KABG420010552024

IN THE COURT OF VII ADDL. DISTRICT AND SESSIONS JUDGE, BELAGAVI, SITTING AT CHIKODI.

:: PRESENT ::

SRI. VIJAY KUMAR, B.Sc., L.L.B,
VII Addl. District & Sessions Judge,
Belagavi sitting at Chikodi.

Dated this the 15th day of June, 2026.

::CRL. REVISION PETITION NO.5114/2024::

Revision Petitioner: Income Tax Department,
Represented By the Deputy Director
of Income Tax, (Inv.), Unit-1
Belagavi-590004.

(Represented By Sri. T. Kalburgi/
Sri. Y. S. G., Advocates.)

/Vs/

Respondents:

1. Sandep Arjun Pujari
   Ichalkaranji-416115,

2. Dnyaneshwar Vishwanath Patil
   Ichalkaranji-416115,

3. Tarun Inderchand Agarwal.

4. The State by Chikodi P.S.

(Represented By R-1 to 3 Sri. S. V. Ghaste, Advocate)
(R-4 by Public Prosecutor)

:ORDER:

This Revision Petitioner being the Income Tax Department, Belagavi Unit has filed this revision petition U/Sec.438 of BNSS to set-aside the order passed by the Learned Prl. Civil Judge and JMFC, Chikodi in Crime No.64/2024 of Chikodi PS dated 07.06.2024 and thereby allow this revision petition as prayed for.

2. The brief facts that lead to the petitioner are:-

The case of the petitioner is that, on 10.04.2024, the Static Surveillance Team inquired of the respondents Nos. 1 and 2 (accused Nos. 1 and 2) at the Chikodi bus stand in view of the forthcoming election and found they were in possession of Rs.1,631,050/- without any supporting documents, and thus the SST team seized the said amount and registered the FIR under section 98 of the KP Act and reported the seized amount to the jurisdictional magistrate. The police also gave intimation to the income tax department. Upon information, the petitioner initiated proceedings under section 132A of the Income Tax Act and issued summons to respondents Nos. 1 to 3 herein, and after their appearance, recorded their oath statement. The petitioner has reason to believe that the amount seized by the police from respondents Nos. 1 and 2 has not been disclosed to the Income Tax Department. Accordingly, the petitioner filed an application under section 457 of Cr.P.C. before the jurisdictional magistrate to direct the police to hand over the seized amount to the Income Tax Department. In that case, the respondents No. 1 and 3 herein also filed an application under section 451 Cr.P.C. seeking interim custody of the seized amount. The JMFC Court, after hearing, by an order dated 07.06.2024, released the amount in favor of respondents Nos. 1 and 3. Respondents Nos. 1 and 3 failed to disclose the source of income. Therefore, the petitioner is the income tax authority seeking interim custody of the seized amount because it is unaccounted money and it is an offense under the Income Tax Act. The respondent's mere production of a purchase invoice or GST numbers is insufficient to substantiate the source of income. To protect the interest of revenue to the state, after inquiry by the authority, if it is satisfied regarding the source of income, it may hand over the amount to the respondent. For the above reasons, the interim order dated 07.06.2024 may be recalled, and a suitable order may kindly be passed. Accordingly, the petitioner prays to allow the petition.

3. After service of the notice, respondents Nos. 1 to 3 appeared through their counsel and filed an objection. It is stated that Respondent No. 3 is doing business under the name and style of ICHI MOBISOFT at Ichalakaranji, Maharashtra, and he used to supply mobile phones and computer accessories to various places. The respondents collected their dues, amounting to Rs. 1,631,050/-, which the police seized in this case. Respondent No. 3 has produced the certificate to the effect that Accused Nos. 1 and 2 were working under him. The respondent No. 3, being the owner of the said amount, rightly filed an application seeking interim custody of the seized amount, and the JMFC court, after considering all these facts, released the amount in favour of respondent No. 3. On all these grounds, he prayed to dismiss the petition.32

4. After hearing both side the following point that arises for my consideration are:

1. Whether the trial court is justified in allowing the application filed by the respondent No.3 U/Sec 457 of Cr.P.C and rejecting the application filed by the petitioner seeking interim custody of Rs.16,31,050/-?
2. What Order?

5. My answer to the above points are as follows:

Point No.1:- In the Negative

Point No.2:- As per final order

-: REASONS :-

6. **POINT No.1:-** The revision petitioner has challenged the order dated 07.06.2024 passed by Prl. Civil Judge and JMFC Chikodi in Chikodi PS Cr.No.64/2024 and also sought for a direction to concerned police to hand over the seized amount of Rs.16,31,050/-.

7. The petitioner claims that the amount was seized from the respondents Nos. 1 and 2 (accused Nos. 1 and 2) by the police when the election code of conduct was in force and a case in Cr. No. 64/2024 was registered for the offences

punishable under Section 98 of the Karnataka Police Act, 1963. An application was filed by the Income Tax Department for release of the amount, which was rejected. The application filed by the respondent No. 3 was allowed by the JMFC court and ordered to release it to the interim custody of him, and a claim petition was filed by the revision petitioner and rejected. Feeling aggrieved, I file this petition.

8. Learned counsel for the respondents submits that the only offense against respondents Nos. 1 and 2 was that they were in possession of the cash, and they submit that this cash belonged to respondent No. 3 and it was not utilized for the purpose of conducting any election. He also contended that the amount was not stolen and therefore, an offense under Section 98 of the K.P. Act was not made out. He therefore submits that the JMFC Court, after considering the accountability of the cash order, release the amount in favor of the Respondent No. 3. Only the income tax department is entitled to interim custody if the amount was searched by the income tax officers and found unaccountable

under section 132 of the Income Tax Act. Accordingly, the court prayed to dismiss the petition.

9. Learned counsel for the revision petitioner filed written arguments, wherein he contends that while allowing the petition, it was not considered that the petitioner has to follow the course stated under Section 132B of the Income Tax Act and that it is the prerogative of the petitioner to take out proceedings under Section 132B of the I.T. Act before releasing the amount. In this regard, he relied upon the judgment of Vipul Chavada vs. State of Gujarat (2018) 90 Taxmanna Com 53 (Gujarat); the High Court of Kerala in the case of Union of India Vs. State of Kerala (2022) 136 taxmann.com 150 (Kerala); Prashant Vs. Union of India (1997) 225 ITR 365 MP; Rajiv Agrawal-Deputy Commissioner IT Vs. State of Gujarat; Sri Janardhan S. Deputy Director of Income Tax Vs. State of Vidhana Soudha; G Shafi Vs. State of Kumaraswamy Layout Ps; and Union of India Vs. Judicial Magistrate (Eastern) (1983) 33 CTR (All) 45, which contended that the procedure under Section 132B of I.T. Act has to be

followed. I have considered the written arguments along with citations referred by the learned counsel for the petitioner.

10. The above decisions consider the provision of section 132 of the Income Tax Act. Under section 132A of the Income Tax Act, the competent authority, if it has reason to believe inter alia that any assets represent either wholly or partly income or property that has been, or would have been, disclosed for the purposes of the Indian Income Tax 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, may require such authority to deliver such books of accounts, other documents, or assets to the requisitioning officer. But in this case, even though the revision petitioner is at the paragraph. 5 of the petition stated that he initiated the proceedings under section 132A of the Income Tax Act and summoned the respondents and also recorded their statements; he has not produced any of the documents to show that he recorded the respondents' statements, and they have not disclosed the

source of income. Since the respondents herein produced invoices and receipts for proof of sources of income before the trial court and this court. Therefore, the above decisions relied on by the petitioner do not apply to the facts of this case.

11. As rightly contended by learned counsel for the respondents, the amount of Rs.1,631,050/- was seized from the custody of the respondents Nos. 1 and 2, who are accused Nos. 1 and 2 in Cr. No. 64/2024. The Respondents Nos. 1 and 2 were working under the Respondent No. 3, who is the owner of the ICHI MOBISOFT mobile shop, and the Respondents, being his workers, collected the amount from the customers; therefore, Respondent No. 3 is deemed to be the owner of the cash, and he is entitled to the interim custody of the cash. The contention of the revision petitioner that the petitioner has to undergo a process under Section 132B of the I.T. Act initiated by the department is not well founded since the procedure under Section 132B has to be followed only in cases where search and seizure are caused

under Section 132 of the I.T. Act. The cash of Rs.1,631,050/- was handed over to the Department of Income Tax only for the purpose of safekeeping. If the petitioner has any suspicion that the amount of Rs. 1,631,050/- has not suffered any tax, it is open for the petitioner to initiate proceedings under the I.T. Act. However, when interim custody is given to the revision petitioner, it cannot withhold the cash and claim that Respondent No. 3 has to undergo the ordeal of a proceeding under Section 132B of the I.T. Act.

12. It is relevant to note that what is seized is cash, and therefore, every passing day would reduce the value of the cash, and therefore, the trial court has rightly considered the erosion in the value of the cash if it is allowed to lie in the custody of the income tax department. In that view of the matter, the order dated 07.06.2024 is required to affirm. However, it is open for the petitioner to initiate any proceedings in accordance with law against the respondents. With these observations, I answered point No. 1 in the 'Negative.'

13. **Point No.2:** For the reasons given to point No.1, I proceed to pass the following:

:: O R D E R ::

The Revision petition filed by the petitioner U/Sec.438 of BNSS is dismissed.

(Dictation given to the Stenographer dirctly on computer, typed by her, corrected by me and then pronounced in the open Court on this the 15th day of June, 2026)

(VIJAY KUMAR)
VII Addl. District and Sessions Judge,
Belagavi, sitting at Chikodi.