Mohammed K. vs State of Kerala

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Court : Kerala

Decided On : Dec-22-2023

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : Crl.Rev.Pet/1121/2023

Appellant : Mohammed K.

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR FRIDAY, THE 22ND DAY OF DECEMBER 2023 / 1ST POUSHA, 1945 CRL.REV.PET NO. 1121 OF 2023 AGAINST THE ORDER DATED 05.10.2023 IN CMP 1502/2023 OF THE JUDICIAL MAGISTRATE OF FIRST CLASS -II,PERINTHALMANNA REVISION PETITIONERS/PETITIONERS:

1 MOHAMMED K. AGED 52 YEARS, S/O. KUNJOYI, MALAYIL, PAITODICHALIL HOUSE, POOLAPOYIL, NEELESWARAM, KOZHIKODE, PIN - 673582. 2 ABDU RAHIMAN, AGED 55 YEARS, S/O. MUHAMMED, PAYYADIPARAMBIL HOUSE, THIRUVAMBADY, KOZHIKODE, PIN - 673603. BY ADVS. K.P.SATHEESAN (SR.)

P.MOHANDAS (ERNAKULAM) R.BHASKARA KRISHNAN BHARATH MOHAN SABU PULLAN GOKUL D. SUDHAKARAN

RESPONDENTS/STATE & COMPLAINANTS: 1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI, PIN - 682031. 2 THE STATION HOUSE OFFICER MELATTUR POLICE STATION, PERINTHALMANNA, MALAPPURAM, PIN - 679326. 3 GOVERNMENT OF INDIA INCOME TAX DEPARTMENT, REPRESENTED BY M. HAREESH KUMAR, ASSISTANT DIRECTOR OF INCOME TAX (INV), CHUNDAKAYIL COMPLEX, MANJAKULAM ROAD, PALAKKAD, PIN - 678001. R1 & R2 BY SMT SEENA C., PUBLIC PROSECUTOR R3 BY SRI.JOSE JOSEPH, SC FOR INCOME TAX THIS CRIMINAL REVISION PETITION HAVING COME UP FOR FINAL HEARING ON 22.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J.

-- Dated this the 22nd day of December, 2023

ORDER

The petitioners, aggrieved by the order dated 05.10.2023 of the Judicial Magistrate of the First Class-II, Perinthalamanna in C.M.P.No.1502 of 2023, have filed this Revision Petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (Code).

2. Heard the learned Senior Counsel for the petitioners, the learned Public and the learned Senior Standing Counsel for the 3rd respondent.

3. An amount of Rs.1,03,00,000/- (Rupees one crore

and three lakhs only) was seized from the possession of the petitioner and one Rahim, while they were travelling in a car on 30.03.2022 by the 2nd respondent. Since the 1st petitioner and his companion could not explain for the possession, the 2nd respondent along with a report produced the money before the Judicial Magistrate of the First Class, Perinthalmanna. The

petitioner filed C.M.P.No.1107 of 2022 under Section 457 of the Code seeking release of the amount on interim custody.

On receipt of notice from the learned Magistrate, the 3rd respondent filed C.M.P. No.1948 of 2022 claiming that the said amount is liable to be released to the department since the petitioner did not account the said amount or pay tax for it. The learned Magistrate, after hearing both sides, dismissed C.M.P.No.1107 of 2022 and allowed C.M.P.No.1948 of 2022 as per Annexure I order directing to release the amount to the 3rd respondent on the department executing a bond for Rs.1,03,00,000/- along with two solvent sureties each for the like sum. The petitioners filed a revision petition before the Sessions Court, Manjeri challenging that order, but was not successful.

4. Annexure II is the order of this Court in Crl. M.C.

No. 8195 of 20017 concerning a similar matter. The learned Magistrate relied on Annexure II to decline the plea of the petitioners to release the money to them. The directions in Annexure II were to release the money to the income tax

department, to complete the proceedings for assessment within six months and, if the department fails to conclude the proceedings within that time, to release the amount in question to the claimant. The petitioners herein taking cue from those directions approached the learned Magistrate again by filing CMP No. 1502 of 2023 invoking the provisions of Section 452 of the Code. It was contended that the 3 rd respondent did not conclude the process of assessment within a period of six months and as no other proceedings in relation to the money is pending, the petitioners were entitled to get the money released. The learned Magistrate dismissed that petition as per the impugned order.

5. The learned Senior Counsel appearing for the

petitioners by placing reliance on a decision of this Court in Ravirajan R. v. State of Kerala [2023 (6) KHC SN 23], submitted that the amount is not liable to be released to the department inasmuch as the Income Tax Department is disentitled to stake a claim under Section 132A of the Income Tax Act, 1961 in respect of money in the custody of a court. A

similar question as in the instant case was considered by a learned Judge in the said decision. It was held that the Magistrate while exercising the powers under Section 451 of the Code cannot issue directions to the revenue to conclude the assessment proceedings within a time frame bypassing the provisions and further that the order to hand over the amount to the revenue is incorrect. It was held so following the law laid down by the Apex Court in J.R.Malhotra and another v. Additional Sessions Judge, Jullundur and others [AIR 1876 SC 219].

6. Having heard the learned Senior Counsel appearing

for the petitioner and the learned Standing Counsel for the 3 rd respondent, I find no reason to deviate from the view taken by this Court in Ravirajan (supra). Further, the learned Standing Counsel for the 3rd respondent would bring to my notice that S.L.P.(C) No.16409 of 2023 filed by the Union of India challenging the decision in Ravirajan (supra) was dismissed as per the order dated 15.12.2023. In the circumstances,the impugned order is liable to be set aside and

C.M.P.No.1502 of 2023 is liable to be allowed.

7. What remains is the conditions on which the

amount shall be released to the revision petitioners. Needless to say that when the amount is released in the circumstances of this case, there shall be sufficient provision for ensuring that the amount if required, is repaid/redeposited by the petitioners. In order to ensure such repayment/redeposit, it is necessary that the petitioners furnish sufficient security. Hence, it is ordered that an amount of Rs.1,03,00,000/- will be released to the revision petitioners on their executing a bond undertaking that they shall repay/redeposit the amount as and when so directed by either the learned Magistrate or the 3rd respondent and furnishing bank guarantee drawn on a Nationalised or Scheduled Bank for the equal amount. The 3 rd respondent shall finalise the process of assessment in accordance with law. The revision petition is disposed of accordingly. Sd/- P.G. AJITHKUMAR, JUDGE dkr APPENDIX OF CRL.REV.PET 1121/2023 PETITIONER ANNEXURES ANNEXURE-I TRUE COPY OF THE COMMON ORDER DATED 22-11-2022 IN C.M.P.NO. 1107/2022 AND C.M.P.NO. 1948/2022 OF THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT-II, PERINTHALMANNA

ANNEXURE-II TRUE COPY OF THE ORDER DATED 10-01- 2022 IN CRL.M.C. NO. 8195/2017 ANNEXURE-III TRUE COPY OF THE ORDER DATED 30-03-2023 IN CRL.R.P.NO. 34/2022 OF THE COURT OF SESSIONS, MANJERI DIVISION ANNEXURE-IV TRUE COPY OF THE ORDER DATED 30-03- 2023 IN CRL. REVISION PETITION NO. MANJERI DIVISION ANNEXURE-V TRUE COPY OF THE INTIMATION ISSUED BY THE 3RD RESPONDENT TO THE 1ST PETITIONER DATED 21-10-2022