(1975) 12 SC CK 0056

In the Supreme Court Of India

Case No : Civil Appeal No. 999 Of 1975

J.R. Malhotra and Another — APPELLANT

Vs

The Additional Sessions Judge, Jullundur and Others — RESPONDENT

Date of Decision : 11-12-1975

Acts Referred:

Citation : AIR 1976 SC 219 : (1976) 5 CTR 102 : (1976) 1 SCC 430 : (1976) SCC(Cri) 48 : (1976) 2 SCR 993

Hon'ble Judges : A. N. Ray, C.J;R. S. Sarkaria, J;P. N. Shingal, J;M. Hameedullah Beg, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Ray. C. J-This appeal is by special leave from the order dated 6th May, 1975 of the High Court of Punjab and Hariyana dismissing in limine the writ petition of the appellant.

2. The appellant filed a writ petition in the High Court challenging the order dated 4th January, 1975 of the Additional Sessions Judge, Jullundur who allowed the revision petition of the respondent Romesh Chander and dismissed the petition of the appellant.

3. The facts leading to the order are these:On 6th August, 1971 the respondent Romesh Chander was travelling in a car. His car was intercepted by the police. A sum of ` 1,61,411/- was found in a bag in his hands. The respondent Romesh Chander was taken to the police station. A criminal case was registered against him under Sections 411, 413 and 414 of the Indian Penal Code and under Sections 4, 5, 6 and 8 of the Foreign Exchange Act, 1947. The Commissioner of Income-tax issued a warrant of authorisation empowering certain officers under Section 132 of the Income-tax Act to conduct a search and seizure. Pursuant to that authorisation the authorised officer seized the sum, of ` 1,61,411/- and certain books and documents. The business premises of the respondent Romesh Chander and the other respondents who were his partners were searched and

certain documents and books were seized.

4. The respondent Romesh Chander by a writ petition challenged the warrant of authorisation. The High Court of Punjab and Haryana on 25th May, 1971 held the search to be invalid and directed the Revenue to return the money and the books. On appeal the High Court on 22nd November, 1972 accepted in part the appeal of the Revenue and held that the amount and the books and documents be returned by the Revenue to the Station House Officer, Police Station. Kartarpur who was directed to proceed in accordance with law.

5. The respondent Romesh Chander filed an application on 12th March, 1973 in the Court of the Judicial Magistrate, Jullundur and alleged that the police had not filed any challan against the respondent Romesh Chander for a long time and prayed for an order that the Station House Officer, Kartarpur be directed to get the money from the Income-tax Authorities and comply with the orders of the High Court.

6. The Revenue Authorities filed an application under Section 523 of the Code of Criminal Procedure, on 25th March, 1973 before the Judicial Magistrate, Jullundur and prayed that orders might be passed directing that the sum of Rs.1,61,411/- be retained by the Income-tax Department in partial satisfaction of their outstanding demand against the respondent Romesh Chander, and the papers of the Respondent Romesh Chander be also retained by the Revenue Authorities for completion of assessment proceedings against the respondent Romesh Chander.

7. In the aforesaid application of the Revenue Authorities before the Judicial Magistrate, Jullundur it was alleged that a regular assessment order had been passed on 26th June, 1972 against the respondent Romesh Chander and the demand of the Revenue Authorities against the respondent Romesh Chander was Rupees 7,90,293/-. The Revenue further alleged that the respondent Romesh Chander was given 35 days notice to pay the amount and because he did not pay the amount demanded, the sum of ` 1,61,411/- was adjusted on 5th October, 1972, towards the outstanding demand. It also appeared in the aforesaid application of the Revenue before the judicial Magistrate, Jullundur that the criminal case registered against the respondent Romesh Chander had bean "filed as untraced" by the order of the Court dated 25th January, 1973.

8. The Judicial Magistrate on 24th Income-tax authorities to return the amount in dispute the books and other documents to the Station House Officer, police Station, Kartarpur.

9. The order of the Judicial Magistrate was affirmed by the Additional Session Judge, Jullunder in revision on 5th May, 1973.

10. The order of the Judicial Magistrate and the order of the Additional Session Judge, Jullundur were challenged by the Revenue in Cri. Revn No. 43o of 1973 in the High Court of Punjab and Haryana. On 26th June, 1974 the High Court set aside the orders and remanded the matter to the Judicial Magistrate. Jullundur

for determining whether the amount in dispute could be adjusted in law against the outstanding tax dues from the respondent Romesh Chander and further whether the adjustment made by the Commissioner of Income-tax on 5th October, 1972 was valid and justifiable.

11. Meanwhile the respondent Romesh chander filed an application under Section 146 of the Income-tax Act before the Income-tax Officer against the order of assessment. The respondent Romessh Chander also filed an appeal against the assessment orders before the Appellate Assistant Commissioner on 3rd August 1972. The application of the respondent Romesh Chander under Sec.146 of the Income-tax Act was rejected by the Income-tax Officer on 2nd August 1973. The respondent Romesh Chander filed an appeal against the rejection of the petition on 27th August, 1973. On 17th September, 1973 the appeals filed by the respondent Romesh Charder against the orders of the Revenue in regard to assessment of income-tax of the respondent were heard. The Income-tax Officer on 18th September, 1973 asked for adjournment to explain the departmental case. The Appellate Assistant Commissioner granted adjournment and informed the respondent Romesh Chander by letter dated 22nd September, 1973 that step had been taken by the department to stop all recovery proceeding against the respondent Romesh Chander and that the appeal would be heard later on.

12. On 22nd September, 1973 the respondent Romesh Chander filed an application before the Appellate Assistant Commissioner that the operation of the assessment order during the pendency of the appeals might be stayed and the demand of the tax be held in abeyance. The Appellate Assistant Commissioner by letter dated 27th September, 1973 informed the respondent Romesh Chander that recovery of ` 7,90,293 for the assessment year 1972-73 had been stayed by order of the Revenue Authorities dated 18th September, 1973.

13. It is this background that the Judicial Magistrate, Jullundur on 3rd June, 1974 on revision petitions filed by the appellant and the respondent Romesh Chander held that the amount of rupees I,61,411 be retained by the income-tax department in partial satisfaction of their outstanding demand against the respondent Romesh Chander. The Judicial Magistrate also held that in view of the invalidity of the order made under Section 132 (5) of the Income-tax Act the adjustment of the amount in dispute the Commissioner of Income-tax on 5th October, 1972 was not valid. The Judicial Magistrate further held that the business papers of the respondent Romesh Chander might be retained by the Income-tax Department for the statutory period for completing pending assessment proceedings.

14. The respondent Romesh Chander went up in revision against the order of the Judicial Magistrate. The Revenue also went up in revision. By order dated 4th January, 1975 the Additional sessions Judge, Jullundur allowed the revision petition of the respondent Romesh Chander and dismissed the petition of the appellant Revenue. The Additional Sessions Judge ,Jullundur directed the Income-tax Authorities to return the amount of ` 1,61,411 and the books to the

respondent Romesh Chander.

15. The appellant Revenue filed a writ petition in the High Court challenging the order dated 4th January,1975 of the Additional Sessions Judge, Jullunddur.

16. The High Court rightly rejected the writ petition at sight. The Additional Sessions Judge, Jullundur held that the criminal case against the respondent Romesh Chander was filed by an order of the Judicial Magistrate dated 25th January, 1973. The second finding of the Additional Sessions Judge is that the High Court by order dated .20th March, 1974 remanded the matter to the Court of the Judicial Magistrate to find out whether it was permissible in law to adjust the standing dues of the respondent Romesh Chander and the Judicial Magistrate held that adjustment was not justifiable under the relevant statutory provision. The Judicial Magistrate, however, held that the respondent Romesh Chander was not entitled to the amount and that the income- tax department could retain the amount in partial satisfaction of their outstanding demand. Before the Additional Sessions Judge, Jullunder the Revenue Contended that the assessment was valid under Section 226 (4) of the In- come-tax Act independently and under Section 132 of the Income-tax Act. The Additional Sessions Judge, Jullundur referred to the appeals filed by the respondent Romesh Chander against the assessment proceedings and observed that the appeal had been heard on 17th September, 1973 and on the following day, viz., 18th September, 1973 the matter was adjourned at the instance of the Revenue. The Additional Sessions Judge Jullundur further said that the search and seizure were illegal and therefore, the assessee was entitled to the return of all documents and the amount in question.

17. The orders of the Appellate Assistant commissioner dated 17th October, 1975 show that there is no order of assessment and there is no income- tax demand

18. There is no criminal case against the respondent Chander. The order of the High Court dated 25th May, 1972 directed the return of the sum of ` 1,61,411 and the documents to the respondent Romesh Chander. The order of the learned Single Judge was affirmed by the High Court on 22nd November, 1972. No appeal was preferred against the order of the High Court. The order of the High Court was that the amount of ` 1,61,411 and the books and other documents were to be returned to the Station House Officer. After the criminal case had been filed the authorities have no right to keep the money, under any provision of law. There is no question of adjustment of the sum of Rs.1,61,411 by reason of the fact that there is no valid order of assessment and there is no demand for income-tax.

19. The Revenue cannot indirectly keep the money on the plea that there will be a demand, and therefore, the money should be allowed to be kept with the Revenue. There must be authority of law under which the money can be kept. There is no legal order to keep the money. The appeal, therefore, fails and is dismissed with costs.

