

**Pratap K. Pothan Vs. Circle Inspector of Police and ors.**

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**Court :** Kerala

**Decided On :** Jun-29-1998

**Reported in :** [1999]238ITR290(Ker)

**Judge :** K. Narayana Kurup, J.

**Acts :** [Income Tax Act, 1961](#) - Sections 132; [Constitution of India](#) - Article 226

**Appeal No. :** O.P. No. 1815 of 1998-N

**Appellant :** Pratap K. Pothan

**Respondent :** Circle Inspector of Police and ors.

**Advocate for Def. :** Government Pleader for respondent No. 1 and; N.R.K. Nair, Adv. for respondent Nos. 2 and 3

**Advocate for Pet/Ap. :** N. Nandakumara Menon and; Murali Purushothaman, Adv.

**Judgement :**

**K. Narayana Kurup, J.**

1. The petitioner was a passenger bound for Madras from the Trivandrum domestic airport in the Jet Airways flight on October 1, 1997. After the baggage of the petitioner was screened through the screening machine at the domestic

airport, the first respondent, Circle Inspector of Police, Airport Security, directed the petitioner to open the baggage. The baggage was opened and an amount of nearly Rs. 6 lakhs which was kept in the baggage was seized by the first respondent. Thereupon, the petitioner also voluntarily disclosed to the first respondent that another amount of Rs. 5.75 lakhs is also in the possession of the petitioner and the same has been kept in the other baggage which has been sent to the cabin of the aircraft. Then the first respondent brought the cabin baggage and the same was also opened and cash found in it namely, a sum of Rs. 5.75 lakhs was also seized by the first respondent. The petitioner informed the first respondent that a total amount of Rs. 11.75 lakhs which is in his possession is the amount received by him from Deedi Automobiles, Trivandrum, who have purchased the 1/3rd share of the petitioner in the 36 cents of land and the building situated therein on the side of the main road near the Ayurveda College, Trivandrum. The petitioner along with his sister who is entitled to another 1/3rd share in the aforesaid property have jointly executed exhibit P-1 agreement for a sale dated September 29, 1997, in favour of Smt. Geetha Jose Thottam, W/o T. C. Paul, who is a partner of Deedi Automobiles and the money seized reflects part of the sale consideration received under exhibit P-1. As per exhibit P-1 agreement, a total of Rs. 25 lakhs has been paid to the petitioner and his sister equally. Thus the petitioner got Rs. 12.5 lakhs out of which he has spent some amount and the balance is Rs. 11.75 lakhs. After the seizure by the first respondent, the petitioner was taken to the customs wing of the International Airport at Trivandrum on the allegation that the money possessed by the petitioner was foreign money (?). The petitioner was questioned by the customs officers and the petitioner explained to them that the possession of the aforesaid amount, viz., Rs. 11.75 lakhs, by him is absolutely legal and proper. After accepting the explanation furnished by the petitioner, the first respondent was told by the customs officers that they have no intention to proceed against him and subsequently the petitioner was brought to the domestic airport by the first respondent. However, the customs officers informed the Income-tax Department that the petitioner has been detained with the possession of a sum of Rs. 11.75 lakhs. Thereupon, the Income-tax Officers came to the domestic airport at Trivandrum and took possession of the entire amount of Rs. 11.75 lakhs possessed by the petitioner on the basis of exhibit P-2

panchanama. Copy of exhibit P-1 was also seized by the Income-tax Officers on the basis of exhibit P-2. Exhibit P-3 is the news item which appeared in English and Malayalam dailies, relating to this incident. Though several requests were made by the petitioner for the return of the money seized from him to respondents Nos. 2 and 3, they did not elicit any satisfactory response. On October 22, 1997, the petitioner submitted exhibit P-4 representation before the second respondent, Commissioner of Income-tax, requesting him to transfer the amount of Rs. 11.75 lakhs seized from the petitioner to the file of the Commissioner of Income-tax, Tamil Nadu-IV, Chennai, for adjusting the same amount towards the tax arrears due from the petitioner. The request contained in exhibit P-4 has been rejected as per exhibit P-5 communication by which he was informed 'that the seizure of cash has been made in connection with the search in the case of Deedi Automobiles, Trivandrum, and that this cash has been seized as the undisclosed income of Deedi Automobiles. Therefore, there is no need to transfer this amount to the P. D. account of the Commissioner of Income-tax, Tamilnadu-IV, Chennai.' Under the above facts and circumstances, the petitioner has moved this court with the present writ petition for the issuance of a writ of certiorari to quash exhibit P-5 and for a writ of mandamus directing the respondents to return to the petitioner the amount of Rs. 11.75 lakhs seized from him on October 1, 1997, from the domestic airport at Trivandrum with 'market rate interest' from October 1, 1997, till date of payment and for other incidental reliefs.

2. In the counter affidavit filed on behalf of respondents Nos. 2 and 3, the plea set up is that they have reasons to believe that the money seized from the petitioner forms part of the undisclosed income of Deedi Automobiles and since Deedi Automobiles is being proceeded against, the money cannot be released to the petitioner till the proceedings are completed.

3. Heard learned counsel on both sides. The short question that arises for consideration is whether the impugned order exhibit P-5 can be legally sustained and if so, whether the petitioner is entitled to the return of the case (Rs. 11.75 lakhs) seized from him on October 1, 1997, from the domestic airport at Trivandrum with market rate interest (?) from October 1, 1997, as prayed. In this context, the first and foremost point to be borne in mind is the fact that the money

which the petitioner was carrying during his travel from Trivandrum to Madras on October 1, 1997, is the money received by him from Deedi Automobiles being part of the sale consideration of the petitioner's 1/3rd share in the land and the building scheduled to exhibit P-1. Exhibit P-2 panchanama itself shows that exhibit P-1 agreement was seized on October 1, 1997, from the possession of the petitioner at the airport. The respondents have no case that exhibit P-1 is a sham or fabricated document to cover up unlawful transactions. They have also no case that Deedi Automobiles have any legal claim or right over the amount of Rs. 11,75 lakhs seized from the possession of the petitioner. Exhibit P-6 disclaimer letter submitted by the managing partner of Deedi Automobiles to the second respondent would prove beyond doubt that they had given a sum of Rs. 12.50 lakhs as advance payment for purchase of the petitioner's 1/3rd share in the land and building situated at M. G. Road, Trivandrum, which is now under the occupation of Deedi Automobiles under a lease arrangement. The payment in question is supported by exhibit P-1 agreement for sale as already noted. Deedi Automobiles have disclaimed their right over the money by issuing exhibit P-G. In this connection, it may be noted that the petitioner is an assessee on the file of the Income-tax Officer, Film Ward-II, Chennai, and has requested in exhibit P-4 representation to the Commissioner of Income-tax that the amount seized from him may be adjusted towards the arrears of income-tax due from him. As per exhibit P-1 agreement a total of Rs. 25 lakhs has been paid to the petitioner and his sister equally. Thus, the petitioner got Rs. 12.50 lakhs out of which he spent some amount and the balance is Rs. 11.75 lakhs. Since the petitioner has disclosed his source of money seized from him at the time of seizure itself, I do not think that respondents Nos. 2 and 3 will be justified in retaining the money on the specious plea that the proceedings initiated against Deedi Automobiles for suppressing income are still pending. Exhibit P-5 communication sent to the petitioner by the Income-tax Department would show that the amount has been seized on the ground that it is the undisclosed-income of Deedi Automobiles. The Department has no case that the money seized is the undisclosed income of the petitioner. That apart, there is no dispute whatsoever between the petitioner and Deedi Automobiles with regard to the money in question.

4. Thus, on a totality of the facts and circumstances brought to my notice, I am satisfied that the power vested in the officers of the Income-tax Department under Section 132A of the Income-tax Act (for short 'the Act') has been exercised on a legal misconception. Since the petitioner has received the amount under a valid agreement, the fact that the Department has a case that the vendee has not disclosed the source of income for purchase of the property may not be a sufficient ground to proceed against the vendor who has parted with his property for a valuable consideration. He is not expected to make a roving enquiry as to whether the amount advanced forms part of the lawful income of the vendee or not. If the Department has a case that the vendee's income is undisclosed, nothing prevents them from proceeding against the vendee, but not against the petitioner who is a bona fide seller for valuable consideration. There is nothing to indicate that the transaction in question is a collusive one intended to defeat the interests of the Revenue. The case law on the point is covered by the decision of the Supreme Court in CIT v. Vindhya Metal Corporation : [1997]224ITR614(SC) . In that case an amount of Rs. 4,63,000 was seized by the railway police from the possession of a rail traveller who at that time had no documents with him in support of the ownership or possession of the money seized and whose name was not borne on the General Index Register of the Income-tax Officer of the place which the traveller belonged to. In that case the validity of the warrant of authorisation issued by the Commissioner of Income-tax under Section 132A(1)(c) of the Act was challenged before the Allahabad High Court on the ground that the condition precedent for the exercise of power under the said provision was not satisfied. After examining the file containing the order passed by the Commissioner, the High Court has observed that the information on the basis of which the Commissioner had issued the warrant of authorisation was as follows (page 617) :

'(a) a sum of Rs. 4,63,000 had been seized by the Government Railway Police from the possession of one Vinod Kumar Jaiswal, resident of Imamganj, Durga Devi, Mirzapur ;

(b) at the time of the seizure by the Railway Police, no papers or documents in regard to the ownership or possession of the amount were in possession of Vinod Kumar Jaiswal, and

(c) no person by the name of Vinod Kumar Jaiswal was borne on the General Index Register of income-tax assesseees of the Income-tax Offices at Mirzapur.'

The High Court, after considering the material on which reliance was placed by the Commissioner, held that on the information in the possession of the Commissioner no reasonable person could have entertained a belief that the amount in the possession of the person from whom the money was seized represented income which would not have been disclosed by him for purposes of the Act. The High Court while quashing the warrant of authorisation, observed as follows (page 618) :

'Vinod Kumar Jaiswal, according to the information in the possession of the Commissioner, was not borne on the General Index Register of income-tax assesseees of the Income-tax Offices at Mirzapur to which place he belonged. Obviously, therefore, there was no occasion for him to have disclosed the amount as his income in any assessment proceedings under the Act. Without anything more than what was actually there before the Commissioner, how could it have been assumed that he would not have disclosed it for purposes of any proceedings under the Act. There was nothing before the Commissioner to suggest that it was, in fact, wholly or in part, income of any person connected with Vinod Kumar Jaiswal so as to induce a belief that, if called upon, Vinod Kumar Jaiswal would not have disclosed it for the purpose of the Act. The mere fact that Vinod Kumar Jaiswal was in possession of this amount and did not have any documents with him regarding its ownership or possession could not be treated as appears to have been done by the Commissioner as information relatable to a conclusion that it represented income which would not have been disclosed by Vinod Kumar Jaiswal for purposes of the Act. Mere unexplained possession of the amount, without anything more, could hardly be said to constitute information which could be treated as sufficient by a reasonable person, leading to an inference that it was income which would not have been disclosed by the person in possession for purposes of the Acts.'

In appeal, the apex court having considered the facts and circumstances of the case, found no valid ground to interfere with the impugned judgment of the High

Court and accordingly the appeal was dismissed. The case of the petitioner herein stands on a much stronger footing than on the case cited supra. The petitioner satisfactorily explained the source of money which he received. He was in possession of valid documents to explain his source of income at the time of seizure. There is no case that the transaction in question is intended to defeat the interests of the Revenue. Exhibit P-6 disclaimer letter submitted by the managing partner of Deedi Automobiles to the second respondent would prove beyond doubt that after execution of exhibit P-1 Deedi Automobiles has nothing to do with the money seized from the possession of the petitioner.

5. For the aforesaid reasons, I allow this original petition and quash exhibit P-5 as prayed for. There will be a further direction to respondents Nos. 2 and 3 either to return to the petitioner the amount of Rs. 11.75 lakhs seized from him on October 1, 1997, at the domestic airport at Trivandrum or to adjust the said amount towards arrears of income-tax due from the petitioner on the file of the Income-tax Officer, Film Ward-II, Chennai. This shall be done forthwith, at any rate, not later than one month from today. The amount of Rs. 11.75 lakhs will bear interest at the rate of 19.5 per cent, from the date of seizure till payment.

6. The original petition is allowed as above. No costs.