



2024:KER:20810

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 11TH DAY OF MARCH 2024 / 21ST PHALGUNA, 1945

WP(C) NO. 9269 OF 2024

PETITIONER:

MUHAMMED C K,
AGED 39 YEARS
CHETTUKKUZHIYIL, KARANTHUR, KUNNAMANGALAM AMSOM,
KOZHIKKODE,
REPRESENTED BY POWER OF ATTORNEY HOLDER,
MUHAMMED FAIQUE, AGED 35 YEARS,
S/O MUHAMMED BASHEER P. K, RESIDING AT
PAZHANKARA HOUSE, KODUVALLY P.O, PUTHUR,
KOZHIKKODE, PIN - 673 572.

BY ADVS.

BEJOY JOSEPH P.J.
M.RAMESH CHANDER (SR.)
P.RAGHUNATHAN
BONNY BENNY
GOVIND G. NAIR
BALU TOM

RESPONDENTS:

- 1 ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE-2, AAYAKAR BHAVAN, NORTH BLOCK,
MANANCHIRA, KOZHIKODE, PIN - 673 001.
- 2 PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL,
CENTRAL REVENUE BUILDING, IS PRESS ROAD, KOCHI,
PIN - 682 018.

BY ADV. NAVANEETH N. NATH-SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 11.03.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



‘C.R.’

J U D G M E N T

Petitioner has approached this Court challenging Exts.P1 to P4 notices issued under Section 148 of the Income-tax Act, 1961 (hereinafter referred to as the ‘1961 Act’) for the assessment years 2020-2021 to 2023-2024. The specific ground raised before this Court is that a reading of Exts.P1 to P4 will indicate that the procedure contemplated by Section 148A of the 1961 Act has not been followed before issuing the impugned notices. It is the case of the petitioner that the reference to Section 132 A of the 1961 Act in the impugned notices is only to get over the formalities contemplated by Section 148A of the 1961 Act, and the facts and circumstances of the case indicate that Section 132A of the 1961 Act is not applicable.

2. Sri. P. Raghunathan, the learned counsel appearing for the petitioner, would vehemently contend that Section 148 A of the 1961 Act contemplates the conduct of an inquiry providing opportunity to the assessee before issue of notice under Section 148 A of the 1961 Act. It is submitted that by



virtue of the 1st proviso to Section 148 A of the 1961 Act, the procedure is dispensed with only in case a search is initiated under Section 132 of the 1961 Act or the books of account, other documents or any assets are requisitioned under Section 132 A of the 1961 Act in the case of an assessee on or after 01-04-2021. It is submitted that in the facts of the present case, certain amounts of cash were recovered from one Muhammed Salih and one Sabeer Ali. It is submitted that the said cash was seized by the Police, and the same was produced before the Judicial First Class Magistrate Court, Nilambur, in Crime No.100 of 2022, registered by the Police. It is submitted that thereafter, the Income-tax Department filed an application under Section 451 Cr.P.C before the Judicial First Class Magistrate Court to release the money to the department. It is submitted that this Court, by Ext.P6 order, has found that the money in question ought to be released to the petitioners and others who had approached this Court. It is submitted that, therefore, it cannot be said that this is a case covered by the provisions of Section 132A of the 1961 Act, as the money in question was never requisitioned as contemplated by the provisions of Section 132A of the 1961 Act. It is submitted that



in such circumstances, any notice under Section 148 of the 1961 Act, without following the procedure contemplated by Section 148 A of the 1961 Act, would have to be declared illegal and unsustainable in law.

3. Sri. Navaneeth N. Nath, the learned Standing Counsel appearing for the Income Tax Department, would submit that the contention taken on behalf of the petitioner is contrary to the facts. It is submitted that on getting information that certain amounts had been seized by the Police from the aforesaid Muhammed Salih and Sabeer Ali, a requisition under Section 132A of the 1961 Act had been issued by the Income Tax Department to the Station House Officer, Nilambur Police Station. It is submitted that on being informed that the amounts seized from the aforesaid persons had been produced before the Judicial First Class Magistrate Court, Nilambur, the Income Tax Department filed an application under Section 451 Cr.P.C, as going by the judgment of this Court in ***R. Ravirajan and Others v. State of Kerala; 2023 (4) KLJ 423***, the provisions of Section 132A of the 1961 Act cannot be applied to requisition something in the custody of a Court. It is submitted that the filing of an application under



Section 451 Cr.P.C. cannot, therefore, be said to be fatal to the issuance of notices under Section 148 of the 1961 Act without following the procedure under Section 148A of the 1961 Act, as the provisions of Section 132A of the 1961 Act were actually invoked in the facts and circumstances of this case.

Having heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the Income Tax Department, I am of the view that the petitioner has not made out any case for interference with Exts.P1 to P4 notices issued under Section 148 of the 1961 Act. Exts.P1 to P4 notices have indeed been issued without following the procedure contemplated by Section 148A of the 1961 Act. However, in the facts and circumstances of this case, that does not result in a situation where this Court has to hold that Exts.P1 to P4 notices are illegal, as it is clear from the facts of this case that the situation is covered by the 1st proviso to Section 148 A of the 1961 Act, which contemplates that the procedure under Section 148 A of the 1961 Act is not applicable in a case covered by the provisions of Section 132A of 1961 Act. The contention of the learned counsel for the petitioner that since the Income Tax Department had filed an application under



Section 451 Cr.P.C, this cannot be treated as a case covered by Section 132A of the 1961 Act cannot be accepted. According to the learned Standing Counsel for the Income Tax Department, the department had requisitioned the amount from the Station House Officer, Nilambur Police Station, and it was only after being informed that the amount had been produced in Court that an application under Section 451 Cr.P.C was filed. It is clear from the judgment of this Court in ***R. Ravirajan and Others (Supra)*** that when an item or cash, as in this case, is produced before a Criminal Court, then it is not open to the Income Tax Department to issue a notice under Section 132A of the 1961 Act to the Court in question. Once the item is produced before the Court in connection with any criminal case registered by the Police or any other law enforcement agency, an application for release of the same or for giving custody of the same to the Income Tax Department can only be in accordance with the provisions of the Code of Criminal Procedure and specifically Section 451 Cr.P.C. thereof. That does not take away the fact that the department had initiated proceedings under Section 132 A of the 1961 Act to requisition the amount from the Station House Officer, Nilambur Police



Station. Therefore, I have no option but to hold that this is a case covered by the 1st proviso to Section 148A of the 1961 Act. Therefore, the procedure contemplated by the provisions of Section 148 A of the 1961 Act need not be complied with before issuing Exts.P1 to P4 notices under Section 148 of the 1961 Act. No other point has been raised. The writ petition fails, and it stands dismissed *in limine*.

Sd/-
GOPINATH P.
JUDGE

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**APPENDIX OF WP(C) 9269/2024****PETITIONER'S EXHIBITS**

- Exhibit P1 PHOTOSTAT COPY OF THE NOTICE NO.
ITBA/AST/S/148_1/2023-24/1061280383(1)
DATED 21.02.2024**
- Exhibit P2 PHOTOSTAT COPY OF THE NOTICE NO.
ITBA/AST/S/148_1/2023-24/1061280385(1)
DATED. 21.02.2024**
- Exhibit P3 PHOTOSTAT COPY OF THE NOTICE NO.
ITBA/AST/S/148_1/2023-24/1061280386(1)
DATED 21.02.2024**
- Exhibit P4 PHOTOSTAT COPY OF THE NOTICE NO.
ITBA/AST/S/148_1/2023-24/1061280388(1)
DATED 21.02.2024**
- Exhibit P5 PHOTOSTAT COPY OF ORDER OF THE JUDICIAL
MAGISTRATE OF FIRST CLASS NILAMBUR DATED
03.08.2022**
- Exhibit P6 PHOTOSTAT OF THE ORDER OF HON'BLE HIGH
COURT IN CRL.M.C. NO. 5605/2022 DATED
21.12.2023**
- Exhibit P7 PHOTOSTAT COPY OF THE MEMORANDUM DATED
12.01.2024 ISSUED BY THE JUDICIAL FIRST
CLASS MAGISTRATE NILAMBUR**
- Exhibit P8 PHOTOSTAT COPY OF THE MEMORANDUM DATED
30.01.2024 ISSUED BY THE JUDICIAL FIRST
CLASS MAGISTRATE NILAMBUR**