 4300 near Guindy and arrested one A. K. Ramu on suspicion u/s 54 of the Criminal Procedure Code. He seized from him Rs. 1,12,000 (currency notes). Ramu, who was sent to court, was remanded to custody. Later, he was released on bail by the court on November 21, 1970. The amount seized was not sent to court. But, on the same day, it was taken away from the police station by the Assistant Director of Inspections (income tax Intelligence), under the authority of a warrant issued by the Commissioner of Income Tax u/s 132 of the Income Tax Act, 1961. Mohanlal, the present petitioner, filed an application before the Chief Presidency Magistrate for the return of this amount. Observing that the matter does not fall within the purview of Section 523 of the Criminal Procedure Code, the learned Magistrate dismissed his application. The correctness of this order is now canvassed in this revision.

2. u/s 523 of the Criminal Procedure Code, when such a seizure is done by a police officer, he should forthwith report the matter to the Magistrate, and the latter should make such orders as he thinks fit respecting the disposal of such property, or the delivery of the property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and

production of such property. Ramu was arrested by the inspector with the amount on suspicion. He was sent for remand to court. The currency notes were not sent, but they were retained in the police station. Those notes were taken away from the station by the Assistant Director of Inspections under the authority of a warrant issued by the Commissioner of Income Tax u/s 132 of the Income Tax Act. Later, the Commissioner had issued a notice to the petitioner u/s 132(5) read with Section 132(7) of the Income Tax Act. The petitioner participated in this enquiry and the Commissioner has passed an order directing the return of Rs. 44,240 to the petitioner. The balance of the amount is now with him awaiting disposal as provided for in Section 132A of the Income Tax Act. The Income Tax Officers have thus seized the amount under the authority conferred on them by the statute. They have powers to deal with the seizures and deposits under the provisions of that Act. The proceedings before the Income Tax authorities are not criminal proceedings and the Income Tax authority is not a court : Balwant Singh and Another Vs. L.C. Bharupal, Income Tax Officer, New Delhi and Another, . As pointed out by their Lordships of the Supreme Court in State of West Bengal Vs. S.N. Basak, , this statutory power cannot be interfered with by the exercise of powers u/s 439 or under the inherent powers of the court u/s 561A of the Criminal Procedure Code, when there was no case pending at the time excepting that the person against whom the investigation has started had appeared before the court, had surrendered and had been admitted to bail. This was a case which related to the powers of interference with the statutory right of investigation conferred upon the police u/s 156 of the Criminal Procedure Code. In AIR 1945 18 (Privy Council) their Lordships of the Privy Council observed as below :

" The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved u/s 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In the case of a cognizable offence, the court's functions begin when a charge is preferred before it and not until then, and, therefore, the High Court can interfere u/s 561A only when a charge has been preferred and not before."

3. Granting that the inspector or the Income Tax authorities exceeded their jurisdiction, one in seizing this amount and the other in handing over the same, even then, whatever remedies the petitioner might have, the remedy will not be u/s 561A of the Criminal Procedure Code.

4. There are two kinds of properties that are dealt with under the Criminal Procedure Code, firstly, those that are seized by the police and produced before the court during enquiry or trial, and, secondly, those which are seized by the police and not produced during the enquiry or trial. The police are empowered to seize the properties during the course of the investigation. Section 523 enjoins a

duty on them to report the matter to the Magistrate. If the property is produced before the court, the court is empowered to pass an order in respect of it u/s 561A or u/s 517 of the Criminal Procedure Code. But, if the property is not produced before the court, but remains with the police, then, as pointed out in *Basava Kom Dvamangouda Patil v. State of Mysore* [1970] M.L.J. (Cri.) 804, u/s 523 of the Criminal Procedure Code, power is given to the court to make such order as it thinks fit respecting the disposal of such property. In any case, the property must be available. Even assuming that due to the negligence of the police officers, the property was stolen and it was not detected, so long as the property is not available, the Magistrate cannot make an order u/s 517 of the Criminal Procedure Code, nor could any direction be given for the return of the value thereof by virtue of the powers u/s 561A of the Criminal Procedure Code.

5. Here, in this case, the property is not available with the police. Under the authority of a warrant issued by the Commissioner of Income Tax, the officers of that department have taken custody of this amount from the police station. Proceedings are now pending before the Commissioner of Income Tax. These proceedings are not criminal proceedings. No case is now pending before any court. The statutory powers conferred on the Income Tax authorities to deal with the seizure cannot be interfered with by the exercise of the powers u/s 439 or under the inherent powers of the court u/s 561A of the Criminal Procedure Code. The petitioner in this case prays for an order directing the Commissioner of Income Tax to return the amount seized to him. For the reasons given above, no such direction can be given.

6. The revision fails and the same is dismissed.