

HIGH COURT OF MADHYA PRADESH

MCRC.No.582/2022

(Jahar Singh Gurjar Vs. The State of M.P. & Another)

Gwalior Bench : Dated : 04.03.2022

Shri Santosh Agrawal, learned counsel for the petitioner.

Shri Neelesh Singh Tomar, learned Public Prosecutor for the respondents/State.

Shri DPS Bhadoriya, learned counsel for the Income Tax Department.

The present petition is preferred by the petitioner/complainant under Section 482 of Cr.P.C. taking exception to the order dated 09.06.2021 passed by the Court of the Second Additional Sessions Judge, Karera, District Shivpuri, whereby the application preferred under Section 457 of Cr.P.C. by the petitioner stands rejected.

2. It is the grievance of the petitioner that on a fateful day dacoity was committed by some accused persons at the house of petitioner to the tune of Rs.1,24,00,000/- (Rs. One Crore Twenty Four Lacs only). F.I.R. was registered vide Crime No.172/2021 and investigation carried out. The accused persons were arrested and charge sheet was filed. The case is pending consideration for trial. Incidentally, Rs.53,16000/- (Rs. Fifty Three Lacs Sixteen Thousand Only) and some silver ornaments were recovered from the possession of accused persons.

3. An application under Section 457 of Cr.P.C. was filed by the present petitioner-Jahar Singh Gurjar in which he sought interim

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custody of Rs.45,16000/-. The said application of the petitioner was rejected, therefore petitioner has preferred this petition under Section 482 of Cr.P.C. before this Court.

4. Learned counsel appearing on behalf of the petitioner submits that since the property/cash amount in question belongs to the petitioner and dacoity has been committed from his residence, therefore this amount should be handed over to him as an interim custody till pendency of the trial. The trial Court erred in rejecting his application on objection being filed at the instance of the Income Tax Department. He undertakes to produce the same before the trial Court as and when required.

5. Learned counsel for the respondents/State opposed the prayer and submitted that it is a case where looted property is to the tune of Rs.53,16000/-, out of which, the present petitioner is seeking interim custody of Rs.45,16000/-. Other amount may belong to other complainants. However, he opposed the prayer on the ground that in the best interest of parties, Income Tax Department intervened in the matter and the court below rightly passed the impugned order.

6. Learned counsel appearing on behalf of the Income Tax Department opposed the prayer of the petitioner on the anvil of Section 132 A (1) (c) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act 1961') and submitted that the disclosure of any assets which

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ought to be disclosed but have not been disclosed, comes under the purview of Section 132 A (1) (c) of the Act 1961, and therefore Income Tax Department rightly intervened in the matter. These assets (cash amount) were never disclosed by the petitioner/complainant and other complainants also before the Income Tax Department. Even, they did not bother to file Income Tax Return and under the garb of agriculture income, the petitioner (and other related persons/complainants) were trying to avoid the tax liability. The same is not permissible. He prayed for dismissal of the petition.

7. Heard the learned counsel for the parties and perused the documents appended thereto.

8. It is the case where petitioner as a complainant is seeking refund of his part of looted amount on interim custody from the trial Court. Total amount, which was recovered allegedly from the possession of the accused, was Rs.53,16000/- whereas the petitioner is seeking interim custody of Rs.45,16000/-. From the allegations of the Income Tax Department and in the fact situation, no document has been produced by the petitioner to demonstrate that Income Tax Return discloses his income of such magnitude at any point of time to the Income Tax Authority. Before this Court, one letter dated 15.07.2021 written by one Chartered Accountant on behalf of petitioner and addressed to the Income Tax Authority as well as to the court below in

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which details have been mentioned and apparently intimation has been given but scope of Section 132 A (1) (c) of the Act 1961 appears to be wide enough to include the present controversy. The Section 132 A (1) (c) is reproduced for convenience and for ready reference:-

132 A : Power to requisition books of accounts, etc:

“(a) xxx xxx xxx

(b) xxx xxx xxx

(c) *Any assets represent either wholly or partly income or property which has not been, or would not have been, disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force, then, the [Principal Director General or Director General] or [Principal Director or Director]] or the [[Principal Chief Commissioner or Chief Commissioner] [Principal Commissioner or Commissioner]] may authorise any [Additional Director, Additional Commissioner,] [Joint Director], [Joint Commissioner], [Assistant Director] [or Deputy Director], [Assistant Commissioner or Deputy Commissioner] or income-tax Officer [hereinafter in this section and in sub-section*

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(2) of section 278D referred to as the requisitioning officer] to require the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer.

[Explanation.- For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.]”

9. Recently, the facts with almost similar contours appeared for consideration before the High Court of Kerala vide CRL.MC No.8195/2017 **(Union of India, Income Tax Department, represented by the Deputy Director of Income Tax, (Investigation), Income Tax Office, Kozhikode Vs. State of Kerala in CRL.MP No.704/2017)** and while considering the impact of Section 132 A as well as the Section 132 B (Application of seized or requisitioned assets) handing over the amount to Income Tax Department found to be proper course of action.

10. Perusal of Section 132 A reveals that Income Tax Authority under the Act 1961 has power to make requisition for taking over possession or control of such assets (cash amount in present case) from any officer or authority under any other law for the time being in

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force, if the said income or property has not been disclosed for the purposes of the Income Tax Act. Understandably so, when it is evident that amount in question was seized from the possession of accused persons allegedly belonging to petitioner but never disclosed by petitioner to Income Tax Authority, therefore, department has the remedy available under Section 132 A (1) (c). This procedure is followed by Section 132 B which elaborates the manner of dealing after requisitioned under Section 132 A of the Act 1961. The power under Section 132 A appears to be distinct *vis-a-vis* Section 132 (**Search and seizure**).

11. Here also, it appears that if the amount is not handed over to the Income Tax Department and is released to the petitioner, then it may hamper effective implementation of relevant provision of Income Tax Act and therefore, in the fact situation it is apposite that amount be deposited with the Income Tax authority and proceedings before the competent authority of the Income Tax Department be concluded within the time stipulated as per the relevant provisions of the Income Tax Act. Time is running fast against the department for assessment. Therefore, it is expected that the Income Tax Department shall complete the assessment proceedings within the time stipulated.

12. Resultantly, the petition preferred by the petitioner fails. The trial Court is directed to immediately release the amount in favour of the

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Director, Income Tax (Investigation) Ayakar Bhawan, Hoshangabad Road, Bhopal. The details of the same are already find place in the application filed by the Income Tax Department. In addition, if any information is required, then the Income Tax Department is at liberty to furnish so. Necessary procedure be carried out at the earliest.

13. Resultantly, the petition stands **dismissed**. The trial Court be intimated immediately accordingly.

C.C. today.

(Anand Pathak)
Judge

AK/-