(1972) 10 MAD CK 0025

In the Madras High Court

Case No : Criminal Revision Case No. 1088 of 1970, Criminal Revision Petition No. 1084 of 1970 and Criminal Miscellaneous Petition No''s. 2702 of 1970, 613 of 1972 and 989 of 1972

Mohammed Kunhi APPELLANT

Vs

Mohammed Koya and Others RESPONDENT

Date of Decision : 13-10-1972

Acts Referred:
Income Tax Act, 1961 — Section 132, 132(1)

Citation : (1973) 91 ITR 301

Hon'ble Judges : Maharajan, J

Bench : Single Bench

Advocate : G. Gopalaswami, for A. Raghunathan, for the Appellant; C.K. Venkata Narasimhan, Special Public Prosecutor, Assistant Public Prosecutor and K. Alagumalai, for the Respondent

Judgement

Maharajan, J.—The question that arises for consideration in this criminal revision is, who is entitled u/s 523, Criminal Procedure Code, to the amount of cash seized from one Mohammed Koya on January 29, 1970? As Mohammed Koya arrived at the Madras Central Station at about 4.30 p.m. on that day by West Coast Express, the Inspector, Railway Police, searched him on suspicion and found on his person currency notes of the value of rupees one lakh. Suspecting him of commission of an offence cognizable by the police, the Inspector arrested him and produced him before the Second Presidency Magistrate, Madras, along with the amount seized. Mohammed Koya was remanded to custody and released on bail subsequently. The Inspector, Railway Police, Madras Central, found on investigation that no cognizable offence has been made out against Mohammed Koya, and dropped the proceedings after intimating the Income Tax department. The Income Tax department found, on investigation, that the amount of rupees one lakh represented the income of Mohammed Koya which he had failed to disclose to the Income Tax department. The Commissioner of Income Tax, Madras, Kerala and Bombay, authorised the V-income tax Officer, Madras, to take possession of the amount u/s 132 of the Income Tax Act, and in pursuance of this authorisation, the Income Tax Officer filed a petition before the Second Presidency Magistrate claiming to be the person entitled to the possession of the amount in court deposit and requesting the court to hand over the amount to him. On the other hand, one Mohammed Kunhi filed a petition before the court below praying for the return of the amount to him. Mohammed Koya supported the application of Mohammed Kunhi on the ground that the amount seized by the police from him did not represent the monies belonging to him, and that the monies really belonged to Mohammed Kunhi, who as the managing partner of M/s. P. Mamunchi C. Ebrahim & Company, Nileshwar, Cannanore, had entrusted him with the amount on behalf of Kallatre Textorium, Mangalore, for being paid to the Southern India Trading Corporation Ltd., Bombay. In other words, the case of Mohammed Koya was that he was merely a carrier entrusted with the task of carrying the amount of rupees one lakh from Mangalore to Bombay for the purpose of payment of the same to the Southern India Trading Corporation on behalf of Kallatre Textorium, Mangalore. If really any monies were payable by Kallatre Textorium to the Southern India Trading Corporation, one would expect them to have sent it by means of a crossed cheque or a demand draft. The carriage of this huge amount by Mohammed Koya over several hundreds of miles was attended with evident risks. That Mohammed Kunhi should have resorted to this hazardous method of transporting the money has naturally enough aroused the suspicion of the Income Tax department. Further, Mohammed Koya claims to be only a hawker doing business in Bombay Railway Station platform, and the Income Tax department is entitled to wonder if Mohammed Kunhi could have reposed confidence in this platform pedlar and entrusted him with rupees one lakh as a carrier. If in these circumstances and in consequence of information, which he says he had in his possession, the Commissioner of Income Tax authorised the Income Tax Officer to seize the amount, the authorisation cannot be attacked in this court on the ground that there is no basis for his reason to believe that the money represented either wholly or partly income which has not been disclosed by Mohammed Koya for the purposes of the Indian Income Tax Act. In fact, the Income Tax department, has, after notice to Mohammed Koya, assessed him to an Income Tax of Rs. 62,375 u/s 147 read with Section 143(3) of the Income Tax Act on the basis that the amount of rupees one lakh represents his undisclosed income. It has also imposed a penalty of Rs. 50,000 u/s 273(b) of the Act on the ground that the assessee had without reasonable cause failed to disclose his income. The orders of the Income Tax Officer are under appeal, and it is open to the aggrieved party to canvass the correctness of the orders before the heirarchy of Tribunals constituted under Chapter XX of the Income Tax Act. If, ultimately, the aggrieved party succeeds, he will be entitled not only to the refund of the entire amount, but also to interest at 9 per cent, per annum on the amount in case of delayed refund (vide Section 243 of the Income Tax Act). It is true that the powers of seizure given to the Income Tax Officer might lead to harassment of innocent citizens if unreasonably exercised. But, Parliament in its wisdom has conferred such powers after taking care to see that such powers are not exercised unless authorised by the Director of Inspection or the Commissioner of Income Tax, and that too, if either of them has reason to believe that the article or thing to be seized represents either wholly or partly income or property which has not been disclosed for the purposes of the Indian Income Tax Act.

2. Learned counsel for Mohammed Kunhi, the revision petitioner, advanced three grounds upon which he attacked the correctness of the order of the court below dismissing the petition of Mohammed Kunhi and directing payment of the amount in court deposit to the Income Tax department: The first ground is that inasmuch as the Income Tax Officer has not seized the amount in court deposit u/s 132 of the Income Tax Act, he cannot be regarded as a person entitled to the possession of the amount within the meaning of Section 523, Criminal Procedure Code. I am unable to agree. If the Income Tax Officer is clothed by the statute with the power to seize the amount in court deposit, he would certainly be a person entitled to possession of the amount, because seizure is the process by which possession is procured, and it would be idle to draw a distinction between a person entitled to possession and a person entitled to seize. If the court is convinced that the Income Tax Officer has the power u/s 132 of the Income Tax Act to seize the money in court deposit, it would be a wholly needless and empty ritual to ask him to wait till after the court has refunded the amount to Mohammed Koya or Mohammed Kunhi and then to allow the Income Tax Officer to seize the amount from either of them the moment it is handed over to them. In fact, it has been held by the different High Courts in India that if a property which an officer is entitled under the law to seize is in custody of a court, what the officer has to do is to move the court for handing over possession of the property for any lawful purpose, and it is the duty of the court to hand it over to the officer if it does not require it for some lawful purpose : vide Bavajee Fakkir Mohammed v. State of Kerala, AIR 1967 Ker. 282, Krishnan Sukumaran Vs. Enforcement Officer, Cochin, , Deputy Superintendent, Customs, Preventive, West Bengal Vs. Sitaram Navsaria and Another, and Enforcement Officer v. Sub-Inspector of Police, [1971] K.L.J. 2.

3. The second ground of attack is that the condition precedent for the seizure is the reasonable belief on the part of the Commissioner that the money sought to be seized represents either wholly or partly income which has not been disclosed for the purposes of the Indian Income Tax Act, and that such a condition precedent has not been fulfilled in this case. I am unable to accept this contention either. I have already referred to the peculiar circumstances under which Mohammed Koya was found in possession of the amount of rupees one lakh. It is the case of the Income Tax authorities that they have scrutinised the accounts of Mohammed Kunhi as well as the accounts of Kallatre Textorium, Mangalore, and come to the conclusion that the theory of entrustment is false and has been conceived belatedly and that the money really belongs to Mohammed Koya and represents his undisclosed income. I am not concerned with the question whether the finding of the Income Tax assessment authorities

is correct or justified. But there is enough material to show that the Commissioner at the time he authorised the Income Tax Officer to seize the amount had reason to believe that the amount represented in whole or in part undisclosed income of Mohammed Koya.

4. It is lastly contended that the Income Tax Officer has no power to seize the amount in court deposit, because he has not found the money as a result of such search as has been contemplated u/s 132 of the Income Tax Act. The relevant provisions of Section 132 of the Aet read ;

" Where .... the Commissioner, in consequence of information in his possession, has reason to believe that--...

(c) any person is in possession of any money, bullion jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been disclosed for the purposes of the Indian Income Tax Act....

he may authorise any .... Income Tax Officer .... to-

(i) enter and search any building or place where he nas reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(ii) break open the "lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by Clause (i) where the keys thereof are not available;

(Hi) seize any such books of account, other documents, money, bullion, jewellery or other Valuable article or thing found as a result of such search;...."

5. The argument is that as the discovery of money in court deposit is not claimed to be the result of search of any building or place referred to in Clause (iii) of Sub-section (1) of Section 132 of the Act, the question of applying the provisions of Clause (iii) of Section 132(1) cannot arise. This argument, it is true, has found favour with two learned judges, one of the Orissa High Court (K. Ahmad C.J.) in Union of India (UOI) Vs. Hadibandhu Das and Others, (Appendix) and the other of the Kerala High Court (K. Baskaran J.) in K. Choyi, Income Tax Officer, Assessment-IV Vs. Syed Abdulla Bafakki Thangal and Another, . With great respect to the two learned judges, I find myself unable to frustrate the legislative intent by putting too narrow a construction upon the language of Section 132 of the Income Tax Act, The primary power conferred by Parliament upon the Income Tax Officer is the power of seizure. The power to enter and search any building or break open the lock of any door, box, locker, safe, almirah or other receptacle is only an incidental power, the exercise of which will be only a means to the primary end, viz., the seizure. To say that the power of seizure is not exercisable unless it is preceded by the search of a building or breaking open of locks is to confuse the end with the means and to caricature the intention of the legislature, which, in order to facilitate the power of seizure, has provided also

for the ancillary power of invading the privacy of people, by entering and searching their buildings and breaking open the receptacles where the thing to be seized might remain concealed. It would indeed be a captious and pernicious play on words to tell the Income Tax Officer, " You have, no doubt, the power of seizure; but you cannot exercise it unless you go though the physical motions of entering a building, searching it, breaking open the locks therein and then finding the thing you want to seize as a result of your searching efforts." It is conceivable that the thing to be seized is lying at the threshold of the building and without entering the building and searching and breaking open the locks, the Income Tax Officer may seize the thing straightaway. To say that such a seizure is illegal, because it is not the result of such a search as is contemplated in Clauses (i) and (ii) of Sub-section (1) of Section 132 of the Act is to indulge in a self-defeating piece of sophistry. After all, what is the meaning of the word " search " ? The Concise Oxford Dictionary says that it means " look for " or " seek out " What the Income Tax Officer has done in this case is to enter the building of the court of the Second Presidency Magistrate and to look for or seek out the amount kept in court custody and ask that it may be paid over to him, because it represents wholly or partly undisclosed income of Mohammed Koya. Be it noted that the section does not say that the Income Tax Officer can enter and search only the building of the person who had failed to disclose his income for the purposes of the Indian Income Tax Act. What the section says is that where any person is in possession of any money which represents wholly or partly undisclosed income, the Income Tax Officer can enter and search any building or place where he has reason to suspect that such money is kept. This means that seizure can be effected even from the custody of a person other than the person who has failed to disclose his income and from a building belonging to any person other than the defaulter. Putting even the narrowest construction upon Clause (iii) of Sub-section (1) of Section 132 of the Act, I hold that the Income Tax Officer has found the money in court deposit only as a result of such search as has been contemplated in the section. The resulting position is that the order of the court below directing refund of the entire amount in court deposit to the V-income tax Officer, Madras, is correct, and is hereby upheld. The criminal revision case of Mohammed Kunhi is dismissed.

6. Interim stay granted in Crl. M.P. No. 2702 of 1970 is vacated.

7. No orders on Crl. M. Ps. Nos. 613/72 and 989/72 are necessary in view of the order passed in the main criminal revision case.

