

(1995) 07 MP CK 0036

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1689 of 1991

Parasnath

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-07-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102, 103
Income Tax Act, 1961 — Section 120, 132, 132(1), 132(5), 132A

Citation : (1997) 225 ITR 365

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : V. Bhargava, for the Appellant; R.D. Jain, for the Respondent

Judgement

T.S. Doabia, J.—This order shall dispose of sixteen writ petitions, preferred under Article 226 of the Constitution of India.

2. These petitions have arisen under the following circumstances :

The Income Tax authorities issued warrant of authorisation under Sections 132 and 132A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Cash and ornaments were required to be delivered to the officer issuing the warrant. These warrants were issued on the happening of different events in different petitions. Twelve petitions arise out of one happening. Two petitions pertain to another event, whereas other two petitions deal with different separate and distinct facts.

Facts in twelve petitions are as under :

3. On June 9, 1990, one Nirbay Kumar was found at the railway station Gwalior. He was travelling by the Kerala Express. This train left the town of Salem and was on its way to Delhi. The Station Incharge of the Government Railway Police (Broad Gauge), Gwalior, found that the aforementioned Nirbay Kumar was in possession of silver ornaments weighing 604 Kgs. A case was registered under Sections 102 and 103 of the Code of Criminal Procedure, 1973 (hereinafter

referred to as the "Code"). Simultaneously, the police sent information to the Income Tax authorities. After two days, a warrant of authorisation was issued u/s 132A of the Act. This directed the Station Incharge of the Government Railway Police (Broad Gauge), Gwalior, to make available the silver ornaments to the officer who had signed the warrant of authorisation. As the Second Additional Chief Judicial Magistrate, Gwalior, had taken cognizance of the case under Sections 102 and 103 of the Code, an application was also moved before the aforementioned court. A prayer was made that the aforementioned silver ornaments be given to the Income Tax authorities. This prayer was declined by the aforementioned Judicial Magistrate. An order to this effect was passed on July 20, 1990. It is worthwhile to mention here that in the meantime, ten persons came forward and claimed ownership in the silver ornaments. Their case was that Nirbay Kumar was merely a carrier and the silver ornaments in fact belonged to them. The Judicial Magistrate referred to above taking note of this contention of the persons claiming ownership directed that the silver ornaments be handed over to the persons laying claim of ownership on their executing a sapurdiginama. It is against this order, the Union of India preferred ten writ petitions under Article 226 of the Constitution of India. These are as under :

1. 1705 of 1990 Union of India v. State of M. P 2. 1711 of 1990 Union of India v. State of M. P 3. 1712 of 1990 Union of India v. State of M. P 4. 1713 of 1990. Union of India v. State of M. P 5. 1714 of 1990 Union of India v. State of M. P 6. 1715 of 1990 Union of India v. State of M. P 1. 1716 of 1990 Union of India v. State of M. P 8. 1717 of 1990 Union of India v. State of M. P 9. 1718 of 1990 Union of India v. State of M. P 10. 1719 of 1990 Union of India v. State of M.

4. When this matter came up before the Motion Bench on August 10, 1990, an order was passed to the effect that the silver ornaments shall remain deposited at the Government Treasury at Gwalior. Since then, the silver ornaments seized by the police have so remained in the custody of the Government Treasury referred to above.

5. The persons claiming ownership of the ornaments have challenged the warrant of authorisation. They have filed two writ petitions in this regard. These are :

1. 1984 of 1990--Murali Lal v. Union of India 2. 1853 of 1991-Grish. Chander v. Union of India

6. Another factor which requires to be taken note of is that the persons who claimed ownership are assesseees at Mathura in the State of Uttar Pradesh. Proceedings have been taken for finalisation of assessment. The order of assessment makes reference to the silver ornaments as well. The order of assessment passed by the Assessing Officer, Ward No. 1, Mathura, has been placed on the record of this petition on July 17, 1995. The relevant portion reads as under :

" During the course of the assessment proceedings it was stated that the said silver ornaments were seized by G. R. Police authorities on June 9, 1990, while

the same were in transit from Salem to Mathura through Sri Nirbay Kumar, carrier of the assessee. Statement on oath of Sri Nirbay Kumar was recorded on December 30, 1991, as placed on record, in this regard. The same silver was released by the aforesaid authorities through C. J. M. Gwalior, on July 20, 1990, and the assessee has accounted for the said seized jewellery after release in his stock register on July 21, 1990, and the stock available on July 21, 1990, after taking into account the aforesaid silver jewellery was of 106.019 grams. However, it is stated that the aforesaid silver ornaments have again been deposited with the Gwalior Treasury on November 1, 1990, in compliance with the directions of higher courts. However, since the matter is still sub judice before the higher authorities, no finding is being given on the silver jewellery seized."

7. It is accordingly argued that there was no justification to issue the warrant of authorisation or to continue with the retention of these seized materials.

8. The second set pertains to two writ petitions. These bear Nos. 2155 of 1990 and 2063 of 1990. The brief facts out of which these petitions have arisen be noticed :

On August 20, 1990, a sum of Rs. 4,68,000 was seized by the police from the person of one Santosh Kumar Jain. At the same time, the person in possession was arrested and the Judicial Magistrate took cognizance of the matter. On the very date the police seized the money, a warrant of authorisation u/s 132A(1)(c) of the Act was issued in the name of Town Inspector, Indergunj, Gwalior. The police authorities did not comply with the warrant. Ultimately, it was found that no criminal offence was committed by the person in possession of the cash. This led to the filing of an application before the Judicial Magistrate for seeking custody of the amount on the part of the officer who had issued the warrant u/s 132A(1)(c) of the Act. The Judicial Magistrate was of the view that the Income Tax authorities were not entitled to the physical possession of the cash amount. This order was passed on September 4, 1990. This led to the filing of a writ petition by the Union of India. This bears No. 2155 of 1990. The second petition bears No. 2063 of 1990. This has been preferred by a firm of jewellers who are carrying on business in the name and style of firm of Jain Jewellers, Sarafa Bazar, Gwalior. This firm is claiming ownership in the money seized from Santosh Kumar Jain. An order was passed by the Motion Bench in Writ Petition No. 2063 of 1990 on September 11, 1990, that the money should remain with the Government Treasury, Gwalior.

9. Another factor which is required to be taken note of is that with regard to this very money, proceedings were taken for regular assessment and the regular assessment orders have since been passed. The Income Tax Officer passing the assessment order has come to the conclusion that the source of money has been properly disclosed. It is seen that the assessments of all the partners who are partners of the firm in Writ Petition No. 2063 of 1990 have been finalised. The relevant assessment order reads as under :

" The most important point is the source of acquisition of the seized money. The partners were required to explain the source of money seized by police from them. In this regard it is stated that it was the firm's money in which they are partners. They have withdrawn Rs. 4,68,000 on August 16, 1990, from the firm's books. In support copies of the cash book from the beginning of the day, i.e., August 1, 1990, to August 19, 1990. It is stated that in the firm's books there was sufficient opening balance of cash amounting to Rs. 4,72,010 on August 16, 1990, on the day when they withdrew the money. It is further stated that the money was withdrawn with the intention to purchase readymade silver ornaments. They went to Nagpur but could not settle the purchases as they were new in this line of trade. Therefore, they returned back to Gwalior. Police arrested and seized the money.

On going through the cash book it is noted that all the three partners have contributed their share capital amounting to Rs. 1,50,000 each. This money has been deposited on August, 10, 11, 12, 13 and 15 of 1990, Rs. 30,000 by each partner daily. They were required to explain the source of money deposited in the firm. They have filed their individual cash book pages showing the cash position. On going through the individual's cash it is seen that there are various deposits in various names. On query to this it is submitted that it is not loan deposits but it is repay back of money advanced to various peoples. In support the list of persons showing the amount and the date when the money was advanced have been identified. It is also stated that they are doing their separate business of brokerage of silver, interest income. Shri Santosh Kumar has also stated in his statement placed on record that he has a masala mixer mill. It is also stated by them that they are already Income Tax payers from last many years and sources of income have been declared in their individual returns. In support copies of assessment orders have also been filed. On going through the submission made by the assessee and supporting materials filed in connection with the partners individual sources, share capital deposited in firm case apparently satisfactory.

Scrutiny of balance-sheet reveals that there are three loan creditors. On query it is gathered that they are brothers of partners. They are doing their separate business. In this regard confirmations have been filed. To ascertain the genuineness all the creditors, namely, Naginchand, Devendra Kumar and Arun Kumar, were called for. Their statements have been recorded and placed on record. After verification of these persons, worthiness of paying capacity found satisfactory."

10. In spite of the fact that the Income Tax Officer has passed the final order of assessment, the money has not been returned to the partners of petitioner firm, may be because of an order having been passed by this court.

The facts in Writ Petition No. 1689 of 1991 are as under :

11. The petitioner is a registered firm. A search was conducted in terms of

Section 132(1) of the Act. Cash and some ornaments were taken possession of. A panchanama was prepared. Copies of these panchnamas have been placed on record as annexure P-1/A to P-1B. The search was made in December, 1988. The present writ petition was filed challenging the proceedings taken u/s 132(1) of the Act by preferring this petition on October 9, 1991. Assessment has since been completed by the assessing authority.

12. The facts in the writ petition which bears No. 1475 of 1990 are as under :

The petitioner is said to be a businessman at Sagar. According to him, he was travelling by the Madhya Pradesh State Road Transport Corporation bus. He was said to be in possession of a suitcase. This contained cash amounting to Rs. 2,76,130. According to him, he got down out of the bus at a way-side hotel between Lalitpur-Taibhat for taking some refreshments. He felt sleepy and slept for a while. When he got up, the bus had left along with the suitcase. He pursued the bus but by the time the bus reached Gwalior, the suitcase was handed over to the police station at Padav. The police authorities registered a case. The matter was taken up before the Court of Chief Judicial Magistrate, Gwalior. The petitioner made a prayer for the release of the suitcase. The Income Tax Department filed objections. A plea was taken that a warrant of authorisation has been issued u/s 132A(1)(c) of the Act. A prayer was accordingly made that the money in question be not handed over to the petitioner. The Chief Judicial Magistrate passed an order to the effect that the petitioner is not entitled to the amount. This led to the filing of the present petition. The warrant of authorisation has been challenged. A plea has also been taken that the part of money which was seized belonged to one Pankaj Kumar. An explanation has also been given that part of the money was brought from Devendra Kumar of Bhandar.

13. In all the cases, the jurisdiction of the officer who had issued the warrant of authorisation is being challenged on the ground that the officer who had issued the warrant had not applied his mind. According to the petitioners whose property is allegedly involved vis-a-vis the warrant submitted that there is nothing on the record to indicate that there was satisfaction on the part of the officer issuing the warrant which may fall within the scope of Sections 132(1)(c) and 132A(1)(c) of the Act. According to them, there is nothing on the record to indicate that the concerned officer had reason to believe that the property which was the subject-matter of the warrant of authorisation represents either wholly or partly income or property which has not been or would not have been disclosed for the purposes of the Indian Income Tax Act, 1922, or the Act.

14. In twelve petitions referred to in the para. 3 of the order above, the further plea which has been taken is that the officer who had issued the warrant had no jurisdiction to issue the same. It is contended that the officer who issued the warrant lacked territorial jurisdiction. According to counsel, Nirbay Kumar referred to above is not an assessee within the territorial limits of Bhopal. It is also stated that he is not the owner and the owners are assesseees at Mathura. It is accordingly argued that the officer who issued the warrant of authorisation

from Bhopal had no jurisdiction in this regard.

15. The further argument raised in the petitions referred to in para. 3 of this order is that an order of assessment has been passed by the Income Tax Officer, Ward No. 1, Mathura, on March 25, 1992. It is argued that in this situation there is no justification to proceed further in the matter and as per the order of the Addl. Chief Judicial Magistrate they are entitled to the return of the seized property. The same argument has been raised in Writ Petition No. 1853 of 1991. According to the petitioners, as the assessments of all the partners have since been completed, therefore, there is absolutely no necessity to continue with the retention of the property regarding which warrant of authorisation was issued.

16. According to counsel appearing for the Union of India, the Judicial Magistrate who took cognizance of the matter in the case of Nirbay Kumar had no jurisdiction to return the amount to the persons who were claiming ownership. It is the further case of the Union of India that the order under Sections 132(1)(c) or 132A(1)(c) was passed after there was due and proper satisfaction and an opinion was in fact formed in terms of Sections 132(1)(c) and 132A(1)(c) of the Act. It is pointed out that this satisfaction is reflected in the warrant which was so issued. With regard to territorial jurisdiction, the case is that as all the events took place at Gwalior, therefore, the concerned officer had jurisdiction. It is submitted that even if there is lack of jurisdiction this shall not be fatal to the legality of the warrant of authorisation. It is argued that if ultimately it is found that the person who is claiming the property is an assessee at some other place then the custody of the seized property would be handed over to or made available or put under the custody of the assessing authority which has the jurisdiction. The further stand taken is that there is no final order of assessment by any assessing authority and no reliance can be placed on the orders of assessment placed on the record. According to him, these are not final dues. It is pointed out that the assessing authority passing the order at Mathura has not pronounced upon as to the nature of the transaction on account of the fact that proceedings are pending in this " court.

17. Thus, the issues involved in these petitions are :

(i) Whether the officer issuing the warrant of authorisation had applied his mind and had reason to believe that circumstances existed for issuing the warrant.

(ii) Whether the officer who issued the warrant had the territorial jurisdiction and if there is lack of jurisdiction what would be its effect.

(iii) What is the effect of the order of assessment having been passed by concerned assessing authorities.

(iv) Whether the Judicial Magistrate could order the return of the goods on sapurdgi to persons claiming ownership ignoring the warrant of authorisation.

18. Before dealing with various contentions raised by both the sides, it would be apt to notice some of the statutory provisions. These are Section 120(1), (2) and

(3), Section 132(1)(c), (5) and (9A), Section 132A(1)(c) and 226(4) of the Act. These provisions read as under :

" 120. Jurisdiction of Income Tax authorities.--(1) Income Tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.

(2) The directions of the Board under Sub-section (1) may authorise any other Income Tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other Income Tax authorities who are subordinate to it.

(3) In issuing the directions or orders referred to in Sub-sections (1) and (2), the Board or other Income Tax authority authorised by it may have regard to any one or more of the following criteria, namely :--

- (a) territorial area ;
- (b) persons or classes of persons ;
- (c) incomes or classes of income ; and
- (d) cases or classes of cases.

132. Search and seizure.--(1) Where the Director-General or Director or the Chief Commissioner or Commissioner or any such Deputy Director or Deputy Commissioner as may be empowered in this behalf by the Board, 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, or would not be, disclosed for the purposes of the Indian Income Tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property).....

(5) Where any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in Sections 132A and 132B referred to as the assets) is seized under Sub-section (1) or Sub-section (1A), as a result of a search initiated or requisition made before the 1st day of July, 1995, the Income Tax Officer, after affording a reasonable opportunity to the person concerned of being heard and making such enquiry as may be prescribed, shall, within one hundred and twenty days of the seizure, make an order, with the previous approval of the Deputy Commissioner.-

(i) estimating the undisclosed income (including the income from the undisclosed property) in a summary manner to the best of his judgment on the basis of such

materials as are available with him ;

(ii) calculating the amount of tax on the income so estimated in accordance with the provisions of the Indian Income Tax Act, 1922 (11 of 1922), or this Act ;

(iia) determining the amount of interest payable and the amount of penalty imposable in accordance with the provisions of the Indian Income Tax Act, 1922 (11 of 1922), or this Act, as if the order had been the order of regular assessment ;

(iii) specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts specified in Clause (a) of Sub-section (1) of Section 230A in respect of which such person is in default or is deemed to be in default, and retain in his custody such assets or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in Clauses (ii), (iia) and (iii) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized :

Provided that if, after taking into account the materials available with him, the Income Tax Officer is of the view that it is not possible to ascertain to which particular previous year or years such income or any part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total income chargeable to tax at the rates in force in the financial year in which the assets were seized and may also determine the interest or penalty, if any, payable or imposable accordingly :

Provided further that where a person has paid or made satisfactory arrangements for payment of all amounts referred to in Clauses (ii), (iia) and (iii) or any part thereof, the Income Tax Officer may, with the previous approval of the Chief Commissioner or the Commissioner, release the assets or such part thereof as he may deem fit in the circumstances of the case. . . .

(9A) Where the authorised officer has no jurisdiction over the person referred to in Clause (a) or Clause (b) or Clause (c) of Sub-section (i), the books of account or other documents or assets seized under that sub-section shall be handed over by the authorised officer to the Income Tax Officer having jurisdiction over such person within a period of fifteen days of such seizure and thereupon the powers exercisable by the authorised officer under Sub-section (8) or Sub-section (9) shall be exercisable by such Income Tax Officer.

132A. Power to requisition books of account, etc.--(1) Where the Director-General or Director or the Chief Commissioner, or Commissioner, in consequence of information in his possession, has reason to believe that--.....

(c) any assets represent either wholly or partly income or property which has not been, or would not have been, disclosed for the purposes of the Indian Income Tax Act, 1922 (11 of 1922), or this Act by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force, then, the Director-General or

Director or the Chief Commissioner or Commissioner may authorise any Deputy Director, Deputy Commissioner, Assistant Director, Assistant Commissioner or Income Tax Officer [hereafter in this section and in Sub-section (2) of Section 278D referred to as the requisitioning officer] to require the officer or authority referred to in Clause (a) or Clause (b) or Clause (c), as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer."

"226. Other modes of recovery.--(1) Where no certificate has been drawn up u/s 222, the Assessing Officer may recover the tax by any one or more of the modes provided in this section.....

(4) The Assessing Officer or Tax Recovery Officer may apply to the court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax."

19. The salient facts be again recapitulated. In petitions referred to in paragraph 3, these are :

(i) that one Nirbay Kumar was found in possession of 304 kgs. of silver ornaments. This has happened on 9th of June, 1990. The police took notice of it and proceedings were initiated under Sections 102 and 103 of the Code ;

(ii) that the Income Tax authorities have issued warrant of authorisation u/s 132A(1)(c) of the Act ;

(iii)" that persons other than Nirbay Kumar are claiming ownership of the silver ornaments, and the Additional Chief Judicial Magistrate ordered the handing over of the silver ornaments to them ;

(iv) that on account of the order passed by this court, silver ornaments are lying in the Government Treasury at Gwalior.

(v) with regard to two writ petitions, referred to in paragraph 4, the factual position is also similar. In two matters, namely, W. P. No. 1689 of 1991 and W. P. No. 1475 of 1990 the Judicial Magistrate refused to give custody of the seized goods to the person claiming it ;

(vi) the assessing authority has taken (sic) some assessment.

20. The first argument with regard to the power of the criminal court to order return of the property which is the subject-matter of warrant of authorisation be examined. As a Division Bench of this court has dealt with this matter in detail, it is not necessary to again examine this issue on first principles. This court in *Union of India v. Police Station, Janakganj* [1990] J LJ paragraphs 8 and 9 observed as under :

" Shri R. D. Jain, who appears for respondent No. 3, has supported the impugned order and has strenuously urged that the warrant of authorisation issued as

above referred to, is illegal and void and as such it is not binding on the learned Magistrate. Counsel also cited decision in J. R. Malhotra v. Addl. S. J. Jullundar (1) and Mohd. Kunhi v. Mohd. Koya (2) to support the contention that his client was entitled to the money to be restored to him. In our view, reliance on those decisions is wholly misconceived for the short and simple reason to be stated at once hereinafter.

According to us, the police officer, who had seized the money from respondent No. 3, on being served with the order of the Income Tax authority and warrant of authorisation, and for that matter the learned Magistrate also, suffered statutory handicap to deal with the money in any other manner than as contemplated under the special law enacted as aforesaid. Be it noted in this connection that the police had not registered any crime against respondent No. 3 and the Income Tax Department on being apprised of the seizure had laid claim to that money and to custody thereof in accordance with provisions aforequoted. Neither the S. H. O., Janakganj Police Station, nor the learned Magistrate, had any jurisdiction to enquire into the validity of the warrant of authorisation for delivery of that money, to the Income Tax Officer concerned, namely, Shri Khanduja, nor of the competence of the Officer issuing the warrant of authorisation. Indeed, we are further of the view that this court also, in this matter, is not at all concerned with the validity of the warrant of authorisation. We are simply concerned to see if the S. H. O., Police Station, Janakganj, or the learned Magistrate, Shri Samadhiya, dealt with the sum of Rs. 3,15,000 recovered from respondent No. 3 in a manner not authorised by law. "

21. As such counsel for the Union of India is right in his submission that the order passed by the Second Additional Chief Judicial Magistrate in the bunch of ten petitions referred to in paragraph 3, directing the return of silver ornaments to the persons claiming it, cannot be sustained.

22. The argument with regard to absence of reasons before issuing warrant of authorisation be examined. R. M. Sahai J. (later judge of the Supreme Court) while expressing the opinion of the Division Bench of the Allahabad High Court in Ganga Prasad Maheshwari and Others Vs. Commissioner of Income Tax, dealt with the concept of "reason to believe" and observed (page 1050) :

" "Reason to believe" is a common feature in taxing statutes. It has been considered to be the most salutary safeguard on the exercise of power by the officer concerned. It is made of two words "reason" and "to believe". The word "reason" means cause or justification and the word "believe" means to accept as true or to have faith in it. Before the officer has faith or accepts a fact to exist there must be a justification for it. The belief may not be open to scrutiny as it is the final conclusion arrived at by the officer concerned, as a result of mental exercise made by him on the information received. But, the reason due to which the decision is reached can always be examined. When it is said that reason to believe is not open to scrutiny what is meant is that the satisfaction arrived at by the officer concerned is immune from challenge but where the satisfaction is not

based on any material or it cannot withstand the test of reason, which is an integral part of it, then it falls through and the court is empowered to strike it down. Belief may be subjective but reason is objective."

23. In *Vindhya Metal Corporation and Others Vs. Commissioner of Income Tax and Others*, the court expressed the view that the reasons which led to the issuing of the warrant are open to judicial review. It was observed (page 239) :

" It is settled that the existence or otherwise of the condition precedent to exercise of power under these provisions is open to judicial scrutiny. The absence of the condition precedent would naturally have the effect of vitiating the authorisation made by the Commissioner in either of the two provisions and the proceedings consequent thereto. While the sufficiency or otherwise of the information cannot be examined by the court, the existence of information and its relevance to the formation of the belief can undoubtedly be gone into. Also, whether on the material available with the Commissioner, any reasonable person could have arrived at the conclusion that a search, seizure or requisition should be authorised is a field open to judicial review. "

24. I am of the view that the question as to whether there was due satisfaction or not is to be determined by taking into consideration the circumstances which existed on the day the warrant is issued. This satisfaction is not to be judged by taking note of subsequent events and explanations which may be furnished. I am of the considered view that in all the cases the warrant of authorisation was properly issued as the concerned officer had reason to believe that the condition precedent for the exercise of power did exist.

25. Thus, in the petitions referred to in paragraph 3 of this order the person found to be in possession is not an assessee. The persons claiming to be owners have yet to prove their ownership. The assessing authority at Mathura has not commented upon this. Even the Court of the Second Additional Chief Judicial Magistrate chose to hand over the ornaments on sapurdgi. Nirbay Kumar had disclaimed ownership. The persons who have claimed ownership have not so far been declared owners. As such the apprehension of the officer who issued the warrant could not be said to be ill-founded.

26. Again in the two writ petitions dealing with currency worth Rs. 4,65,000, the position is no different. The only difference is that assessment has since been completed. The source of money has been explained. As such this aspect is not being commented upon.

27. In Writ Petition No. 1689, the assessment is complete and the liability which has been created is allegedly more than the assets which have been taken possession of.

28. In Writ Petition No. 1475 of 1990 the claim as to ownership is again doubtful. The story put forward with regard to loss of suitcase and later claim being made regarding ownership makes the claim of ownership doubtful.

29. Thus in all the cases on the basis of the information the opinion formed by the officer issuing the warrant cannot be said to be such opinion which falls outside the scope of Sections 132(1)(c) and 132A(1)(c) of the Act.

30. The argument with regard to lack of territorial jurisdiction as raised in the writ petitions referred to in paragraph 3 be examined. The person who was found in possession of the ornaments is not an assessee. Persons claiming ownership are at Mathura but they have failed to prove and sustain their plea of ownership so far. As such prima facie, it cannot be said that warrant of authorisation was issued by an officer who lacked initial jurisdiction. In any case mere lack of jurisdiction would not render the warrant illegal. The only consequence of this would be that the seized property would be placed at the disposal of the authority or officer having jurisdiction. This course would now be adopted and appropriate orders would be passed in the manner indicated in the later portion of this order.

31. The effect of an order of assessment having been passed be now examined. The natural legal consequences which are to happen in these circumstances are visualised in a decision of the Supreme Court in K. Choyi Vs. Syed Abdulla Bafakky Thangal and Others, . Section 226(4) of the Act was being interpreted. It was observed (page 437) :

" There can be no question of making a seizure u/s 132 of the Income Tax Act and proceeding further under the provisions of that section once an assessment is completed. Seizure u/s 132 relates to a pre-assessment stage. If an assessment is completed before the seizure is effected and while the assets are still in the custody of the court, the appropriate remedy for the Revenue is to make an application u/s 226(4) of the Income Tax Act."

32. In the writ petition referred to in paragraph 4 order of assessment has been passed. The source of money has been explained. As such warrant of authorisation shall cease to operate with regard to cash subject-matter of the petition.

33. In Writ Petition No. 1853 of 1991 the assessment has been completed. The ratio of the decision given in K. Choyi Vs. Syed Abdulla Bafakky Thangal and Others, would apply to the above case.

34. Thus, I am of the view :

- (i) The criminal court had no authority to order handing over of property, i.e., jewellery or cash to persons claiming it.
- (ii) Satisfaction of the authority issuing the warrant is to be determined as per the situation existing on the date when the warrant is issued and the requisite satisfaction satisfy the test of judicial review.
- (iii) Lack of territorial jurisdiction is not fatal to the issuance of the warrant.
- (iv) Once an assessment is over the seized property is to be disposed of as per

the determination made by the assessing authority.

(v) Where assessment is not complete the authority issuing the warrant shall take further steps within the stipulated period as required u/s 132(5) of the Act.

35. Thus Writ Petitions Nos. 1705, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718 and 1719 of 1990 filed by the Union of India are allowed. The silver ornaments shall be deemed to be in the custody of the Income Tax Department (though in reality these shall remain in the Government Treasury at Gwalior).

36. So far as Writ Petitions Nos. 1853 of 1991 and 1984 of 1990 are concerned, they are disposed of with a direction that further steps in terms of Section 132(5) be taken and completed. Even the assessing authority at Mathura would be at liberty to proceed further. As a matter of fact it could have completed the proceedings pending before it. There was no prohibitory order in existence.

37. So far as Writ Petition No. 2155 of 1990 is concerned, the same is dismissed. The assessment order having been passed the custody of the cash in question is not required to be given to the officer issuing the warrant. In Writ Petition No. 2063 of 1990 a direction is given to hand over the cash to the parties after clearance is given by the assessing authority that all the liabilities have been met.

38. Writ Petition No. 1689 of 1991 is dismissed. The assessing authority would be at liberty to apply the seized property to meet the demand raised by the assessing authority.

39. So far as Writ Petition No. 1475 of 1990 is concerned the same is disposed of with the direction that the officer issuing the warrant would now complete the proceedings within the stipulated period in terms of Section 132(5) of the Act.

40. There would be no order as to costs.