(2012) 11 MAD CK 0043

In the Madras High Court

Case No : Writ Petition (MD) No. 10536 of 2007 and M.P. (MD) No. 1 of 2007

K. Viswanathan APPELLANT

Vs

Superintendent of Police, Pudukkottai and Another RESPONDENT

Date of Decision : 22-11-2012

Acts Referred:

Citation : (2013) 28 MLJ 422

Hon'ble Judges : K. Ravichandrabaabu, J

Bench : Single Bench

Advocate : K. Baalasundharam, for the Appellant; S. Bharathi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K. Ravichandrabaabu, J.—This writ petition has been filed challenging the proceedings of the first respondent, dated 28.11.2007, whereby,

a deduction of Rs. 1,500/- per month from the petitioner''s salary for a period of 17 months was sought to be made for recovery of interest amount

on the arrears of amount payable to the Excise Department by the petitioner''s deceased father in respect of a claim relating to the period 1972-73.

It appears that the petitioner''s father was running a Toddy shop during the excise year 1972-1973 and the petitioner is one of his son. After

running the said Toddy shop, the petitioner''s father died long back and there was no action initiated whatsoever to recover the so called arrears

amount either during the life time of the petitioner''s father or even immediately after his death. All of a sudden, during the year 2006, the second

respondent issued a notice to the first respondent to recover the interest amount payable by the petitioner''s father from the salary of the petitioner, who is working as Sub-Inspector of Police. It is also admitted by the respondents that the principal sum of Rs. 8,608/- was already paid by the

other son and only interest amount to the tune of Rs. 27,451/- alone is liable to be paid, which is sought to be recovered from the salary of the

petitioner, based on the request made by the second respondent to the first respondent through his communication, dated 14.11.2007.

2. A perusal of the said impugned order shows that there was absolutely no notice issued to the petitioner before passing the said order. Thus, it is

needless to say, it violates the principles of natural justice. No doubt, there was a notice issued by the second respondent to all the legal-heirs on

6.11.2007, calling upon them to pay the interest amount. But, that would not absolve the liability of the first respondent to pass the order

unilaterally without affording opportunity of hearing to the petitioner. Moreover, as it is seen that the arrears sought to be recovered is in respect of

the excise years 1972-1973, nothing is placed before this Court to justify such demand made after such a long lapse of time. Therefore, as the

impugned proceedings was made without affording an opportunity of hearing to the petitioner and also the very recovery itself was sought to be

made beyond a period of more than 30 years, I doubt as to whether such demand is justifiable even by looking from the point of limitation. At any

event, even assuming that they are entitled to recover, the authorities have to take action against the estate of the deceased only and not against the

salary of the petitioner, which is his personal property. Therefore, in my considered view, the impugned proceedings is not sustainable in the eye of

law and consequently, the same is set aside. Accordingly, the Writ Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

No costs.

