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**Court :** Kolkata

**Decided On :** Jun-07-1961

**Reported in :** [1961]42ITR753(Cal)

**Appeal No. :** Revision Application No. 580 of 1961

**Appellant :** Union of India and Another

**Respondent :** The State and Others.

**Advocate for Pet/Ap. :** Mr. E. Meyer

**Judgement :**

S. K. SEN, J. - This revisional application is directed against an order of the Chief Presidency Magistrate, Calcutta, revising an order passed by his predecessor in office allowing an application under Order XIII, rule 10, of the Civil Procedure Code for sending certain documents to the Income-tax Officer (Central) Circle No. VII, and directing the Income-tax Officer in question to indicate specifically what documents he wants for the purpose of income-tax assessment, so that the question of relevancy thereof for the purpose of an assessment may be examined in the presence of all the interested parties.

The facts of the case are briefly as follows : On September 15, 1959, certain books of account, documents and correspondence were seized from the firm of opposite party No. 2, Sohan Lal Sethia, on the authority of a search warrant issued by the Chief Presidency Magistrate, Calcutta, under section 19(3) of the Foreign

Exchange Regulation Act, 1947. There was, however, no case in court started under the provisions of the Foreign Exchange Regulation Act against Sohan Lal Sethia or against M/s. Sohanlal Sethia and sons Private Ltd. by the Enforcement Officer attached to the Ministry of Finance, Department of Economic Affairs, Government of India, but an adjudication proceeding was started and as a result of the adjudication the claims of the Government of India against Sohan Lal Sethia and his company were settled. On May 6, 1960, the Income-tax Officer (Central) Circle No. VII, Calcutta, made an application to the Chief Presidency Magistrate, Calcutta, for getting custody of all the documents seized in execution of the search warrant issued by the Chief Presidency Magistrate on September 15, 1959, stating that the documents were required for reference in an assessment proceeding pending before the Income-tax Officer against Sohan Lal Sethia and his company. A letter of request under Order XIII, rule 10, of the Civil Procedure Code containing a list of the documents was annexed to the application. On May 11, 1960, the then Chief Presidency Magistrate passed an order that the investigating officer should make over the seized documents to the Income-tax Officer; but the Foreign Exchange Enforcement Directorate then moved the Chief Presidency Magistrate for being permitted to retain the documents until the completion of the adjudication proceedings against Sohan Lal Sethia and his company and the learned Chief Presidency Magistrate then passed a revised order that the Income-tax Officer would get the documents after the adjudication proceedings were concluded. The adjudication proceedings were concluded by March 9, 1961, and then the Income-tax Officer (Central) Circle No. VII, Calcutta, renewed his prayer for the documents in accordance with the letter of request under Order XIII, rule 10, of the Civil Procedure Code already sent to the Chief Presidency Magistrate. On March 18, 1961, the learned Chief Presidency Magistrate directed that the application be put on June 3, 1961. In the meantime, on April 15, 1961, opposite party No. 2, Sohan Lal Sethia, filed an application before the Chief Presidency Magistrate for the return of all the documents seized on September 15, 1959, at the instance of the Foreign Exchange Enforcement Directorate. The learned Chief Presidency Magistrate after hearing both parties passed the impugned order on April 26, 1961. He observed that the Income-tax Department could not as of right claim to have the custody of all the seized documents without mentioning the particulars of

the documents which they wanted to have and without showing that they were entitled to get these documents in view of the provision of section 22 read with section 21(1) of the Income-tax Act. Accordingly the Income-tax Officer was directed to inspect the documents which were directed to be produced by the Enforcement Directorate on May 3, 1961, and then to inform the court which documents in particular the Income-tax Officer wanted for the purpose of income-tax assessment.

It is against this order that the Income-tax Officer and the Union of India represented by the Commissioner of Income-tax (Central) have moved this revisional application. Mr. E. Meyer appearing for the petitioners has urged that the Income-tax Officer has the power of a civil court in respect of discovery and inspection of documents and compelling the production of books of account and other documents [vide section 37(1) of the Income-tax Act] and that the Income-tax Officer in exercise of his power as a civil court is entitled to issue a letter of request under Order XIII, rule 10, of the Civil Procedure Code, and that the court to which such a letter of request is issued is not entitled to examine the validity of the requisition but is bound to comply with it. In this connection Mr. E. Meyer has referred to the decision, *Ganpatrai Rawatmull v. Collector, Land Customs, Calcutta* where it was held that the documents seized in execution of a search warrant issued by a magistrate under section 172 of the Sea Customs Act, on requisition by the land customs authorities, could be made over by the magistrate to the income-tax authorities on receiving a requisition under Order XIII, rule 10 of the Civil Procedure Code. Mr. E. Meyer has also referred to an old decision of this court, viz., *Golap Coomary Dosee v. Rajah Soondur Narain Deo*, that when a requisition under Order XIII, rule 10, of the Civil Procedure Code is made by one civil court on another court, e.g., the Court of the Judicial Commissioner, the latter has no discretion in the matter but is bound to comply with the requisition. The terms of Order XIII, rule 10, of the Civil Procedure Code if scrutinized lead to the same conclusion. It is clear on reading the rule as a whole that when there is an application by a party to make such a requisition from another court, the court may direct the party to satisfy him as to the relevancy of the documents of the record to be requisitioned from another court by when the requisition is made by another court suo motu, it does not appear from the terms of the rule that the court

requested has any discretion in the matter. In the circumstances, it appears prima facie that the learned Chief Presidency Magistrate was wrong in seeking by his order dated April 26, 1961, to scrutinize the validity and legality of the requisition made by the Income-tax Officer for the documents and papers which had been seized from the firm of Sohan Lal Sethia in execution of a search warrant issued under the provisions of the Foreign Exchange Regulation Act.

Mr. Ajit Kumar Dutta appearing for Sohan Lal Sethia had urged two objections against the validity of the requisition and has sought to support the order of the learned Chief Presidency Magistrate dated April 26, 1961. The first point urged by Mr. Dutta is that the relevant time, viz., May 6, 1960, no proceedings for assessment of the company belonging to Sohan Lal Sethia was pending before the Income-tax Officer (Central) Circle No. VII, and that therefore, the requisition was without jurisdiction. As to this point, however, it appears from the affidavit in reply by the petitioners that although assessment for the assessment year 1959-60 had been completed in respect of Sohan Lal Sethia and Sons Private Ltd. and Sohan Lal Sethia, the assessment proceedings for the assessment year 1960-61 in respect of the firm Sohan Lal Sethia and Sons Private Ltd., was pending on May 6, 1960. According to Mr. E. Meyer the general notice under section 22(1) of the Income-tax Act had been issued before May 6, 1960, and a specific notice on the party in question under section 22(2) of the Income-tax Act was also issued on May 6, 1960, before the letter of request under Order XIII, rule 10, of the Civil Procedure Code was issued on the Chief Presidency Magistrate. This statement made in the affidavit in reply was not controverted, and it must, therefore, be held that proceedings for assessment were pending before the Income-tax Officer in question and, therefore, he had jurisdiction to make a letter of request for the documents under Order XIII, rule 10, of the Civil Procedure Code. There can be no doubt that proceedings commenced with the issue of the specific notice under section 22, Sub-section (2), of the Income-tax Act. Mr. E. Meyer has urged that with the issue of general notice under section 22(1) of the Income-tax Act proceedings may be said to commence; but on this point we need make no decision, as specific notice under section 22, sub-section (2), was issued before the letter of request was issued on the Chief Presidency Magistrate.

Mr. Dutta has next urged that a settlement had been made regarding the assessment of the various concerns of Sohan Lal Sethia, between him and the Commissioner of Income-tax on January 27, 1959, under which Sohan Lal Sethia on behalf of the concerns agreed to assessment on a previously undisclosed income of fifty lakhs of rupees made by the concerns during the assessment years 1940-41 to 1958-59; and that in view of this settlement it is not open to the Income-tax Department to reopen the assessment of the years 1940-41 to 1958-59 on the basis of the old documents which were seized by the Foreign Exchange Enforcement Directorate. Mr. Dutta has also referred to section 22(4), proviso, of the Income-tax Act, which provides that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year as defined in the Income-tax Act. Mr. Dutta has urged that the Income-tax Officer could not circumvent that statutory provision by purporting to act under Order XIII, rule 10, of the Civil Procedure Code and get hold of the account papers of a much earlier period.

We do not, however, think that when a valid letter of request under Order XIII, rule 10, of the Civil Procedure Code has been issued by the Income-tax Officer acting as a civil court on another court the latter court is entitled to go into the question whether the document could be otherwise legally obtained by the requisitioning court or authority. Reference has already been made to the terms of Order XIII, rule 10 of the Civil Procedure Code, and to the old decision, *Golap Coomary Dosee v. Rajah Soondur Narain Deo*. Order XIII, rule 10, sub-rule (3), provides that nothing in this rule should be deemed to enable a court which makes the requisition to use in evidence any document which under the law of evidence would be inadmissible in the suit. It appears to us that not only the objection on this score of inadmissibility but the objection on other legal grounds may be pressed by the party affected, that is Sohan Lal Sethia, before the income-tax authority or the Appellate Tribunal or the High Court, but it is not the function of the court on which requisition has been made to enter into the question of admissibility or other legal questions which may be raised by the party concerned. It is not for the Chief Presidency Magistrate or for us to decide at this stage whether in view of the settlement made between the parties on January 27, 1959, the income-tax authority could legally re-open the assessment for the years 1940-

41 to 1958-59.

The next point urged by Mr. Dutta is that by the terms of Order XIII rule 10(1), requisition may be made from any other court of the record of any suit or proceeding and that it cannot be said that there was or is any proceeding before the Chief Presidency Magistrate who merely issued a search warrant under the provisions of section 19(3) of the Foreign Exchange Regulation Act, 1947, even though the magistrate issuing the search warrant has some control over the ultimate disposal of the documents and account papers seized. But reference may be made to section 4, clause (m), of the Criminal Procedure Code which defines 'judicial proceedings' as including any proceeding in the course of which evidence is or may be legally taken on oath under section 96 of the Criminal Procedure Code. When a Magistrate issues a search warrant, he must have reason to believe that a person to whom a summons or an order under section 24 or requisition under section 95(1) has been issued will not produce the document or things required by such summons or requisition, or in the alternative he has to be satisfied judicially that the purpose of any enquiry, trial or other proceedings under the court would be served by a general search or inspection; only then on being so satisfied the magistrate may issue a search warrant. The issue of search warrant is, therefore a judicial act of the magistrate, and he may also examine any witness to satisfy himself that the issue of the search warrant would be justified. Accordingly, the proceeding in connection with any issue of search warrant must be considered a judicial proceeding before the Magistrate. In this connection reference may be made to the decision, *Mohamed Jackariah & Co. v. Ahmed Mahomed*, where it is observed that issue of search warrant is a judicial act and it should be issued only after a judicial enquiry and upon the proper materials. This has reference to the issue of search warrant under section 96 of the Criminal Procedure Code, but the issue of a search warrant under section 19(3) of the Foreign Exchange Regulation Act, 1947, is similar. It provides that if on a representation in writing made by a person authorised in this behalf by the Central Government or Reserve Bank, a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or a Magistrate of the First Class, has reason to believe that a contravention of any of the provision of this Act has been, or is being or is about to be committed in any place, or that a person to whom an order under sub-

section (2) of this section has been made will or will not produce any book or other documents etc. he may issue a search warrant. In this case also the magistrate must have reason to believe that the issue of the search warrant would be justified according to the provisions of this section and, therefore, the issue of such a search warrant is a judicial act like the issue of a search warrant under section 96 of the Criminal Procedure Code. Accordingly, the proceeding in connection with the issue of a search warrant must be considered to be a judicial proceeding.

Further, it may be pointed out that Order XIII, rule 10(1) of the Civil Procedure Code does not refer to a judicial proceeding. It refers to a suit or proceeding. Even if the proceeding in connection with the issue of a search warrant under the Foreign Exchange Regulation Act be considered a non-judicial proceeding on the part of the Magistrate, such a non-judicial proceeding would still be within the scope of Order XIII, rule 10(1), of the Civil Procedure Code. In the circumstances, we cannot accept the contention of Mr. Dutta that as there was no proceeding before the Chief Presidency Magistrate the requisition under Order XIII, rule 10, of the Civil Procedure Code made by the Income-tax Officer would not be a valid requisition.

That being so, we hold that the order of the learned Chief Presidency Magistrate dated April 26, 1961, seeking to restrict the documents which may be sent to the Income-tax Officer on the requisition, was not a legal order and the order must be set aside. Mr. Dutta has referred also to section 37(3) of the Income-tax Act which provides that 'subject to any rules made in this behalf, any authority referred to in sub-section (1) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act :

Provided that Income-tax Officer shall not -

(a) impound any books of account or other document without recording his reasons for so doing; or

(b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the

Commissioner therefor.'

It has, therefore, been urged that the Income-tax Officer cannot retain the documents and account books indefinitely, and that the Income-tax Officer may therefore be directed to make over the documents to the party, Sohan Lal Sethia, after the expiry of the period of fifteen days. It is quit true that ultimately the documents and the account books must be returned to the party, Sohan Lal Sethia, and the Income-tax Officer must comply with the provisions of section 37(3). It is not necessary for us however to limit the period for which he may retain the documents. We may only pass the direction that the Income-tax Officer will return the documents to opposite party No. 2, Sohan Lal Sethia, as expeditiously as possible, having regard to the terms of section 37(3) of the Income-tax Act.

This rule is, therefore, made absolute and the order of the learned Chief Presidency Magistrate is set aside, and it is ordered instead that apart from the 18 sheets which are to be kept back by the Enforcement Directorate the other documents mentioned in the list attached to the letter of request be made over to the Income-tax Officer (Central) Circle No. VII, and the Income-tax Officer and the Department and directed to return the document and books of account as expeditiously as possible to opposite party No. 2 Sohan Lal Sethia, having regard to the provisions of section 37(3) of the Income-tax Act. If the requirement of the Enforcement Directorate regarding the 18 sheets mentioned in their application dated April 22, 1961, has been satisfied in the meantime, these 18 sheets will also be made over to the Income-tax Department and the Income-tax Officer of (Central) Circle No. VII; if not, the learned Chief Presidency Magistrate may pass further direction regarding the 18 sheets in the light of the observations made above.

K. C. SEN, J. - I agree.

Petition allowed.