

(1982) 04 AHC CK 0041
In the Allahabad High Court
Case No : Criminal Revision No. 177 of 1982

UNION OF INDIA

APPELLANT

Vs

JUDICIAL MAGISTRATE (EASTERN RAILWAY), MUGHALSARAI,
AND ANOTHER.

RESPONDENT

Date of Decision : 09-04-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102, 41, 457
Income Tax Act, 1961 — Section 132, 132A, 81, 82
Penal Code, 1860 (IPC) — Section 411

Citation : (1983) 33 CTR 45 : (1983) 140 ITR 553

Hon'ble Judges : P. N. Bakshi, J

Bench : Division Bench

Judgement

P. N. BAKSHI J. - Station Officer, G.R.P., informed the Commissioner of Income Tax, Varanasi, that on December 25, 1981, one Vinod Kumar Jaiswal, son of Hira Lal Jaiswal, resident of Imamganj, Durga Devi, Mirzapur, was travelling by 2-DN Kalka Mail in a three tier bogie. From his possession currency notes of the value of Rs. 4,63,000 and some clothes were recovered which had been kept in a brief case. Vinod Kumar has been challenged under Sections 41/102, Cr. PC read with s. 411, I.P.C. The Commissioner having reason to believed that the assets represented undisclosed income, issued warrant of authorization under s. 132A of the I.T. Act (From No. 45C) read with r. 112D of the I.T. Rules, 1962, in he name of the Station House Officer, G. R. P. Mughalsari, appointing Sri S. N. Kapur as the authorities officer and directing him to take possession and control of the assets. It appears that the S.H.O, G.R.P., Varanasi, did not deliver possession of the seized currency unless orders have been obtained from the court. On January 1, 1982, Sri Rajendra Kumar Panndey filed an application in the Court of Judicial Magistrate (R), Varanasi, praying that the amount in question be released in his favour or in favour of the accused, Vinod Kumar. The case set up in this application was that Sri Vinod Kumar is an employee of the firm M/s. Vindya Metal corporation, Bamariaya told, Mirzapur City, of which Santosh Kumar

Jaiswal, resident of Calcutta, is a partner. The accused, Vinod Kumar Jaiswal, from whose possession the cash was recovered, is the nephew of Santosh Kumar and was serving as a muneem in the aforesaid firm. The said money was being taken by Sri Santosh Kumar for the purposes of participation in an auction for the purchase of zinc which was to be held on December 29, 30, 1981, at Calcutta under the instruction of the Manager, Materials Van, Steel Authorities of India Ltd., Rourkela Steel Plant. While Sri Santosh Kumar was processed on his journey, the G.R.P. Mughalsarai, illegal detained him and seized the money in question. The tax has been paid on the seized money, no offence was made to under s. 411, I.P.C. On January 4, 1981, Sri S. N. Kapoor, ITO/Authorized Officer, (F) Ward, officer, G.R.P., to deliver the assets to him. Objection thereto was filed by Sri R. K. Pandey, vide annex 7. Application, annex. 8, was again filed by Sri S. N. Kapoor. Authorize Officer giving further details and praying for the release of the sum of Rs. 4,63,000 seized from Vinod Kumar. Thereafter, the impugned order was passed on February 3, 1982, by the Judicial Magistrate, Varanasi, directing the delivery of the assets to Rajendra Kumar Pandey. Aggrieved thereby, the instant revision was filed by the Union of India.

I have heard the learned counsel for the parties at considerable length and have also examined the affidavits and the impugned orders. Counsel for the Union of Indian has argued that having regard to the provision of I.T. Act the Magistrate has no jurisdiction to had over the property in question to Rajendra Kumar Pandey and that an order should have been passed in favour of the authorities officer so that the inquiry under s. 132, I.T. Act may be conducted by the I.T. Dept. On the other hand, counsel for the opposite party has submitted that the order in question was within the jurisdiction of the Judicial Magistrate and he was competent to hold that the assets in question belonged to Vinod Kumar Pandey under the provisions of s. 457, Cr. PC.

In dealing with the legal question, I shall only refer to the relevant sections of the I.T. Act. Section 132(1)(c) relates to search and seizure by an officer authorized by the Commissioner, who in consequence of information in his possession has reason to believe that any persons is in position of any money, bullion, etc., which represents either wholly or partly undisclosed income. Section 132(a) refers to seizure of assets from a person by any officer or authority under any other law for the time being in force. In case of such a seizure the Commissioner is empowered to authorize an ITO, etc., to take possession of the assets from such officer or authority.

Whether it is seizure by an officer of the Income Tax Department of a seizure by any persons under any other law for the time being in force the assets so seized, constituted the subject-matter of inquiry under s. 132(5) of the I.T. Act. The ITO, while conducting this inquiry, has to afford a reasonable opportunity to the persons concerned of being heard and within 90 days of the seizure, he has to pass an order concerning with the previous approval of the Asst. Commissioner. He can retain in his custody, such assets or part of such assets as are in his

opinion sufficient to satisfy the tax demand on undisclosed income and release the remaining assets, if any, to the person from whose custody they were seized.

Section 457, Cr. PC, refers to the procedure to be adopted by the police upon seizure of property. Admittedly, the seizure has been made by the G.R.P., Mughalsarai. Section 457, Cr. PC runs as follows:

"(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provision of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property to the persons entitled to such property or the delivery of such property to the persons entitled to the possession thereof, or if such persons, cannot be ascertained, respecting the custody and production of such property..."

There can be no doubt that even in respect of seizure under the I.T. Act, Magistrate would have jurisdiction under s. 457, Cr PC, to pass orders with respect to the seized property covered by that section. The material question, however, is as to who is the persons entitled to possession of the property. There can be no dispute that the inquiry under s. 457 Cr PC, is only a summary inquiry. The I.T. Act is a specialized law, which has been enacted for specific purposes of realization of due taxes from the citizen. The provision of a specialized law always overrides the provisions of a general law. As I have mentioned above, s. 132(5) of the I.T. Act lays down the procedure for conducting an inquiry with regard to the assets which the Commissioner has reasons to believe is undisclosed income. Section 132A(c) contemplates the seizure of assets by an officer or authority under any other law of the time being in force, except the Income Tax Act. With respect to such seizures provision has been made in the same section authorizing the Commissioner to nominate a Requisitioning Officer. Sub-section (2) of s. 132A runs as follows:

"On a requisition being made under sub-section (1), the officer or authorities referred to in clause (a) or clause (b) or clause (c), as the case may be, of that sub-section shall deliver the books of account other document, or assets to the Requisitioning Officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody."

It is thus clear that under this sub-section, the Requisitioning Officer would be the persons entitled to the seized assets. The assets have been seized by an officer or authority which, in the instance case, is the SHO, G.R.P. He has refused to deliver possession of the assets without an order of the court. The Magistrate, therefore, should have directed the assets to be released in favour of the Requisitioning Officer. It was not his function in the circumstance of the case to have embarked upon an inquiry into the nature of the asset and the ownership of the same in a summary way. That inquiry has to be conducted by the ITO under s. 132(5) of the I.T. Act as already mentioned above.

It appears from the record that the investigation agency has submitted a final

report in favour of the accused. If that report is accepted by the Magistrate, the result would be that no case under s. 411, IPC, would be made out against the accused. But, so far as the release of the assets is concerned, that cannot be made to Rajendra Kumar Pandey, who claims to be a partner of India Metal Corporation, Mirzapur, and who claims that this money constituted assets of this firm. I have perused the facts stated in the affidavits, and the counter-affidavits, and the allegations which have been made by Rajendra Kumar Pandey claiming ownership of the assets, and by the Department alleging that the assets were undisclosed income of the said firm which had only filed a return of income of an amount of Rs. 2,400 in the assessment year u/s (sic) 81 and 82. I would, however, not like to give any finding of my own on this factual question because that is likely to prejudice the case of the parties. These are all matters which would be considered by the ITO, while conducting the inquiry under s. 132(5) of the I.T. Act. In this view of the matter, I am of the opinion that the order passed by the Magistrate is erroneous and illegal and liable to be set aside.

As I have mentioned above, the ITO is required to complete the inquiry within a period of 90 days of the seizure. After the conclusion of the inquiry within the stipulated period has is only authorize to deducted the tax due, if any, payable on the undisclosed income if it is found to be so and to return the remaining assets to the persons from whose custody they were seized.

In the result, therefore, this application in revision is allowed. The impugned order passed by the Judicial Magistrate (Eastern Railway), Mughalsarai, dated February 3, 1982, is set aside and the courts below is directed to deliver possession of the seized assets of Rs. 4,63,000 and the clothes seized from Sri Vinod Kumar to Sri S. N. Kapoor, ITO/Authorized Officer, (f) Ward, Varanasi, so that the enquiry may be conducted under s. 132(5) of the I.T. Act, in accordance with law.