(1966) 11 OHC CK 0001

In the Orissa High Court

Case No : Criminal Revision No. 571 of 1965

Union of India (UOI) APPELLANT

Vs

Hadibandhu Das and Others RESPONDENT

Date of Decision : 17-11-1966

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 523
Income Tax (Amendment) Act, 1965 — Section 132, 132(1), 132(3), 275A

Citation : (1967) CriLJ 1357 : (1973) 91 ITR 156

Hon'ble Judges : K. Ahmad, C.J

Bench : Single Bench

Judgement

K. Ahmad, C.J.—This application in revision has been brought by the Inspecting Assistant Commissioner of Income Tax, Cuttack, and is directed against the order dated May 31, 1965, passed by Shri C. R. Panda, Special Magistrate (Additional District Magistrate, Judicial), Puri, substantially dismissing the petition made before him on behalf of the petitioner, for the safe custody of currency of Rs. 92,549.36 and gold bars and ingots weighing 44.39 tolas and gold ornaments weighing 182''36 tolas which were seized in connection with some criminal case pending before him for disposal.

2. It appears that in connection with that criminal case a search was effected in the house of one Hadibandhu Das at Cuttack, on May 6, 1965, by the Special Police Establishment, Economic Offences Wing, Calcutta, and in the course of that search the aforesaid cash including some coins, gold bars, ingots and ornaments were seized. Two days thereafter, on May 8, 1965, petition was filed on behalf of Hadibandhu Das before the learned Special Magistrate u/s 523, Criminal Procedure Code, for the release of the properties seized in the course of the search. This application was disposed of by the order, dated May 11, 1965. Thereunder, the prosecution was, inter alia, directed to release his cash, except the small coins within a fixed date. That order has now become final and it is the admitted case of the parties that there was no revision filed against it.

3. Subsequently, however, on May 19, 1965, there was a petition filed on behalf of the petitioner for some suitable orders. That petition read as follows:

"In the Court of the Additional District Magistrate (Judicial) and Special Magistrate, Puri

S. P. E. Case No. 3 of 1965 (Bombay) Republic of India v. Hadibandhu Das

Application filing of--Prayer for consideration and necessary action in view of honourable Court''s order in the above case, dated May 11, 1965.

My client Shri E. V. Rao Naidu, Inspecting Assistant Commissioner of Income Tax, Cuttack Range, Cuttack, duly authorised by the Commissioner of Income Tax, Bihar and Orissa, Patna, u/s 132(1) of the Income Tax Act, 1961, as amended by the Income Tax (Amendment) Act, 1965, has passed an order u/s 132(3) of the said Act in pursuance of the powers vested in him as such in the matter of cash and currency of Rs. 92,549.36 (rupees ninety-two thousand five hundred and forty-nine and thirty-six paise only) and gold bars and ingots weighing 182.36 tolas for purposes of Income Tax, and a copy of the order is herewith submitted for the kind consideration of the court. It is prayed that the hon''ble court be pleased to take cognizance of this situation and pass suitable orders for the safe upkeep of the properties in question and for this act of your honour''s kindness the petitioners, as in duty bound, shall ever pray.

R.C. Misra, By the Advocate 19-5-1965. "

Along with that application there was also attached a copy of the order said to have been passed u/s 132(3) of the Income Tax Act, 1961, as amended by the Income Tax (Amendment) Act, 1965. That order read as follows:

" Whereas it has come to my knowledge that cash and currency of the value of Rs. 92,549.36 (Rupees ninety-two thousand five hundred and forty-nine, and thirty-six paise only) and gold bars and ingots weighing 44.09 tolas and gold ornaments weighing 182''36 tolas have been found in the house near Mangalabagh Police Station, Cuttack, of Hadibandhu Das of Cuttack, and it has been seized by the Special Police Establishment Officers in a raid conducted by them on May 6, 1965, and

Whereas the said cash and currency of Rs. 92,549.36 and gold bars and ingots weighing 44.09 tolas and gold ornaments weighing 182.36 tolas as per their inventory furnished has been lodged in the State Bank of India, Bhubaneswar.

Whereas I am the authorised officer duly authorised by the Commissioner of Income Tax, Bihar & Orissa, Patna, u/s 132(1) of the said Act.

I hereby invoke the provisions of Section 132(3) of the said Act and serve this order on you that you shall not remove, part with or otherwise deal with the said cash and currency of Rs. 92,549.36 and gold bars and ingots weighing 44.09 tolas and gold ornaments weighing 182.36 tolas except with my previous permission.

(Sd.) E. V. Rao Naidu, Inspecting Assistant Commissioner of Income Tax, Cuttack Range, (Authorised Officer)

Note : Section 275A of the said Act says: '' Whosoever contravenes any order referred to in Sub-section (3) of Section 132 of the said Act shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine.''

(Sd.) E. V. Rao Naidu, Inspecting Assistant Commissioner of Income Tax, Cuttack Range, (Authorised Officer)

Memo. No. Con. No. 65-66/267 Dated Cuttack the 19th May, 1965.

To Shri Hadibandhu Das, Mangalabagh, Cuttack C/o. Superintendent of Jail, Puri, for compliance

E.V.R. Naidu, Inspecting Assistant Commissioner "

The learned Special Magistrate on hearing the objection raised on behalf of Hadibandhu Das disposed of that application by the order under revision.

4. Section 132 of the Income Tax Act provides a special procedure for search and seizure to meet situations enumerated in Clauses (a), (b) and (c) of its Sub-section (1). That sub-section lays down that where the Director of Inspection or the Commissioner, in consequence of information in his possession, has reason to believe that any of the aforesaid situations exist, he may authorise any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection, or Income Tax Officer (hereinafter referred to as " the authorised officer ") to

" (i) enter and search any building or place where he has reason to believe 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;

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

Sub-section (1) is followed by a number of other sub-sections. But, out of them, Sub-section (3) alone is relevant here. That sub-section reads as follows:

" (3) The authorised officer may, where it is not practicable to seize any such books of account, other document, money, bullion, jewellery or other valuable article or thing, serve an order on the owner or the person who is in immediate possession or control thereof, that he shall not remove, part with, or otherwise deal with it, except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section. "

A careful reading of Sub-section (1) makes it unambiguously clear that the stage of seizure as provided in its Clause (iii) comes only after entry and search, as provided in Clause (i): in other words when the authorised officer has entered into a building or place referred to in Clause (i) of Subsection (1) and as a result of such entry has found there any books of account or any of the other articles referred to therein, he is empowered to seize them if considered necessary. But it may so happen that some of the things found on search may be such as may not permit of seizure then and there. It is to meet such a situation that there is a special provision made in Sub-section (3) for the service of an order by the authorised officer, if considered necessary, on the owner or the person who is in immediate possession or control of those articles, that he shall not remove, part with, or otherwise deal with them, except with the previous permission of such officer-In the present case, it is not disputed that there was at no stage any entry or search effected by the authorised officer in any building or place as referred to in Sub-section (1)(i) of Section 132. All that appears to have happened by that time was that as a result of some other searches affected in the course of the criminal proceeding the aforesaid properties were seized by the police and brought into the custody of the court where the criminal case was pending for trial. Therefore, it cannot be said that there was any such search effected in the present case by the petitioner in exercise of the authority given to him u/s 132 of that Act.

5. Further, it has to be noted that so far as the cash amount lying in the custody of the court was concerned, that had already been dealt with and released from custody by the court, by its order dated May 11, 1965, passed u/s 523, Cr. P.C. There was no revision filed against that order, and, therefore, by the time the application was made by the petitioner on May 19, 1965, for the relief u/s 132 of the Income Tax Act that order had become final and there was nothing left thereafter to be dealt with in connection with the cash by that court. In that view of the matter the Court of the learned Special Magistrate had by that time in regard to the cash amount become functus officio.

6. For these reasons I have ho doubt in my mind that no relief could be given to the petitioner in regard to the application filed by him ; and if that application was not maintainable in the Court of the Special Magistrate, much less there can lie any revision against the order in this court.

7. Accordingly this application is dismissed.

