

RAJENDRAN CHINGARAVELU
v.
MR. R.K. MISHRA, ADDL. COMMISSIONER OF I T & ORS.
(Civil Appeal No. 7914 of 2009)

NOVEMBER 24, 2009

[R.V. Raveendran and K.S. Radhakrishnan, JJ.]
[2009] 15 (Addl.) SCR 1113

The Order of the Court was delivered by

O R D E R

R.V. RAVEENDRAN, J. 1. Leave granted. Heard.

2. The case of the appellant in brief is as follows: The appellant, a Computer Engineer, who was lucratively employed in United States of America for more than ten years, returned to India with his earnings and took up employment in Hyderabad in the year 2006. He wanted to buy a property at Chennai. But his attempts were not fruitful. He was advised that if he wanted to buy a good plot, he must be ready to pay a considerable part of the sale price in cash as advance to the prospective seller. When the appellant ultimately identified a prospective seller, he wanted to go to Chennai with a large sum and finalise the deal. He contacted the Reserve Bank of India, ICICI Bank (his Banker) and the Airport Authorities to find out whether he can carry a large sum of money in cash, while travelling. He was informed that there was no prohibition. Thereafter he drew Rs.65 lakhs from his bank. He travelled by air from Hyderabad to Chennai on 15.6.2007, carrying the said cash. At the Hyderabad Airport, he disclosed to the security personnel who checked his baggage that he was carrying cash of Rs.65 lakhs along with a bank certificate certifying the source and withdrawals. After the contents of his bags were examined by the security personnel, he was allowed to board the aircraft without any objection. But when the flight reached Chennai, some police officers and others (who were later identified as officers of Income Tax Investigation Wing) rushed in, loudly called out the name of the appellant.

When appellant identified himself, he was virtually pulled from the aircraft and taken to an office in the first floor of the airport. He was questioned there about the money he was carrying. The appellant showed them the cash and bank certificate evidencing the withdrawals and explained as to how the amounts formed part of his legitimate declared earnings which were drawn from his bank's account. He also explained to them the purpose of carrying such huge amount. The officers recorded his statement. After a few hours, the second respondent came in and asked the appellant to sign some papers without allowing him to read them and without furnishing him copies. It became obvious to the appellant that the officers of the Income Tax Department were suspecting him of carrying the money illegally. They even attempted to coerce him to admit that the amount was being carried by him for some illegal purpose. Having failed, they seized the entire amount under a mahazar, gave him a receipt and permitted him to leave. In this process, he was detained for about 15 hours without any justifiable reason. To add insult to the injury, the Tax Intelligence Officers prematurely and hurriedly informed the newspapers, that they had made a big haul of Rs.65 lakhs in cash, making it appear as though the appellant was illegally and clandestinely carrying the said amount, and they had successfully caught him while he was at it. The next day all three leading Tamil newspapers (Daily Thanthi, Dinamalar, Dinamani) as also an English daily Hindu, prominently carried the news of the seizure from him. The news reports disclosed his name, profession, his native place in Tamil Nadu, his place of employment. The news report also stated that he was not able to satisfactorily explain the source of the amount and that the officials had found discrepancies between what was drawn by him from the bank and what he was carrying. Ultimately, two months later, after completing the investigation and verification, as nothing was found to be amiss or irregular, the seized money was returned to him, but without any interest.

3. The appellant lists the following four acts on the part of the Income Tax Officials as objectionable and violative of his fundamental rights : (i) his illegal detention for more than 15 hours at the Chennai Airport; (ii) illegal seizure of the cash carried by him despite his explanation about the source and legitimacy of the funds with supporting documents; (iii) failure to return the seized amount for more than two months without any justification; and (iv) prematurely and maliciously disclosing to the media a completely false picture of the incident. The said acts, according to him, tarnished his reputation among his friends, relatives and acquaintances, by being dubbed as some sort of a criminal. Being aggrieved, he filed a writ petition (WP No.27344/2007) in the High Court of Andhra Pradesh in December, 2007 seeking several reliefs. He sought action against the Income Tax officials and the newspapers. He also sought compensation for the illegal acts, and quashing of the proceedings initiated against him under Income Tax Act. He sought appropriate directions for reforming and streamlining the procedure relating to checking of passengers. He also sought some consequential reliefs. He impleaded four officers of the Income Tax department, the Director of the Hyderabad Airport and the editors of the three Tamil newspapers as respondents.

4. The said writ petition was dismissed by the High Court on 17.6.2008 on the ground that no part of the cause of action arose within Andhra Pradesh. The contentions raised by the appellant were not considered. The court directed the appellant to approach the appropriate court at Chennai. The said order is challenged in this appeal by special leave.

5. The first question that arises for consideration is whether the Andhra Pradesh High Court was justified in holding that as the seizure took place at Chennai (Tamil Nadu), the appellant could not maintain the writ petition before it. The High Court did not examine whether any part of cause of action arose in Andhra Pradesh. Clause (2) of Article 226 makes it clear that the High Court exercising jurisdiction in relation to the territories within which the

cause of action arises wholly or in part, will have jurisdiction. This would mean that even if a small fraction of the cause of action (that bundle of facts which gives a petitioner, a right to sue) accrued within the territories of Andhra Pradesh, the High Court of that State will have jurisdiction. In this case, the genesis for the entire episode of search, seizure and detention was the action of the security/ intelligence officials at Hyderabad Airport (in Andhra Pradesh) who having inspected the cash carried by him, alerted their counterparts at the Chennai Airport that appellant was carrying a huge sum of money, and required to be intercepted and questioned. A part of the cause of action therefore clearly arose in Hyderabad. It is also to be noticed that the consequential income tax proceedings against him, which he challenged in the writ petition, were also initiated at Hyderabad. Therefore, his writ petition ought not to have been rejected on the ground of want of jurisdiction.

6. Normally, we would have set aside the order and remitted the matter to the High Court for decision on merits. But from the persuasive submissions of the appellant, who appeared in person on various dates of hearing, two things stood out. Firstly, it was clear that the main object of the petition was to ensure that at least in future, passengers like him are not put to unnecessary harassment or undue hardship at Airports. He wants a direction for issuance of clear guidelines and instructions to the inspecting officers, and introduction of definite and efficient verification/investigation procedures. He wants changes in the present protocol where the officers are uncertain of what to do and seek instructions and indefinitely wait for clearances from higher ups for each and every routine step, resulting in the detention of passengers for hours and hours. In short, he wants the enquiries, verifications and investigations to be efficient, passenger-friendly and courteous. Secondly, he wants the department/concerned officers to acknowledge that he was unnecessarily harassed.

7. As the first issue required a decision at the level of the concerned Ministry and Central Board of Direct Taxes, instead of remitting the matter to

the High Court, we requested Mr. Gopal Subramaniam, the learned Solicitor General to take notice and suggest a solution. He agreed to have the matter examined as to whether there was a need for issue of guidelines.

8. Taking note of the issue, the Central Board of Direct Taxes, Ministry of Finance has issued a circular dated 18.11.2009 setting out the guidelines to be followed by Air Intelligence Units or Investigation Units while dealing with air passengers with valuables at the airports of embarkation or destination, to avoid any undue inconvenience to them. The said circular is extracted below :

“Subject : Avoiding harassment in the course of enquiry/search of the air passengers by the Air Intelligence Units/Investigation Units of the Income Tax Department.

Detailed procedure regarding enquiry and identification of the passengers at the airports for action under section 132 of the Act has been laid down in the Search & Seizure Manual, 2007 (pp.92-95 of Volume-I). Instances have come to the notice of the Board where some of the passengers have allegedly felt harassed. In view of this, the following guidelines are laid down in this regard, which he followed strictly by Air Intelligence Units or Investigation Units while dealing with air passengers at the airports of embarkation or destination:

- (i) On the basis of information through the scanner in check-in-area and security hold area, further enquiry/action under section 131/132/133A of the Income tax Act, 1961 may be conducted within the time available before the departure of the flight of the passenger(s). Alternatively, the information may be passed on quickly to the Air Intelligence Unit at the Airport of destination and, in case there is no Air Intelligence Unit at the airport of destination, to the local Investigation Unit. On getting such information, the recipient Unit will carry out necessary enquiries as quickly as possible so as to intercept the passenger at the exit of the destination airport.

(ii) When the passenger is intercepted at the airport of destination and his statement is recorded to ascertain the accounted or unaccounted nature of the cash, bullion, jewellery etc., being carried by him, the Unit recording the statement may not wait for the conclusion of the statement before taking steps to obtain warrant of authorization from the concerned Authority. As soon as the information is sufficient to infer that the assets are unaccounted, the concerned authority may be contacted and the information may be furnished to him for obtaining warrant of authorisation.

(iii) For issuing such warrant of authorisation, the Director of Income-Tax (Investigation) should carry blank forms and his official seal. Before issuing such authorisations, he may try to obtain the administrative approval from the Director General of Income-tax (Investigation) telephonically. In case he is not able to contact him, he should still issue the authorisation under his statutory powers without loss of time. Such warrant of authorisation may be communicated expeditiously.

(iv) The statement may be recorded in the language which the passenger understands. The statement should invariably be read to him before asking for his signature. He should be given full opportunity to go through the statement, questions as well as answers, before putting his signature and to make amendments under his signature if there is variation in what he said and what was recorded. It should be ensured that what is recorded is stated voluntarily without any coercion. At the end of the statement, the passenger should be requested to write in his own handwriting that it was given voluntarily and it recorded truthfully what was stated by him.

(v) The procedure regarding administering of oath may be duly followed.

(vi) The proceedings of enquiry and action may be completed as expeditiously as possible. In the course of these proceedings, the passenger should be provided drinking water, tea, snacks and food in case the passenger desires the same. He should also be provided medical assistance in case it is required.

(vii) In case the seizure involves bullion or jewellery, the services of an approved valuer should be obtained expeditiously. For this purpose, while granting approval under section 34AB of the Wealth Tax Act, the Chief Commissioners/Director Generals should put a condition that the approved valuer shall be available for providing his services at any time, at any place, at any place, at short notice and even at odd hours.

(viii) On the conclusion of the search, the passenger should be dropped at the place he wants to go in the government vehicle, if he makes a request on the ground of security etc.

(ix) The officer would take adequate precautions and steps to ensure that enquiry/investigation undertaken at the airports is kept confidential and any premature disclosure to the media (print/electronic) is avoided.”

The Directors General of Income-tax (Inv.) and Directors of Income-tax (Inv.) are requested to ensure that these guidelines are complied with by all the concerned authorities.”

[Note : Instruction (ix) is being added to the notification dated 18.11.2009 by issuing an amendment, as stated in the department's Additional affidavit dated 23.11.2009]

9. In regard to the merits of the case and the claim for compensation, the learned Solicitor General submitted that whatever action was taken by the security/intelligence officials at Hyderabad and Chennai Airports, was in the line of duty. He submitted that a legitimate suspicion was created in the mind

of the officers on account of appellant carrying an unusually large sum of money in cash; that even though the appellant offered some explanation and produced a bank certificate in regard to withdrawals, they required to be verified. He submitted that two factors necessitated the appellant's prolonged stay at the Airport for purposes of enquiries and verification and the seizure of the cash : (i) The appellant had given contradictory statements regarding the proposed purchase of land by him. Initially he had stated that the deal was yet to be finalised. But the documents/ investigation showed that he had already paid some advance to the seller by cheque. (ii) There was some variation between the denominations of cash in the possession of the appellant and the cash withdrawn from ICICI Bank. The learned Solicitor General submitted that the appellant is not free from blame, as by his unwise and rather naïve decision to carry such a large sum of money, creates suspicion. He also pointed out that appellant put himself to personal risk by carrying such an amount of cash. He pointed out that in the circumstances, the delay and seizure were inevitable.

10. We are in agreement with the submissions of the learned Solicitor General. When the bonafides of a passenger carrying an unusually large sum, and his claims regarding the source and legitimacy, have to be verified, some delay and inconvenience is inevitable. The inspecting and investigating officers have to make sure that the money was not intended for any illegal purpose. In such a situation, the rights of the passenger will have to yield to public interest. Any bonafide measures taken in public interest, and to provide public safety or to prevent circulation of black money, cannot be objected as interference with the personal liberty or freedom of a citizen. We are satisfied that the actions of the officers of the investigation wing in detaining the appellant for questioning and verification, and seizing the cash carried by him, were bonafide and in the course of discharge of their official duties and did not furnish a cause of action for claiming any compensation. The nation is facing terrorist threats. Transportation of large sums of money is associated

with distribution of funds for terrorist activities, illegal pay offs etc. There is also rampant circulation of unaccounted black money destroying the economy of the country. In this background if the officers wanted to fully satisfy themselves that the funds were not intended for any illegal purposes, such action cannot be termed as highhanded or unreasonable.

11. The appellant contended that when he had demonstrated that the money carried by him was drawn from his bank and formed part of his legitimate earnings, and when there was no legal prohibition in law for carrying such money, there was no justification for detaining him for 15 hours or for seizing the money that was carried by him. He contended that the purpose for which he was carrying the money was not relevant at that stage as he could use the money for any purpose; that if he used the money for any illegal purpose, he could always be prosecuted; and that therefore, seizure of money legally held and carried, merely on baseless suspicions, was not warranted. The appellant is looking at the issue from the narrow angle of the right of a citizen to carry money which is duly accounted for from a disclosed source. It is no doubt true that a person has the right to carry money, whether his own or under authority of the person owning it, in the absence of any prohibition. But the purpose for which the money is carried is also important from the point of view of intelligence gatherers. Money which is drawn from a Bank and legitimately belonging to the carrier, may still be used for an illegal purpose, - say to pay for a crime or to fund an act of terrorism. It may also be used for a routine illegal function - to make part payment of sale consideration for a property in cash, so that the full price is not reflected in the sale deed, resulting in evasion of stamp duty and registration charges and evasion of payment of capital gains and creation of black money. The carrying of such a huge sum, itself gives rise to a legitimate suspicion. The intelligence officers are therefore entitled to satisfy themselves, not only that the money is from a legitimate source, but also satisfy themselves that *such a large amount is being carried for a legitimate purpose*. That is necessary in the interest of

preventing crimes and offences. Therefore, even if the carrier is not guilty of any offence in carrying the money, the verification or seizure may be warranted to ensure that the money is not intended for commission of a crime or offence.

12. It is not only the security/intelligence personnel who require to be sensitised, but also the air travelling public some of whom throw tantrums and create scenes at Airports, even for minimum delays and checking procedures. When security protocols are in place, certain hardship and inconvenience is inevitable, and should be accepted with grace, patience, and discipline. Many a traveller forgets that the vigilance and checks are meant for their own interest.

13. But the appellant's grievance in regard to media being informed about the incident even before completion of investigation, is justified. There is a growing tendency among investigating officers (either police or other departments) to inform the media, even before the completion of investigation, that they have caught a criminal or an offender. Such crude attempts to claim credit for imaginary investigational breakthroughs should be curbed. Even where a suspect surrenders or a person required for questioning voluntarily appears, it is not uncommon for the Investigating Officers to represent to the media that the person was arrested with much effort after considerable investigation or a chase. Similarly, when someone voluntarily declares the money he is carrying, media is informed that huge cash which was not declared was discovered by their vigilant investigations and thorough checking. Premature disclosures or 'leakage' to the media in a pending investigation will not only jeopardise and impede further investigation, but many a time, allow the real culprit to escape from law. Be that as it may.

14. The department's additional affidavit dated 23.11.2009 expressed regret for the inconvenience caused to the appellant and also assuages the apprehension felt by appellant that he would be harassed for having taken the

department to court. The relevant portions of the affidavit are extracted below :

“I state and submit that the petitioner has alleged harassment against various Income Tax Officers who had questioned him on the possession of Rs.65 lakhs upon his disembarkation at Chennai on 15th June, 2007. The inconvenience caused to the petitioner, under the circumstances, is regretted. Further, I state and submit that the actions of the officers were not intended to harass or cause any inconvenience to the petitioner. Moreover, these actions were in furtherance of the prevailing circumstances where adequate precaution and sensitization is rendered necessary.

I state and submit that the petitioner has referred to certain notices issued by the Income Tax Department under section 142(1) of the Income Tax Act, 1961, dated 20th November, 2009 in respect of the assessment years 2002-03, 2003-04, 2004-05, 2006-07 and 2007-08. I state and submit that the assessments of the petitioner, pursuant to the above notices, will be undertaken strictly in accordance with law.”

15. The bonafides of the intelligence wing officials at Chennai is not open to question, though their enthusiasm might have exceeded the limits when they went to press in regard to the seizure. We are of the view that the remedial action by the department and the expression of regret serves and achieves the purpose of appellant filing the writ petition. In view of the above, the appeal is disposed of, treating the entire episode as closed. The appellant is not entitled to any further relief in the matter.

16. The efforts of the learned Solicitor General to find a solution to reduce the hardships of the travelling public without compromising the security/intelligence concerns, requires to be appreciated.