

K. Choyi

Vs

Syed Abdulla Bafakky Thangal and Others

Criminal Appeal No. 15 of 1973

(R.S. Sarkaria, P.N. Shinghal, O. Chinnappa Reddy JJ)

24.07.1979

JUDGMENT

CHINNAPPA REDDY, J. –

1. On December 24, 1970, at about 1 a.m. Beeran, second respondent herein, was walking along the road in Calicut town when the police stopped him on suspicion, searched him and found, in a bag which he was carrying, a sum of rupees one lakh in currency notes of one hundred rupee denomination. He was arrested under Sections 54 and 550 of the Code of Criminal Procedure and produced before the Sub-Magistrate I, Kozhikode. The Magistrate remanded him to custody. The police reported to the Magistrate that at the time of arrest Beeran had stated that the money belonged to one Ahammed Thangal and that he was carrying the money to be paid to one Kayappa of Puthupady. On December 28, 1970, Beeran filed a petition requesting the Court to pay the money to Syed Abdulla Bafakky Thangal, first respondent herein, stating that the money belonged to him. Syed Abdulla Bafakky Thangal also filed a similar petition (C.M.P. No. 65 of 1970). On November 20, 1971, the police submitted a final report referring the case as one of mistake of fact and stating that their investigation revealed that the money seized from Beeran belonged to Syed Abdulla Bafakky Thangal and that Beeran had committed no offence. In the meanwhile the Income Tax Officer, Assessment IV, Calicut, the appellant herein, filed C.M.P. No. 1 of 1971 before the Sub-Magistrate praying that the amount seized from Beeran may be paid to him under Section 132 of the Income Tax Act as it represented wholly or partly property or income which had not been disclosed for the purposes of the Income Tax Act. Later, Beeran was assessed to pay income tax of Rs. 56,501 and a penalty of Rs. 42,900 and the Income Tax Officer (Recovery), Calicut, filed C.M.P. No. 54 of 1971 before the Sub-Magistrate, apparently under Section 226(4) of the Income Tax Act, praying that the amount of Rs. 1,00,000 seized from Beeran may be paid to him.

2. The learned Magistrate, on the scant material available to him, found that the amount seized from Beeran belonged to Syed Abdulla Bafakky Thangal. He rejected C.M.Ps. Nos. 1 and 54 of 1971 and allowed C.M.P. No. 65 of 1970. The Income Tax Officer, Assessment IV, Calicut and the Income Tax Officer (Recovery), filed Criminal Revision Petitions 1 of 1972 and 2 of 1972 respectively in the court of the District Magistrate, Calicut. The learned District Magistrate confirmed the order of the Sub-Magistrate and dismissed the criminal revision petitions. The Income Tax Officer, Assessment IV, Calicut, filed a further criminal revision petition in the High Court against the order of the District Magistrate in Criminal Revision Petition No. 1 of 1972. But the Income Tax Officer (Recovery) did not file any further criminal revision petition. He allowed the order of District Magistrate affirming the order of the Sub-Magistrate rejecting his application under Section 226(4) of the Income Tax Officer Act to become final. The High Court dismissed the Income Tax Officer, Assessment IV's criminal revision petition on the ground that Section 132(1)(iii) of the Income Tax

Act had no application to the facts of the case as the currency notes produced in Court were not 'those seized by the officer or which he was empowered to seize'. The Income Tax Officer, Assessment IV, Calicut, has preferred this appeal, having obtained special leave from this Court.

3. Shri Lalit and Shri Datar, learned counsel for the appellant, urged that Section 132 of the Income Tax Act was applicable to assets in the custody of the court also and that the Income Tax Officer, who may not physically seize the assets, may achieve the result by requesting the court to deliver the assets to him. We do not think it necessary to consider this question in the situation that has arisen on the facts of the case. There can be no question of making a seizure under Section 132 of the Income Tax Act and proceeding further under the provision of that section, once an assessment is completed. Seizure under Section 132 relates to a pre-assessment stage. If an assessment is completed before the seizure is effected and while the assets are still in the custody of the court, the appropriate remedy for the revenue is to make an application under Section 226(4) of the Income Tax Act. That was what was done in the present case too. The earlier petition by the Income Tax Officer, Assessment IV, praying that the money may be paid to him under Section 132 must be considered to have become infructuous as a result of subsequent events. Now, as already mentioned by us, the order of the District Magistrate confirming that of the Sub-Magistrate rejecting the application under Section 226(4) was allowed to become final by the Income Tax Officer (Recovery). We, have, therefore, no option but to reject the present appeal. We may add that on the material placed before him the learned Sub-Magistrate was justified in holding that the money belonged to Syed Abdulla Bafakky Thangal and not to Beeran.

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