

# VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR  
&  
THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

Wednesday, the 4<sup>th</sup> day of September 2024 / 13th Bhadra, 1946  
CRL.MC NO. 1742 OF 2024

CRIME NO.10/2020 OF RAILWAY POLICE STATION, KASARGOD

CRMP 4511/2024 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -II, HOSDRUG

**PETITIONERS/ACCUSED:**

1. KASINATH RANGONDA KANADE, AGED 44 YEARS, PROP SREERAM PETRO SERVICES, SAMRAT NAGAR, KOLHAPUR, KARVAR, DT KOLHAPUR KARNATAKA, PIN - 416001. AND ANOTHER

**RESPONDENTS/COMPLAINANT & STATE:**

1. STATE OF KERALA, REPRESENTED BY SUB INSPECTOR OF POLICE, KASARGODE RAILWAY POLICE STATION KASARGODE, PIN - 671121. AND 2 OTHERS

This Criminal Misc. case again coming on for orders, upon persuing the petition and this Court's order dated 17.07.2024 in CrL.MC.1742/2024 and upon hearing the arguments of M/S.M.RAMESH CHANDER (SR.), BEJOY JOSEPH P.J., P.RAGHUNATH, GOVIND G. NAIR, BONNY BENNY and BALU TOM, Advocates for the petitioners PUBLIC PROSECUTOR for the 1st respondent and of STANDING COUNSEL for the 3rd respondent , the court passed the following:

p.t.o

P.B.SURESH KUMAR & C.PRATHEEP KUMAR, JJ.

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Criminal M.C. Nos.7060 of 2023

and

1742, 2495 & 2516 of 2024  
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Dated this the 4<sup>th</sup> day of September, 2024

**ORDER**

P.B.Suresh Kumar, J.

The central issue in these cases relates to the right of the authorities under the Income-tax Act, 1961 (the Act) to seek interim custody of currency notes seized and produced before the Jurisdictional Magistrate or seized and reported to the Jurisdictional Magistrate in terms of Section 102 of the Code of Criminal Procedure (the Code).

2. In **Union of India v. State of Kerala**, 2022 SCC OnLine Ker 11017, the learned Single Judge of this court opined that in the light of the provisions contained in the Act, especially Sections 132A and 132B, the authorities under the Act are entitled to seek interim custody of the currency notes.

However, in **R.Ravirajan v. State of Kerala**, (2023) SCC OnLine Kerala 8444, another learned Single Judge struck a different note on the issue and held that in the absence of a valid order of assessment and demand for Income-tax, the party from whom the amount is seized, is entitled to seek interim custody. In **R.Ravirajan**, the learned Single Judge distinguished the decision in **Union of India** as one rendered on the facts of that case, without noting the principles of law laid down by the Apex Court in **J.R.Malhotra v. Addl. Sessions Judge**, (1976) 1 SCC 430.

3. When the above matters came up before another learned Single Judge, having noticed the conflict in the views, the learned Judge chose to refer the matters to a Larger Bench to resolve the conflict, for according to him, if the conflict is not resolved, there will not be any consistency in the orders on applications under Section 451 or Section 457 of the Code for interim custody of currency notes. These matters have thus come up before us.

4. Heard the learned counsel for the petitioners, the learned Government Pleader as also the learned Additional

Solicitor General of India. We have also called for and verified the Judges Papers' in the two cases in which conflicting views as aforesaid have been expressed.

5. It is unnecessary to refer to the facts in detail, as we do not propose to decide the matters finally on merits. At the same time, the essential facts relevant for answering the reference need to be stated. The subject matter of Crl.M.C.No.7060 of 2023 is 19.95 lakhs seized by the Excise Officials, the subject matter of Crl.M.C.No.2495 and Crl.M.C.No.2516 of 2024 is 180.5 lakhs seized by the State Police and the subject matter of Crl.M.C.No.1742 of 2024 is 140 lakhs seized by the Railway Police. When the seized currency notes were produced before the concerned Jurisdictional Magistrates, the petitioner in Crl.M.C. No.7060 of 2023, and the petitioners in Crl.M.C.No.2495 and Crl.M.C.No.2516 of 2024 who are one and the same, as also Union of India sought interim custody of the currency notes invoking Section 451 of the Code. The applications filed by the petitioners in the said cases were rejected and the applications filed by the Union of India, on

behalf of the competent authorities under the Act, were allowed. The common orders passed in this regard are under challenge in the said cases. When the petitioners in Crl.M.C.No.1742 of 2024 preferred an application for interim custody of the currency notes, the same was dismissed by the Jurisdictional Magistrate holding that the amount is subject to assessment under the Act. After some time, they preferred another application seeking the same relief and that application was also dismissed. Crl.M.C.No.1742 of 2024 is preferred challenging the latter order.

6. It is trite that in proceedings under Sections 451 and 457 of the Code, the court only determines the person who is best suited to possess the seized property till the conclusion of the enquiry or trial and does not settle the right to ownership [See **V. Parakashan v. K.P. Pankajakshan**, 1985 SCC OnLine Ker 333]. The conflict in the decisions referred to above needs to be resolved keeping in mind the scope of the proceedings under Sections 451 and 457 of the Code.

7. As noted, it is in the light of Sections 132A and

132B of the Act that the learned Single Judge in **Union of India** took the view that the authorities under the Act are entitled to seek interim custody of the currency notes, whereas in **R.Ravirajan**, the learned Single Judge held that the above provisions cannot have any application in the context.

8. In the background of the facts stated above, it is necessary to understand the scope of Sections 132A and 132B of the Act before proceeding further in the matter. In order to understand the scope of the said provisions, it is necessary to first refer to Section 132 of the Act as well. Section 132 of the Act deals with Search and Seizure. The relevant portions of Section 132 read thus:

**“132. Search and seizure**

(1) [Where the [Principal Director General or] Director General or [Principal Director or] Director or the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner or Additional Director or Additional Commissioner], [or Joint Director or Joint Commissioner] in consequence of information in his possession, has reason to believe that—

(a) xxx

(b) xxx

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property [which has not been, or would not be, disclosed] for the purposes of the Indian Income-tax

Act, 1922 (11 of 1922) or this Act (hereinafter in this section referred to as the undisclosed income or property).

[then,-

(A) the [Principal Director General or] [Director General or [Principal Director or] Director] or the [Principal Chief Commissioner or] [Chief Commissioner or [Principal Commissioner or] Commissioner], as the case may be, may authorise any [Additional Director or Additional Commissioner or] [[Joint] Director], [Joint] Commissioner, [Assistant Director] [or Deputy Director], [Assistant Commissioner [or Deputy Commissioner] or Income-tax Officer], or

(B) such [Additional Director or Additional Commissioner or] [[Joint] Director] or [Joint] Commissioner, as the case may be, may authorise any [Assistant Director] [or Deputy Director], [Assistant Commissioner [or Deputy Commissioner] or Income-tax Officer],

(the officer so authorised in all cases being hereinafter referred to as the authorised officer) to—]

(i) enter and search any [building, place, vessel, vehicle or aircraft] where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

[(iia) search any person who has got out of, or is about to get into, or is in the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;]

[(iib) require any person who is found to be in possession or control of any books of account or

other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents;]

- (iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search:

[Provided that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business;]

- (iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

- (v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing:

X X X X X X"

(underline supplied)

As evident from the extracted provision where in consequence of information, the competent authority has reason to believe that any person is in possession of any money and that such money represents either wholly or partly income which has not been, or would not be, disclosed for the purposes of the Act, then, the competent authority is empowered to search and seize the same. Section 132A of the Act deals with powers of



the authorities under the Act to make requisitions. The relevant portions of Section 132A read thus:

**“132A. Powers to requisition books of account, etc.**

(1) Where the [Principal Director General or] [Director General or [Principal Director or] Director] or the [Principal Chief Commissioner or] [Chief Commissioner or [Principal Commissioner or] Commissioner], in consequence of information in his possession, has reason to believe that—

(a) xxx xxx xxx or

(b) xxx xxx xxx or

(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 or [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] (hereafter in this section and in sub-section (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.]

(2) On a requisition being made under sub-section (1), the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, of that sub-section shall deliver the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody.

(3) Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions of sub-sections (4A) to (14) (both inclusive) of section 132 and section 132B shall, so far as may be, apply as if such books of account, other documents or assets had been seized under sub-section (1) of section 132 by the requisitioning officer from the custody of the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of this section and as if for the words "the authorised officer" occurring in any of the aforesaid sub-sections (4A) to (14), the words "the requisitioning officer" were substituted."

(underline supplied)

As seen from the extracted provision, where in consequence of information, the competent authority has reason to believe that any assets represent either wholly or partly income which has not been, or would not have been, disclosed for the purposes of the Act by any person from whose possession or control such assets have been taken into custody by any officer or authority, then, the authority is empowered to make a requisition directing the officer or authority to deliver the same to the requisitioning officer and if a requisition is made, the officer or authority under any other law concerned, shall deliver the

assets to the requisitioning officer. The *Explanation* to sub-section (1) of Section 132A declares 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 including the Appellate Tribunal. Sub-section (3) of Section 132A clarifies that where any assets have been delivered to the requisitioning officer, the provisions contained in Section 132B shall, so far as may be, apply as if the assets requisitioned had been seized under sub-section (1) of Section 132 by the requisitioning officer from the custody of the person from whose possession or control such assets have been taken into custody by any officer or authority. The relevant portions of Section 132B dealing with application of requisitioned assets read thus:

**“132B. Application of seized or requisitioned assets.**

(1) The assets seized under section 132 or requisitioned under section 132A may be dealt with in the following manner, namely:—

- (i) the amount of any existing liability under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1987 (35 of 1987), the Gift-tax Act, 1958 (18 of 1958) and the Interest-tax Act, 1974 (45 of 1974), and the amount of the liability determined on completion of the assessment [[or reassessment or recomputation] and the assessment of the year relevant to the previous year in which search is initiated or requisition is made, or the

amount of liability determined on completion of the assessment under Chapter XIVB for the block period, as the case may be,] (including any penalty levied or interest payable in connection with such assessment) and in respect of which such person is in default or is deemed to be in default, [or the amount of liability arising on an application made before the Settlement Commission under sub-section (1) of section 245C,] may be recovered out of such assets:

[Provided that where the person concerned makes an application to the Assessing Officer within thirty days from the end of the month in which the asset was seized, for release of asset and the nature and source of acquisition of any such asset is explained to the satisfaction of the Assessing Officer, the amount of any existing liability referred to in this clause may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner, to the person from whose custody the assets were seized:

Provided further that such asset or any portion thereof as is referred to in the first proviso shall be released within a period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed;

- (ii) if the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied;
- (iii) xxxx
- (2) xxxx.
- (3) xxxx.
- (4) xxxx”

(underline supplied)

As seen from the extracted provision, if the asset requisitioned is money, in terms of clause (i) to sub-section (1), the Assessing Officer is entitled to apply such money in the discharge of the liabilities of the person from whom it was obtained under the Act which includes not only the existing liabilities, but also liabilities determined on completion of assessment or reassessment or recomputation and also the assessment of the year relevant to the previous year in which the requisition is made. The first proviso to clause (i) of sub-section (1) is an exception to the provision contained in the sub-section and the same confers a right on the person from whom the money has been seized to prefer an application to the Assessing Officer for release of the asset namely, money. The said proviso states that if the nature and source of acquisition of the money is explained to the satisfaction of the Assessing Officer, the amount of any existing liability may be recovered out of such money and the remaining portion, if any, may be released. The second proviso to clause (i) of sub-section (1) states further that such money or any portion thereof as is referred to in the

first proviso shall be released within a period of 120 days from the date on which the requisition was executed. The correctness of the decisions rendered by this Court in **Union of India** and **R.Ravirajan** needs to be examined in the background of the aforesaid provisions of the Act.

9. In **Union of India**, the competent authority under the Act had in fact issued a requisition in terms of Section 132A requiring the Sub Inspector of Police to deliver the currency notes seized by him and it was since the same had been deposited in the meanwhile with the Jurisdictional Magistrate, the competent authority approached the Jurisdictional Magistrate invoking Section 451 of the Code for interim custody of the same. Whereas in **R.Ravirajan**, at the time of seizure, proceedings under Section 131 of the Act dealing with production of books of account and other documents, was pending against the person from whom the currency notes were seized. Even though the currency notes seized were not requisitioned in that case as done in **Union of India**, it is seen that application was preferred by the Union of

India under Section 451 of the Code alleging that the seized currency notes represent the income of the person from unknown sources which is liable to be assessed and that, therefore, the competent authority is entitled to recover the tax from the seized amount in terms of Section 132B of the Act. The learned Judge who dealt with **R.Ravirajan** was, however, of the view that Section 132A may not have any application to the facts of the case inasmuch as a requisition under Section 132A has not been made in that case and the same cannot be made to a court where the currency notes have been deposited. The learned Judge relied on the decision of this Court in **Abdul Khader v. Sub-Inspector of Police**, 1998 SCC OnLine Ker 580, to arrive at the said conclusion.

10. We have perused meticulously the provisions contained in Sections 132, 132A and 132B of the Act. A combined reading of the said provisions would indicate that the object of the said provisions is to enable the competent authorities under the Act to hold the assets seized under Section 132 or requisitioned under Section 132A for

appropriation towards existing and future liabilities of the assessee, except in cases where the assessee is able to explain the nature and source of the acquisition of the assets seized or requisitioned, provided the competent authority has reason to believe that the assets represent either wholly or partly the income which has not been or would not be disclosed for the purpose of the Act. As provided for in Section 132B, the scheme of the provisions is that in cases where the assessee is able to explain the nature and source of acquisition of the asset, the asset shall be released to the assessee in a time framed manner. When the Act confers power on the competent authority under the Act to issue a requisition and obtain assets of assesseees and adjust the same towards their liabilities, if the competent authority has reason to believe that the asset represents either wholly or partly income or property which has not been or would not be disclosed for the purposes of the Act, according to us, the best suited person to hold the currency notes which have been seized in cases of this nature until the culmination of the enquiry or trial, would be the competent



authority under the Act provided it is alleged that the asset represents either wholly or partly income or property which has not been or would not be disclosed for the purposes of the Act. Even though this Court held in **Abdul Khader** that Section 132A does not empower the competent authority to make a requisition to a court for delivery of assets, it was made clear in the said case that the competent authority under the Act is entitled to seek interim custody of the seized assets. In the said view of the matter, according to us, the view expressed in **Union of India** that the competent authority under the Act is entitled to seek interim custody of the currency notes in the facts of the said case, is in order.

11. It appears that the learned Single Judge who dealt with **R.Ravirajan** is persuaded by the judgment of the Apex Court in **J.R. Malhotra**. A close reading of the judgment in **J.R. Malhotra** would indicate that the case dealt with therein relates to a seizure effected prior to the introduction of Sections 132A and 132B of the Act. What the learned Judge omitted to take note of, is the power conferred on the competent

authorities to hold any assets if it has reason to believe that the same represents either wholly or partly income or property which has not been, or would not be disclosed for the purposes of the Act. Of course, the said power is subject to the exception provided for in the first proviso to clause (i) of sub-section (1) of Section 132B. If the competent authority has reason to believe that the amount seized represents wholly or partly income or property which has not been or would not be disclosed for the purposes of the Act and is unable to issue a requisition in terms of Section 132A of the Act for the reason that asset has been produced by the officer or authority who seized the same before the Jurisdictional Magistrate, as clarified by this Court in **Abdul Khader**, the competent authority shall be held to be authorised to prefer an application seeking interim custody of the currency notes under Section 451 of the Code, for otherwise, Sections 132A and 132B, would become futile. Needless to say, the view expressed in **R.Ravirajan** that the provisions contained in Sections 132A and 132B are not relevant in the context, does not appear to us to be correct.

12. As we propose to uphold the view expressed in **Union of India**, it is necessary to clarify that the direction in **Union of India** that the competent authority under the Act, on receipt of the seized currency notes, shall complete the proceedings contemplated against the person concerned within a period of six months and if not, the amount shall be redeposited and shall be released to the person from whom the amount has been seized, is not in accordance with law. Such a direction is unwarranted inasmuch as the scope of the proceedings is only to decide the person who is best suited to have custody of the currency notes until the conclusion of enquiry or trial. According to us, direction for disbursement/appropriation of the amounts after completing the proceedings contemplated under the Act can be issued only when the court exercises the power under Section 452 of the Code for disposal of the property at the conclusion of the enquiry or trial.

In the result, the reference is answered upholding the view taken in **Union of India** subject to the observations made in the preceding paragraph as regards the directions

issued therein for completion of assessment proceedings in respect of the assets, appropriation of tax, disbursement of balance etc. Registry shall place these matters for disposal on merits before the regular bench as per roster.

**Sd/-**

**P.B.SURESH KUMAR, JUDGE.**

**Sd/-**

**C.PRATHEEP KUMAR, JUDGE.**



YKB