
(1992) CriLJ 1320 : (1990) JLJ 734

Madhya Pradesh High Court

Case No: Miscellaneous Petition No. 724 of 1990

Union of India (UOI)

APPELLANT

Vs

Incharge Police Station
and Another

RESPONDENT

Date of Decision: June 23, 1990

Acts Referred:

- Income Tax Act, 1961 - Section 132(4A), 132A, 132A(1), 132A(3)

Citation: (1992) CriLJ 1320 : (1990) JLJ 734

Hon'ble Judges: T.N. Singh, J; S.K. Dubey, J

Bench: Division Bench

Advocate: K.S. Shrivastava, for the Appellant; M.C. Khedkar, A.G.A., R.D. Jain, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. Petitioner, Union of India, has moved this Court through Assistant Director of Income Tax (Investigation) at Gwalior, assailing the validity of the proceeding of the Court of Shri A.K. Samadhiya, Judicial Magistrate, First Class, Gwalior, in a case of 1990 Bundle file in which the order was passed on 30-4-1990 at 11.00 a.m.

2. We were moved on 2-5-1990 and we passed an interim order on LA. 1/90 filed in this matter. We directed that the sum of Rs. 3,15,000/- which were seized in cash on 24-4-1990 from one Kallu alias Awadh Bihari s/o Tulsiram Agarwal, resident of Gandigar-Ka-Tapra, Jhansi and ordered to be paid to him by respondent No. 2 Shri A.K. Samadhiya, Judicial Magistrate, First Class, Gwalior, to be deposited by S.H.O. Jangakganj, Police Station, Gwalior, (who was holding the money) with Additional Registrar, High Court of M. P. Bench Gwalior. We directed that the money so deposited in this Court shall not be disbursed in any manner without this Court's prior permission.

3. Although the said Kallu alias Awadh Bihari was not impleaded in the first instance as the respondent, he intervened to enable us to hear him for disposing of the matter expeditiously on the prayer made by him. Thereafter, however, on formal prayer being made by the petitioners it was observed that even otherwise the said intervenor was necessary party and had to be formally impleaded. We directed him to be impleaded in the petition as respondent No. 3, and we took the view that the return, which he had filed, must be given due consideration. However, return also came from Officer-in-charge, Police station Janakganj, Gwalior, though we have not received any report from Shri Sarnadhiya, learned Judicial Magistrate First Class, Gwalior, despite a direction being made in that regard. Indeed, we had also made direction for records of the proceedings before him to be transmitted to us and as that was not received we took care in the earlier part of the day to send for the records by directing the Additional Registrar to depute special messenger for that purpose. When the hearing in the matter was taken up 2.00 p.m. we got the records and that we have perused. We have also perused the police case diary, which Government Advocate, Shri Khedkar has produced pursuant to the direction made in that regard on the last date.

4. Short submission, of Shri Shrivastava, learned counsel appearing for the petitioner Department is that even if S.H.O. Janakganj police station had discharged his duties in sending the case diary to the learned Magistrate on requisition being made by him in that regard, the proceeding which the learned Magistrate continued after receipt of the case diary, by passing orders on 26-4-1990 and 30-4-1990, are wholly without jurisdiction and those orders are liable to be quashed. In support of this submission counsel has relied on the provisions of Section 132-A(1)(c) and Sub-section (3) thereof, besides relying on Section 132(4-A) of the said Act. In short, counsel's submission is that the Police Officer, namely, S.H.O. Police Station, Janakganj was "Officer/authority", who had taken in to his "custody" the money and in that regard he was acting under "authority" of "law". Thus, the department had the jurisdiction to act u/s 132-A for transfer of custody of that money to the "requisitioning officer" as contemplated u/s 132-A. The fact which is indisputed is that there was a "due requisition" made u/s 132-A for exercise of authority for recovering custody of the money from police Officer.

5. Counsel relied on some documents and submitted that those relevant documents were before the Court when he passed the order and, therefore, the Court concerned, Shri Sarnadhiya lacked inherent jurisdiction to deal with the custody of the money. On going through the records of the proceedings of Shri Sarnadhiya we have found that amongst other papers, such as, Income Tax return of the respondent No. 3 and notice issued to him on 31-1-1989 by I.T.O. Jhansi is the letter dated 26-4-1990 issued by Shri Ashwanikumar, Deputy Director of Income Tax (Investigation), Bhopal, Camp at Gwalior. That letter is addressed to Shri A.K. Sarnadhiya, J.M.F.C., Gwalior and copy of that letter appears to have been endorsed to Shri A.S. Bal, IGP, Gwalior, Zone, Gwalior, and Town Inspector, Janakganj Police Station, Gwalior. In so far as the second endorsement which concerned the Town Inspector, it has to be noted that there is mention therein of the letter

of Shri R. K. Shrivastava, Assistant Director of Income Tax (Investigation) Gwalior, of 26-4-1990 and the "Warrant of Authorisation" issued by the Commissioner of Income Tax Bhopal on 25-4-1990. Indeed, we have also found in the records, in the proceedings of Shri Samadhiya, xeroxed copy of the said warrant of authorisation in the prescribed form No. 45-C bearing the date 25-4-1990.

5. We are surprised to note that although in his order dated 26-4-1990 learned Magistrate noted the objection of the A.P.P. in regard to "income tax Clearance" of respondent No. 3 and although the case diary was before him, no care was taken by the learned Magistrate to apprise himself of the legal position in regard to the custody of the money seized by the police from respondent No. 3 and his compee (order sheet form) under the law to deal therewith. We find that in the case diary there is a copy of the letter which was addressed on 26-4-1990 by S.H.O. Janakganj Police Station, Gwalior to Shri R.K. Khatuja, Income Tax Officer, Gwalior. It is unfortunate that the learned Magistrate did not apply his mind to that. Although the fact is that on the documents appears the endorsement of receipt of the letter by Shri Khanduj a what cannot be said to be doubtful in any manner is the fact that the Income Tax Department was duly informed of the seizure and the department was also informed that in regard to the custody of the money seized and proceeding had been initiated by respondent No. 3 in the Court of Judicial Magistrate, First Class, Gwalior. In the case diary we also found copy of the letter dated 26-4-1990 which Shri Shrivastava, Assistant Director of Income Tax had addressed to the Town Inspector, Police Station, Janakganj, Gwalior, wherein it was mentioned on 26-4-1990 Commissioner of Income Tax Bhopal had issued the warrant of authorisation u/s 132-A(1) of the Act and Shri R.K. Khantuja, Income Tax Officer, Gwalior, was authorised under the warrant of Authorisation to take delivery of cash seized.

6. It is very clear that the case diary remained in the possession of the Court as manifested in the order passed on 26-4-90 when direction was made to retain the case diary and the matter was adjourned to 30-4-1990.

7. Although in the impugned order, the bone of the contention, passed on 30-4-1990, in this matter, there is copious reference made in regard to Income Tax proceedings, it passes our comprehension that the Court concerned has still regarded it unnecessary to hear the department before passing any order in regard to custody of the money. We are surprised to note that for reasons not disclosed in the order it was regarded sufficient to ignore and overlook all the documents, which were there in the case diary as earlier referred. Indeed, in case the learned Magistrate was careful and was conscious of his judicial duty of dealing with the matter in accordance with law, he was bound not to ignore and overlook the documents which were on record, in the case diary and also before him in the proceedings. We reiterate that it was incumbent on him in the facts and circumstances of the case not to pass any order in the matter without first hearing the department as department evidently a necessary party to lay its claim for custody of money. Nothing of the sort was done, but order was passed releasing the money and directing the same to be delivered to respondent No. 3 on his executing a bond for Rs.

5,00,000/- . However, later, on being taken by the A. P. P. to the order passed time was allowed to move this Court. It is true, that further proceedings were stayed by learned Magistrate and on 3-5-1990 it is recorded that this Court had passed an order aforesaid on 2-5-1990 and as such no effect be given to the order passed by him on 30-4-1990.

8. 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, is illegal and void and as such it is not binding on the learned Magistrate. Counsel also cited decision in J. R. Malhotra v. Additional Sessions Judge, Jullundur, (1976) 2 SCR 993 and [Mohammad Kunhi Vs. Mohammad Koya and Others](#), 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 short and simple reason to be stated at once hereinafter.

9. 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 learned Magistrate also suffered statutory handicap to deal with the money in any other manner then 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 afore-quoted. Neither S.H.O. Janakganj police. Station, nor 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 Khatuja, nor of the competence of the Officer issuing that 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 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.

10. For the reasons aforesaid we have to doubt that there is little option open to us except to declare illegal and void the proceedings in question of the Court of Shri Samadhiya, Judicial Magistrate First Class, Gwalior, and to quash the orders passed by him on 26-4-1990 and 30-4-1990. We would also add that the money had not come to the Court of Shri Samadhiya and remained in the custody of S.H.O., Janakganj Police Station. As such a direction was made for that money to be transferred by that Officer to the temporary custody of Additional Registrar of this Court and that has been done. The unfortunate part of the episode is that S.H.O. Janakganj Police Station had to comply with the judicial direction made to him to submit the case diary and that he did although he was not bound to do so under the law.

11. For all the foregoing reasons the petition succeeds and is allowed. However, we make an interim direction valid for a period of seven days and that we have done to take care of Shri Jain's submission on the ground that we have not heard him on the validity

of warrant of authorisation and the claim of the department. We direct that the petitioner, if so advised, may file a separate Petition within three days challenging the action of the Income Tax Department and if that is done, the money held in the custody of the Additional Registrar shall not be transferred to Income Tax Department. On the expiry of the period of a week Income Tax Department shall be entitled to take delivery of custody of the money which is with the Addl. Registrar of this Court.

12. As prayed by Shri Shrivastava, Counsel appearing for the Income Tax Department, a type copy of the order shall be furnished to him by the office, because some other matters are pending in some other courts and for the ends of justice it may be necessary for him to place the same for the guidance of the Courts concerned.

13. Records received from Shri Samadhiya"s Court may go down. But, he has nothing to do with this much any further. A copy of this order shall also be sent to that Court for his information and compliance.