

Mohammad Kunhi

Vs

Mohammad Koya and Others

Criminal Appeal No. 2 of 1973

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

24.07.1979

JUDGMENT

CHINNAPPA REDDY, J. –

1. Mohammad Koya was searched on suspicion by the Railway Police when he alighted at the Madras Central Station on January 29, 1970 by the West Coast Express. A sum of rupees one lakh in currency notes of 100 rupee denomination was seized from his person. Mohammad Koya was arrested and produced before the Second Presidency Magistrate, Madras, who remanded him to custody. After investigation, the Inspector, Railway Police Madras Central, reported to the Magistrate that no cognizable offence was disclosed against Mohd. Koya and the proceedings may, therefore, be dropped. Mohd. Kunhi filed a petition before the Presidency Magistrate claiming that the money belonged to him and that he had entrusted Mohammad Koya with the money for being paid to a constituent at Bombay. Mohammad Koya also supported the petition filed by Mohammad Kunhi. Meanwhile Income Tax Officer V, Madras, having been duly authorised by the Commissioner of Income Tax, Madras, Kerala and Bombay, filed an application before the Presidency Magistrate praying that the amount may be paid to him under Section 132 of the Income Tax Act as the amount represented the undisclosed income of Mohammad Koya. The learned Presidency Magistrate reflected the application of Mohammad Kunhi and allowed that of the Income Tax Officer. A criminal revision petition filed by Mohammad Kunhi in the High Court of Madras was by Maharajan, J., on October 13, 1972. The present appeal has been filed by Mohammad Kunhi on a certificate granted by the High Court of Madras under Article 134(1)(c) of the Constitution. It was brought to the notice of Maharajan, J., at the time of the disposal of the criminal revision petition, that Mohammad Koya from whom the currency notes were seized had subsequently been assessed to pay income tax of Rs. 62,375 and a penalty of Rs. 50,000. It is now brought to our notice and it is not disputed by the learned counsel for the respondents, that the order imposing the penalty has been set aside on appeal. The present prayer of Mohammad Kunhi is for a return of the amount in excess of the income tax assessed on Mohammad Koya. The question of law to decide which the certificate was granted by the Madras High Court has not now been pressed before us.

2. We do not see how the request of the appellant that the amount in excess of the tax assessed on Mohammad Koya should be returned to him can be refused. Mohammad Koya has no objection to this course and the learned counsel appearing for Mohammad Koya has stated so before us. Under Section 132(5) of the Income Tax Act the Income Tax Officer can only retain the amount sufficient to satisfy the demand and is bound to release the balance. We, therefore, direct the third respondent Income Tax Officer to return to the appellant Mohammad Kunhi the amount in excess of the income tax assessed on Mohammad Koya together with such interest as may be admissible under the

provisions of the Income Tax Act. The appeal is dismissed subject to this direction.

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