

IN THE HIGH COURT OF GUJARAT

AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5922 of 2009
CRIMINAL REVISION APPLICATION No. 206 of 2009

DEPUTY DIRECTOR OF INCOME TAX(INVESTIGATION)

Vs

STATE OF GUJARAT & 1

M D Shah, J

Dated : August 4, 2009

Appellant Rep. by : Mrs Mauna M BHatt

Respondent Rep. by : Shri KP Raval, Mr S N Divatia

Income Tax - Currency notes of Rs. 42.5 lakhs seized by police In spite of requisition by Income Tax, Police hand over the currency to claimant - By not complying with the requisition, a grave illegality has been committed by the concerned police officer. Money ordered to paid to Income Tax Department: The learned Magistrate was not at all within his powers to order for handing over muddamal currency notes to the respondent when proceedings were initiated by the Department under Sec.132 of the Act. In view of Section 132 of the Act, it shall be the duty of the police authority to comply with requisition issued by the authorized officer of the Department. The police authority has no power to retain the muddamal or hand it over to the respondent No.2. It was incumbent upon him to have handed over muddamal to the Department for completion of proceedings initiated by it.

JUDGEMENT

1. This revision under Section 457 of the Code of Criminal Procedure ('the Code' for short) is taken out by the Deputy Director of Income Tax (Investigation), Unit-1(1), Ahmedabad, against the order dated 6-4-2009 passed by the learned Metropolitan Magistrate, Court No.5, Ahmedabad, in Miscellaneous Application No.42 of 2009 filed by the present respondent No.2 under of the Code.

2. Shortly stated, the facts leading to filing of the present revision are that a complaint was filed by the respondent No.2, Kirtilal Dayaljibhai Thakkar, before Karanj Police Station against his employee Shri Shailesh @ Sagar

Dilipbhai Khadgi inter alia alleging that said Shri Shailesh ran away with cash amounting to Rs.42.50 lakhs out of Rs.50.00 lakhs withdrawn from his Current Account lying with Shri Vinayak Cooperative Bank Ltd., Kalupur. Pursuant to the said complaint, offence was registered as Crime Register No.1-48 of 2009 and investigation started. During the course of investigation, the accused Shailesh was arrested by the police and muddamal currency notes of Rs.42.50 lakhs were seized from him. As huge currency notes were seized, the Police Inspector, Karanj Police Station, vide his letter dated 30-3-2009 accompanied by copy of FIR informed the Deputy Director of Income Tax (Investigation) that if Income Tax Department ('the Department' for short) intends to initiate any proceedings in this regard, they may approach the learned Metropolitan Magistrate, Court No.5, along with the letter.

3. In the meanwhile, the present respondent No.2 submitted an application before the learned Metropolitan Magistrate, Court No.5, in Karanj Police Station I.Crime Register No.48 of 2009 under Sec.451 of the Code of Criminal Procedure for obtaining muddamal currency notes which were seized by the police during the course of investigation.

4. The Deputy Director of Income Tax(Inv), Unit-1(1), Ahmedabad, Mr.K.M.Mahesh, however submitted an application claiming right over the said muddamal to complete the proceedings initiated by the Department against the respondent No.2.

5. Upon affording opportunity of hearing to all the respective parties, learned Metropolitan Magistrate partly allowed the application of the respondent No.2 and passed order to hand over muddamal currency notes amounting to Rs.30.00 lakhs to the respondent No.2 on furnishing personal bond of Rs.45.00 lakhs with surety and ordered to keep the remaining amount of Rs.12.20 lakhs in the custody of the police. The complainant was directed to give necessary explanation to the Department and the Department was directed to complete the proceedings within 15 days under intimation to the Court if any income tax liability is accruing to the department and to pass necessary order. It was also directed that in the event of any tax liability accruing to the Department, the complainant would pay the same immediately under intimation to the Court. Said order of the learned Metropolitan Magistrate is under challenge by the present revision.

6. Heard Mrs.Mauna M.Bhatt for the applicant-Deputy Director of Income Tax(Investigation), learned APP, Mr.K.P.Raval for the respondent No.1-State and learned advocate, Mr.S.N.Divetia for the respondent No.2-original complainant.

7. It is submitted by Mrs.Mauna Bhatt that once custody of muddamal currency notes is taken by the Department by initiating proceedings under Section 131 read with Section 132 of the Income Tax Act ('the Act' for short), neither the Court nor any other agency has the power to release the said muddamal. She has placed reliance on a decision of this Court reported in 2006(1)GLR Vol.47 page 196 in the case of Rajiv Agrawal or His Successor in Office Vs. State of Gujarat and another in this regard. According to her, the ratio laid down in the said judgment is very well applicable to the facts of the present case. Still, however, learned Metropolitan Magistrate held that the facts of the case on hand is different from facts cited in the authority and since there is sufficient evidence on record to show that Rs.42.00 lakhs are belonging to the complainant being the amount withdrawn from the bank, the aforesaid judgment was held not applicable to the facts of the present case.

8. It is further submitted by Ms.Bhatt that in spite of serving summons, the respondent No.2 failed and neglected to appear before the Department which was sufficient for the Department to issue requisition under Sec.132A of the Act. He also did not show any documents indicating accountability of the seized currency notes and hence, authorization under Section 132A of the Act was issued by the Department which was duly executed on the Police Inspector, Karanj Police Station, Ahmedabad City. However, the Police Inspector did not hand over the muddamal currency notes to the applicant. According to her, once authorization issued under Sec.132A of the Act was duly executed on the Police Inspector, it was the duty of the Police Officer to hand over the seized muddamal to the Department. The learned Magistrate was also not authorized to order for an inquiry to find out whether the seized muddamal was accounted or not when a requisition was made by the Department but it is the concerned Assessing Officer, who will ascertain the tax liability of the assessee and will decide about the release of muddamal on conclusion of inquiry. According to her, sufficiency of the tax liability cannot be examined by the Court. Since the order passed by the learned Magistrate is in

contravention of the provisions of Sec.132A of the Act, it is urged that the impugned order may be quashed and set aside and the muddamal currency notes be handed over to the applicant for completion of proceedings initiated by it.

9. Mr.Divetia, learned advocate for the respondent No.2, on the other hand has submitted that though the applicant was given sufficient opportunities to take appropriate remedial action against the order dated 6-4-2009 passed by the learned Magistrate, neither any explanation has been given nor anything has been done by him. According to him, a legal and proper order has been passed by the learned Magistrate by protecting the interest of the applicant by not releasing the amount of Rs.12.20 lakhs. It is further submitted that intention of the Legislature is to safeguard the interest of revenue with regard to the disproportionate assets. Hence, since a conditional order has been passed by the learned Magistrate, the impugned order does not require any interference.

10. It is further submitted by Mr.Divetia that Section 132A of the Act does not empower the applicant to issue requisition for seizure of stolen property. According to him, Section 132A of the Act more particularly clause (c) of sub-section (1) could be invoked by the Department only against a person from whom undisclosed assets which were seized have been taken into custody. The muddamal currency notes seized from Shri Shailesh @ Sagar Dilipobhai Khadgi are a stolen property. Hence, the decision in the case of Rajiv Agrawal's (supra) case is not applicable to the case of the respondent No.2. Further, there was no material before the Department to form a belief that the muddamal amount represented either wholly or partly income or property which has not been disclosed for the purpose of the Act. It is further submitted that the summons issued under Section 131(1A) of the Act on 30-3-2009 was unserved on the respondent No.2 and even the fresh summons dated 1-4-2009 was affixed at his residential premise as it was closed. Hence, the summons did not require the respondent No.2 to explain the amount requisitioned from the police authority. In view of the same, it is submitted that the summons were issued illegally and unlawfully and without any jurisdiction and hence, the impugned order dated 6-4-2009 passed by the learned Magistrate does not require any interference.

11. Learned Addl. Public Prosecutor, Mr.K.P.Raval has adopted the submissions made on behalf of the respondent No.2 by Mr.Divetia.

12. Before dealing with the rival submissions made on behalf of the parties, certain facts are necessary to be narrated. In pursuance of a complaint filed by respondent No.2 for stealing away cash of Rs.42.50 lakhs, his employee Shri Shailesh @ Sagar Dilipbhai Khadgi was arrested and muddamal currency notes of Rs.42.50 lakhs were seized. The Department was intimated by the Karanj Police Station Officer to approach the learned Magistrate if they intend to initiate proceedings. Meanwhile, an application was submitted by the present respondent No.2 before the learned Metropolitan Magistrate for getting the said muddamal currency notes. The applicant also submitted an application to hand over the same to complete the proceedings initiated by the Department against the respondent No.2. Since the Department was not handed over the muddamal, it preferred Cri.Rev.Appln.No.206 of 2009 before this Court. Since the document of authorisation has to be produced, order regarding interim relief has not been passed by the Court. The applicant vide letter dated 16-4-2009 requested the Police Inspector of Karanj Police Station not to release the muddamal in view of hearing of Criminal Revision Application fixed in the High Court on 17-4-2009 and also since there are probabilities of passing an interim order staying the order passed by the learned Magistrate. In spite of the same, the muddamal was released to the respondent No.2 on the same day i.e. on 16-4-2009. Hence, this Court vide order dated 17-4-2009 stayed execution of the impugned order.

13. It appears from the aforesaid that though warrant of authorization was served on the Police and though the police was informed of the revision being pending in the Court, the police has handed over the muddamal currency notes to the complainant relying only the order passed by the learned Metropolitan Magistrate. Since the order dated 6-4-2009 passed by the learned Magistrate was implemented by the police, order dated 16-4-2009 passed by this Court granting ad-interim relief became inoperative.

14. This Court is now required to see whether the applicant was entitled for custody of muddamal seized by the police for completion of proceedings initiated by the Department or not. Section 132 of the Act would be relevant in this respect. Section 132 stipulates that, on a requisition being made under sub-section (1), the officer or authority

referred to in Clause (a) or Clause (b) or Clause (c), as the case may be, of the sub-section shall deliver the books of account, other documents or assets to the requisition 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.

15. Under Section 451 of the Code, the Criminal Court has limited power to make inquiry. However, the Court has no power to go in detail and hence, specific provision is made in the Act under Sec.132-A once the proceedings is initiated by the Department. Under Section 132-A of the Act, neither the Court nor the Police Authority has the power to release the currency notes. Hence, scope of inquiry under Sec.451 of the Code as also under Sec.132-A of the Act is quite different.

16. The intention of the Legislature by incorporating Section 132 of the Act is only to protect the interest of revenue of the State and if authority is satisfied regarding the source of income, it may pass appropriate order to hand over the muddamal to the assessee or any concerned person. When question of huge currency is involved and if proceedings of inquiry under Sec.132-A of the Act are initiated, then certainly truth will come before the the Department regarding genuineness of the muddamal seized.

17. It appears that though request was made by the applicant through an application before the learned Magistrate for handing over the muddamal to the applicant and not to hand it over to the respondent No.2, the learned Magistrate ordered to hand over the muddamal to the respondent No.2. Thereafter, the applicant approached the learned Magistrate on 15-4-2009 by submitting an application that since the Department had filed revision being Cri.Rev. Appln.No.206 of 2009 against the said order, the order passed by the learned Magistrate be stayed till the disposal of revision. It is surprising and shocking that the learned Magistrate rejected the said application. If reasonable time would have been granted by the learned Metropolitan Magistrate, no heaven would have fallen and no complication would have arisen. The learned Magistrate was not at all within his powers to order for handing over muddamal currency notes to the respondent when proceedings were initiated by the Department under Sec.132 of the Act.

18. Apart from informing the learned Magistrate, the applicant had also informed the Police Inspector, Karanj Police Station, that a revision was filed in the Court and there was a likelihood of granting stay against the order and hence, he was requested not to release the muddamal to the respondent No.2 till the revision is heard. He also did not do anything but handed over the muddamal currency notes amounting to Rs.30.00 lakhs relying only on the order passed by the learned Magistrate.

19. In view of Section 132 of the Act, it shall be the duty of the police authority to comply with requisition issued by the authorized officer of the Department. The police authority has no power to retain the muddamal or hand it over to the respondent No.2. It was incumbent upon him to have handed over muddamal to the Department for completion of proceedings initiated by it. By not complying with the requisition, a grave illegality has been committed by the concerned police officer. The conduct of this Officer also speaks volume.

20. In the entirety of the facts and circumstances narrated hereinabove, I am of the opinion that the order passed by the learned Magistrate requires to be quashed and set aside and the revision deserves to be allowed.

21. Thus, the revision is allowed. The order dated 6-4-2009 passed by the learned Metropolitan Magistrate, Court No.5, Ahmedabad, in Miscellaneous Application No.42 of 2009 is quashed and set aside. The muddamal currency notes, which were given to the complainant on furnishing personal bond, are ordered to be hand over to the Department through the Police Inspector, Karanj Police Station, Ahmedabad, within fifteen days from today. Rule is made absolute.

22. In view of the aforesaid order passed in main revision application, Cri.Misc.Appln.No.5922 of 2009 does not survive and is disposed of accordingly. Notice is discharged.

23. Office shall place a copy of this judgment in each matter.

24. The observations made by this Court in this judgement being made for the purpose of deciding this revision shall not prejudice the parties either in the trial or in the proceedings pending before the Department.