CNR No. DLCT11-001429-2019

CC No. 354/2019

CBI Vs. Rakesh Tiwari & Ors.

16.02.2023

Present : Ms. Shweta Dhingra, Ld. PP for CBI.

A-1 Rakesh Tiwari on bail with Sh. Ajit K. Singh and Sh. Deepak Badana, Advocates.

A-3 Rohit Srivastava on bail with Sh. Amit Tiwari, Advocate.

A-4 Rabindra Pradhan is absent.

Ms. Bhumika Yadav, Ld. Counsel for A-4.

Sh. Udit Bakshi, proxy counsel for Kanhaiya Singhal, Ld. SPP for Income Tax Department.

O R D E R

An application seeking exemption from personal appearance of A-4 Rabindra Pradhan has been filed by the Ld. Counsel for A-4. Heard. Exemption of A-4 is allowed only for today.

An application of income tax authority U/s 451 CrPC read with Section 132A of Income Tax Act seeking custody of cash and jewellery seized from the premises of A-1 during search, two applications of A-1 seeking direction to CBI to release the cash and jewellery and wrist watches seized during the search at his official premises and residential premises and another application of A-1 seeking release of letter dated 19.06.2019 mentioned at Sl. No. 37 of the list of unrelied documents are pending.

IO has filed copy of the letter dated 19.06.2019 alongwith annexure. Copy supplied. In view of this, application of A-1 seeking release of letter dated 19.06.2019 stands disposed off.

Coming to other three applications. Arguments heard. A-1 has sought release of cash and jewellery and wrist watches seized from his office and residential premises on the ground that they are not the part of the case property and should be released.

Income Tax Authority in its application has stated that they were informed by CBI regarding seizure of huge cash and jewellery articles from the office and residential premises of A-1 and there are reasons to believe after analyzing the income tax return of A-1, his firm M/s. Avone Logistics and M/s. Sand Storm Properties Pvt. Ltd. that A-1 does not have credit worthiness and adequate disclosed income to explain the cash and jewellery seized by CBI and the seized assets stand unexplained as per his sources of income and summons were issued to him U/s 131 (1A) on 08.06.2022 and he was required to furnish details for the transactions but he did not furnish any reply till date and has always asked for adjournments and in these facts, the cash and jewellery articles seized during search by CBI, being unaccounted and unexplained, should be handed over to Income tax authority. In support of his submissions, Ld. Counsel for Income tax authority has relied upon the following judgments:

1) ***Dy. Director of Income Tax (Investigation) & Ors. Reported in (2012) 347 ITR 1 by Hon'ble Gujarat High Court.***

2) ***Union of India Vs. State of Kerela & Ors. In Crl. MC No. 8195 of 2017 dated 10.01.2022 by Hon'ble Kerela High Court.***

3) ***Jinkal Dinesh Bhai Virvadiya Vs. Asstt. Commissioner of Income Tax, (2014) 367 ITR 317 (Gujarat).***

4) ***Rajiv Aggarwal Vs. State of Gujarat, (2007) 290 ITR 449 (Gujarat).***

5) ***Union of India Vs. Judicial Magistrate (Eastern Railway), Mugal Sarai & Anr., (1983) 140 ITR Allahabad 553.***

6) ***Udai Navin Chandra Sangani Vs. Vikrant Pal Singh, Spl. Crl. Application No. 58 of 2015 decided on 20.01.2015 by Hon'ble High Court of Gujarat.***

In reply to this application, it is stated that the present application is not maintainable as U/s 451 CrPC, a criminal court has no power to go into the details and specific provision U/s 132A of Income Tax Act for requisition of books of accounts, assets etc. is there. As per Section 132A of the Income Tax Act, income tax officer could only issue requisition to any officer or authority and the court does not fall under the definition of officer or authority. The income tax authority has not placed any material before this court to prove that jewellery and cash recovered from the premises of A-1 was obtained from concealed income. In the reply, A-1 had given details pertaining to the seizure of cash and jewellery from his house.

During the arguments, Ld. Counsel for A-1 has argued that no letter till date has been issued by the requisitioning officers of income tax department to deliver the assets to income tax and the application is not maintainable even on this technical ground. It is argued that anything, which should be done in a particular manner as prescribed by law, should be done in that manner only. Requisition officer has to request CBI to handover the jewellery and articles, which has not been done. On merits, it was argued that the income tax authorities are bound to disclose the reasons to believe to the satisfaction of the court when they approach the court, as on what basis they want the assets seized by the CBI from the premises of A-1 and since no reasons have been mentioned in the application, the application is liable to be dismissed.

In support of his submissions, Ld. Counsel for A-1 has relied upon the following judgments:

1) ***Commissioner of Income Tax Vs. Satyanarain Patni, 2014 SCC Online RAJ 6609.***

2) ***Commissioner of Income Tax & Anr. Vs. Balbir Singh, 1993 SCC Online P&H 1575.***

3) ***Rewati Singh Vs. Assistant Commissioner of Income Tax & Ors., 2017 SCC Online Allahabad 3861.***

I have heard the submissions and perused the case law relied upon. As per the facts of the case, a cash of Rs. 79,08,230/-, jewellery and wrist watches were recovered from the office premises of A-1 and a cash of Rs. 2,86,02,055/- in Indian currency, 160 Euros, 5 Pound and 1 Dollar was recovered from his residential premises. The same admittedly are not case property. As far as the law is concerned, U/s 132A of the Income Tax Act, the income tax officials mentioned therein in consequence of information in their possession and having reasons to believe can direct any person or authority to deliver books of accounts, documents, assets, which has not been or would not have been disclosed for the purposes of Indian Income Tax Act to the requisitioning officer. The first ground raised by Ld. Counsel for A-1 is that no letter has yet been issued by requisitioning officer to CBI though requisition officers have been appointed on 17.06.2022. It is pertinent to note that Income tax authorities have already issued notice to A-1 U/s 131 (1A) of Income Tax Act on 08.06.2022 and A-1 for the first time on 27.01.2023 has furnished some information to the income tax department, which are under verification. The matter, therefore, is already sub-judice before the Income Tax Authority. Non-issuance of any such letter otherwise cannot be ground to dismiss this application.

Coming to the argument that no reasons have been disclosed by the income tax authority in its application, the income tax authority have clearly mentioned in the application that the ITR profile of A-1 and his concerns does not disclose credit worthiness to possess huge cash and jewellery and these reasons are sufficient. As far as the right of income tax authority to approach the court is concerned, in the judgment relied upon by counsel for applicant titled as ***Commissioner of Income Tax Vs. Balbir Singh (supra)***, the Hon'ble High Court has mentioned in para 8 as "The remedy available to the Income Tax officer was to apply to the Chief Judicial Magistrate for release of money in its favour. Its remedy was not to issue a requisition U/s 132A of the Act, which in our opinion, was clearly without jurisdiction". It means that the income tax authorities can approach the court and can seek release of the properties. It is for the income tax authorities to adjudicate on the explanation furnished by A-1 on 27.01.2023 in response to its notice and this court, being a criminal court, is not supposed to go into that argument. In the judgments relied upon by the counsel for income tax authority, the Hon'ble High Court has held that the custody of the seized amount should be given to income tax authorities and it is for the concerned person to convince the authority as to the source of income and if he succeeds, he will have right to the properties.

In view of the same, the application filed by income tax authorities is allowed and that of A-1 is dismissed and CBI is directed to handover the custody of articles, jewellery and cash seized from the premises of A-1 to Income tax authorities.

With this order, other two applications also stand disposed off.

On 09.02.2023, Ld. Counsel for applicant/approver filed Undertaking regarding his arrival on 07.02.2023 and also filed itinerary of applicant/approver from 11.02.2023 to 14.02.2023 in compliance of Order dated 13.12.2022. Same be taken on record.

On 14.02.2023, Ld. Counsel for applicant/approver filed Undertaking regarding his arrival on 13.02.2023 and also filed itinerary of applicant/approver from 15.02.2023 to 01.03.2023 in compliance of Order dated 13.12.2022. Same be taken on record.

Part arguments on behalf of A-3 on the point of charge heard. Ld. Counsel for A-3 seeks time to address further arguments on the point of charge.

Put up for addressing further arguments on the point of charge on behalf of A-3 on **09.03.2023.**

(AMIT KUMAR)
Special Judge, PC Act, CBI-04
Rouse Avenue Courts, New Delhi
16.02.2023