(1979) 02 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 529 of 1975

Tej Pal Oswal — APPELLANT

Vs

Income Tax Officer and Others — RESPONDENT

Date of Decision : 15-02-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102, 457

Citation : (1979) 118 ITR 21

Hon'ble Judges : S.S. Sidhu, J;B.S. Dhillon, J

Bench : Division Bench

Advocate : Bhagirath Das, S.S. Mahajan and B.K. Gupta, for the Appellant; D.N. Awasthy and B.K. Jhingan, for the Respondent

Judgement

B.S. Dhillon, J.—The petitioner is an Income Tax and wealth-tax assessee under Central Circle-1, Ludhiana. One of his sons was studying in the Lawrence School, Sanawar (hereinafter referred to as "the School"). At the relevant time, i.e., in the year 1974, the petitioner came in contact with Shri M. V. Gore, Bursar of the School. Some time on 2nd October, 1974, the petitioner gave for safe custody to Shri Gore a suit case, a tin box and two hand bags, one of them being empty. These contained cash, ornaments, jewellery and some watches. The said articles were taken to Sanawar because the petitioner thought that in the conditions prevailing then, the articles would be safe with the said Bursar. Five weeks later, the petitioner went to Shri Gore for the return of the four articles which had been deposited with him. Shri Gore did not return the articles and the matter was discussed between the petitioner, Shri Gore and the Headmaster or the School. The Headmaster postponed the delivery of the articles to 15th November, 1974.

2. On 14th November, 1974, the Headmaster got into touch with the Superintendent of Police, Solan, and consequently, S.H.O., Solan, seized the above-mentioned articles from the Bursar of the School. On 22nd November, 1974, the petitioner received a communication from Shri Gore that the articles of luggage left by the petitioner have been seized by the police authorities on 15th

November, 1974. The Superintendent of Police, Solan, got into touch with the Customs and Central Excise Department at Chandigarh and also with the Commissioner of Income Tax, Patiala. On this information having been sent, respondent No. 2, Commissioner of Income Tax, Patiala, issued a warrant of authorisation in the name of respondent No. 1 authorising him to once again seize the cash, silver utensils and other documents of the nature of hundis in the name of Shri Padam Kurnar Jain, son-in-law of the petitioner. Similar action was taken by the Superintendent of Customs. The articles seized by the police were divided into two lots. The ITO prepared a panchnama, copy of which is annex. ''P-2'' with the writ petition, along with a list of articles taken into possession by him, copy annex. ''P-3'' with the writ petition, whereas the Customs authorities took into possession articles which have been mentioned in annexs. ''P-4'' and ''P-5'', attached with the writ petition. In this petition, the petitioner has not claimed any relief qua the articles taken into possession by the Customs authorities but as regards the articles taken into possession by the Income Tax authorities, relief has been claimed that the seizure by the Income Tax authorities should be held to be without jurisdiction and the articles so seized by the Income Tax authorities should be directed to be returned to S.H.O. Police Station, Solan, who be directed to proceed to take steps to obtain orders from a court of competent jurisdiction regarding the articles in question, in accordance with law.

3. In para. 8 of the return filed on behalf of respondents Nos. 1 and 2, it has been specifically averred that on 16th November, 1974, the Superintendent of Police, Solan District, informed respondent No. 2 that certain smuggled goods and objectionable articles left by the petitioner in the premises of the Lawrence School at Sanawar in suspicious circumstances, had been seized by the police which was holding 6''75 kgs. gold and gold ornaments, 14.520 kgs. silver utensils; unaccounted currency notes worth Rs. 36,880; hundis worth Rs. 90,000; two imported wireless sets (Walkie Talkie), wrist watches and saris, etc., for appropriate action. However, according to the respondents, the custody of the articles in question with the police at Solan was on behalf of the petitioner and, therefore, it has been contended that the seizure by the Income Tax authorities was from the custody of the petitioner and was thus in accordance with law.

4. The learned counsel for the parties are agreed that in view of the law laid down by this court in Commissioner of Income Tax and Others Vs. Ramesh Chander and Others, , if it is found that the articles in question were seized by the police in pursuance of the provisions as contained in the Code of Criminal Procedure, 1974 (hereinafter called the "Code"), or under the provisions of the Police Act, in that case, the seizure of articles by the Income Tax authorities will be illegal and thus the articles seized shall have to be dealt with as would be ordered by a court of competent jurisdiction. The contention of the learned counsel for the respondents, Shri Awasthy, that the possession of the articles in question with the Solan police was on behalf of the petitioner, is really without any merit. As is clear from the averments made in para. 8 of the return, the

Superintendent of Police, Solan, informed the Income Tax authorities that the goods in question had been seized under suspicious circumstances and that they are suspected to be smuggled goods and objectionable articles. It cannot be disputed that if an S.H.O, gets information about some articles which are suspected to be stolen or regard-ing which some offence is suspected to have been committed, he is entitled to seize the said articles under the provisions of Section 102 of the Code. The articles so seized, then shall have to be disposed of in accordance with the orders of a court of competent jurisdiction u/s 457 of the Code. In Commissioner of Income Tax and Others Vs. Ramesh Chander and Others, , this court examined the question of seizure from the police possession in detail and came to the conclusion that if the seizure by the police is under the provisions of the Code of Criminal Procedure, the property has to be disposed of in accordance with the provisions of the said statute and the Income Tax authorities will have no jurisdiction to take away the goods from police custody by issuing a seizure warrant. As already observed, in view of the averments made in para. 8 of the return, it is obvious that the articles in question were seized by the police under the provisions of Section 102 of the Code and thus the seizure effected by the Income Tax authorities from the police, cannot be upheld.

5. For the reasons recorded above, the seizure warrants issued by the respondent No. 2 are quashed and the respondents are directed to hand over the articles as mentioned in annex."P-3" with the writ petition, to the S.H.O., Police Station, Solan, who is directed to produce the said property before the court of competent jurisdiction which in turn shall pass proper orders for the disposal of the said property. However, it will be open to the Income Tax authorities to put in a proper application before the court of competent jurisdiction to obtain the articles in question and the court may pass orders as it may deem fit and proper in the circumstances of the case. We order accordingly. The petition is accepted. Hewever, there will be no order as to costs.

