and cremation etc. This part of the statement was not challenged in cross-examination. Normally, even this amount would have been payable to the appellants. However, we think that a total compensation of Rs. 45,000 on this account shall be just and reasonable.

(21) No other point has been raised.

(22) Whatever the amount of compensation that we might assess and award, the loss that the appellants have suffered is irreparable. Nothing but time can heal the wound. The sear shall remain till the last day of their lives. So far as this appeal is concerned, it is allowed in the above terms. The appellants are held entitled to an amount of Rs. 11,97,000 alongwith interest @ 12% per annum from the date of the filing the claim petition as awarded by the tribunal. Since both the vehicles have been held to be equally liable by the Tribunal and that finding has not been challenged, the liability of respondent Nos. 5 and 6 would be joint and several. The appellants shall be entitled to their costs.

R.N.R.

Before G.S. Singhvi and N.K. Sud, JJ

AMANDEEP SINGH,—*Petitioner*

versus

DIRECTOR OF INCOME TAX (INV.) LUDHIANA & OTHERS,—*Respondents*

C.W.P. No. 15388 of 1999

15th December, 2000

Income Tax Act, 1961—Ss. 132-A & 158-BC—Code of Criminal Procedure, 1973—Ss. 102 & 457—Seizure of Indian currency notes—Income Tax authorities requisitioning the currency notes from the police u/s 132-A—Police authorities delivering the possession of the seized amount without obtaining an order u/s 457 Cr. P.C. of the competent Court—Income tax authorities competent to issue a requisition u/s 132-A(1)—Police was duty bound to obtain an order u/s 457 Cr. P.C. before parting with the possession of the seized amount—Action of the Police in delivering the possession of the seized amount to income tax authorities contrary to the provisions of S. 102 of the

Cr. P.C.—Income tax authorities ordered to return the seized amount while directing the police authorities to comply with the provisions of the Cr. P.C.

Held, that when a seizure is made by a Police Officer in connection with an alleged offence and held by him under Section 102 of the Cr. P.C., he is duty-bound to transport the same and produce the seized property before the Court of competent jurisdiction. There can be no transfer or appropriation of any seized property by the Police authorities except under an order of the Magistrate u/s 457 of the Cr. P.C. However, till the Magistrate issues an order about the custody of the seized assets, the possession will continue to be that of the Police Officer. It is only after the Magistrate passes an order u/s 457 of the Cr. P.C. that the person getting possession of the seized property shall be deemed to be possessing it under the orders of the Court. Viewed from this angle, the possession and control of the seized amount on 23rd March, 1998 was that of the SHO P.S. City Phagwara. He cannot be said to be in possession of the seized amount under the orders of the Court. Consequently, the seized amount could not be said to be in the custody of the Court. Income Tax authorities were well within their competence to issue a requisition u/s 132A(1) of the Act. However, the police authorities were duty bound to obtain an order u/s 457 of the Cr. P.C. before parting with the possession of the property. Therefore, their action under sub-section (2) of Section 132A of the Act in delivering the possession of the seized amount to income tax authorities is clearly contrary to the provisions of the Cr. P.C.

(Para 12)

A.K. Mittal, Advocate for the petitioner.

R.P. Sawhney, Sr. Advocate with Rajesh Bindal, Advocate , for respondents No. 1 and 2.

Rupinder Khosla, DAG, Punjab for respondent No. 3.

JUDGMENT

N.K. Sud, J.

(1) Challenge in this writ petition is to the action of the Director of Income Tax (Investigation), Ludhiana, the respondent No. 1, in issuing a notice under Section 132A of the Income Tax Act, 1961 (for short 'the Act') on 23rd March, 1998 requiring the

S.H.O. Police Station City, Phagwara, the respondent No. 3, to deliver the custody of the amount of Rs. 21,05,000 seized from the petitioner by the respondent No. 3 on 21st March, 1998. The petitioner has also challenged the consequential notice dated 20th July, 1990 (Annexure P-3) issued under Section 158 BC of the Act by the Deputy Commissioner of Income Tax, Investigation Circle-II(1), Ludhiana, the respondent No. 2.

(2) The relevant facts leading to the aforesaid action of the respondent No. 2 may first be noticed.

(3) On 21st March, 1998, the petitioner was driving a white Fiat Car No. PB-10-Q-8228 and was coming from Ludhiana side towards Phagwara. His car was checked at the Check Post set up for checking the vehicles at Hoshiarpur Chowk. During the search of his car two bags containing Indian currency notes amounting to Rs. 21,05,000 were found. The petitioner was detained and the car and currency notes were also taken into custody for alleged offences under Sections 411 and 414 of Indian Penal Code read with Section 9(i)(B) and 9(ii)(D) of the Foreign Exchange Regulation Act, 1973. FIR No. 27 dated 21st March, 1998 was lodged with the Police Station, Sadar, Phagwara. On 22nd March, 1998 the police authorities applied to the Chief Judicial Magistrate for police remand of the petitioner for a week. On receipt of the information about this seizure, the income tax authorities recorded the statement of the petitioner on 23rd March, 1998 to enquire into the source of the currency notes worth Rs. 21,05,000. Not satisfied with the explanation of the petitioner, the respondent No. 1 issued a requisition under Section 132A of the Act on 23rd March, 1998 requiring the respondent No. 3 to deliver the currency notes to him, as according to him, the same represented income of property which had not been or would not have been disclosed for the purposes of the Act. The respondent No. 3 in pursuance to the said requisition delivered the currency notes to the respondent No. 1 on 24th March, 1998. Thereafter, the respondent No. 2 issued a notice under Section 158 BC of the Act dated 20th July, 1999 (Annexure P-3) requiring the petitioner to prepare and file the return for the block period 1st April, 1987 to 23rd March, 1998. The petitioner filed the necessary return on 6th September, 1999. The return was accompanied by a letter of the same date in which it had been mentioned that the notice was void as the block period mentioned in the same was 1st April, 1987 to 23rd March, 1998 whereas it should have been from 1st April, 1987 to 24th March, 1998 as the search warrant had been

executed on 24th March, 1998. During the course of the assessment proceedings for the block period, the petitioner filed a letter dated 13th October, 1999 wherein the validity of the requisition under Section 132A of the Act and consequential notice under Section 158BC of the Act was questioned on the ground that the Income-Tax authorities had no power to requisition the currency notes from the custody of S.H.O. Police Station City, Phagwara. For this purpose, the petitioner relied on the decision of this Court in *Tej Pal Oswal* Vs. *Income Tax Officer, Central Circle, Ludhiana* (1). The respondent No. 2 did not agree with the petitioner's objection and continued with the proceedings initiated *vide* the impugned notice dated 20th July, 1999. It is in this background that the present writ petition challenging the notices under Section 132A and 158BC of the Act dated 23rd March, 1998 and 20th July, 1999 respectively, has been filed.

(4) The sole question for our consideration therefore, is whether the requisition made by the respondent No. 1 under Section 132A of the Act on 23rd March, 1998 is valid or not. It is agreed that our finding on this issue will also govern the validity of the notice under Section 158BC dated 20th July, 1999 as the only ground for challenge to this notice is non-existence of a valid requisition under Section 132A of the Act.

(5) Mr. A.K. Mittal, Advocate, appearing on behalf of the petitioner referred to Sections 102 and 457 of the Criminal Procedure Code, 1973 (for short 'the Cr. P.C.') to contend that once the police officer had seized the property, he was bound to follow the procedure prescribed under Section 102 of the Cr. P.C. and as per sub-section (3) of Section 102, he was required to report the seizure to the Magistrate having jurisdiction over the case. It was further stated that thereafter the seized property could only be dealt with in accordance with the orders of the Magistrate passed under Section 457 of the Cr. P.C. He further contended that till such time the Magistrate passes an appropriate order under Section 457 Cr. P.C., the police authorities would be deemed to be in possession of the seized property on behalf of the Court or as a custodian of the Court. For this purpose, he relied on the judgment of the Gujrat High Court in *Suraj Mohan Babu Mishra* Vs. *State of Gujrat* (2). It was, therefore, contended that the currency notes of Rs. 21,05,000 in the possession of the respondent No. 3 should be deemed to be in the Court's custody and, therefore, the impugned

(1) (1979) 118 ITR 21
(2) AIR 1967 Guj. 126

requisition dated 23rd March, 1998 under Section 132A of the Act was invalid as the respondent No. 1 had no jurisdiction to make such a requisition to a Court. He placed reliance on the decision of this Court in *Commissioner of Income Tax* Vs. *Balbir Singh* (3) and also on the decisions of the Kerala and Andhra Pradesh High Courts in *Abdul Khader* Vs. *Sub Inspector of Police and others* (4) and *Sadruddin Javeri* Vs. *Government of Andhra Pradesh and others* (5).

(6) Shri R.P. Sawhney, Senior Advocate along with Shri Rajesh Bindal, Advocate, appearing on behalf of the respondents Nos. 1 and 2 submitted that there was no dispute about the proposition of law that once certain assets are seized by the police authorities, the same have to be dealt with in accordance with the procedure laid down under Sections 102 and 457 of the Cr. P.C. However, according to him, until and unless a specific order is passed by the Magistrate under Section 457 of the Cr. P.C. regarding disposal of the property or delivery thereof to any person, it cannot be held that the property seized by the Police authorities should be deemed to be in their possession under the directions of the Court. He further contended that in the case of Balbir Singh (supra) where this Court had quashed the notice under Section 132A of the Act, the requisition had been made after the Chief Judicial Magistrate had passed the order under Section 457 of the Cr. P.C. handing over possession to one Balbir Singh as supurdar. Similar was the position in *Abdul Khader's case* (supra). It was only in the case of *Sadruddin Javeri* (supra) that the requisition had been made by the Income-tax authorities during the course of investigation by the Police authorities and prior to any order of the Magistrate under Section 457 of the Cr. P.C. The Andhra Pradesh High Court, therefore, did not quash the notice issued under Section 132A of the Act, but merely held that the Police Officer could not have handed over the custody of the seized property to the Income-tax authorities without obtaining an order from the Magistrate.

(7) We have heard the learned Counsel for the parties and have perused the relevant records and have also gone through the authorities relied on by the Counsel for the petitioner. Before examining the contentions of the parties, it would be useful to

(3) (1993) 203 ITR 650
(4) (1999) 240 ITR 489 (Ker)
(5) (2000) 243 ITR 579 (AP)

reproduce the provisions of Sections 102 and 457 of the Cr. P.C. which read as under :—

"102(1) Any Police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same."

"457 Procedure by police upon seizure of the property

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

From a reading of the aforesaid two provisions, it clearly emerges that the Police Officer has to forthwith report the seizure to the Magistrate having jurisdiction and produce the seized assets

before the Court. In case, it is not possible to transport such property for production before the Court, the Police Officer can give its custody to any person who furnishes the bond as prescribed under sub-section (3) of Section 102 of the Cr. P.C. The Magistrate then passes an order under Section 457 of the Cr. P.C. in respect of disposal of such property of the delivery thereof to the person entitled to its possession. While making such an order, the Magistrate also considers the claim made by any person to such seized property by allowing him an opportunity to appear before him and establish his claim.

(8) The question for our consideration is whether the custody of the seized currency notes with the Police Officer prior to his obtaining an order from the Magistrate under Section 457 Cr. P.C. can be said to be under the orders of the Court or under the deemed custody of the Court. The answer, according to us, is in the negative. It is true that the police authorities should report the seizure "forthwith" to the Magistrate having jurisdiction and produce the seized property before him and obtain an order regarding disposal of such property. However, it is also true that till the time such an order is obtained, the possession of the seized assets by the Police Officer in the meanwhile can not be deemed to be under the orders of the Court. The decision of the Gujrat High Court in *Suraj Mohan Babu Misra's* case (supra) can not be said to be an authority on this proposition. In that case, the Police had not reported the seizure to the Magistrate and the party claiming to be entitled to the seized property had made an application under Section 523 of the Cr. P.C. before the Magistrate for seeking an order for delivery of the seized property to him. This application was contested by the State on the ground that the Magistrate can only pass such an order under Section 523 of the Cr. P.C. after the seizure has been reported to him by the Police authorities and in the absence of such a report the Magistrate could not pass such an order merely on the application of a claimant. The Gujrat High Court rejected this contention by observing as under :—

> "With respect, I am unable to agree with that view if it is taken to hold it is only on a police report and not on any application of any party affected by seizure of any such property, that the Court can pass the order under Section 523 of the Criminal Procedure Code. Apart from there being any such specific limitation imposed on the Magistrate exercising his powers on being moved by any such party, a power to call for a report, on such

information given to him is implicit in the power given to him to deal with such property seized by the police. If that were not so, the effect of Section 523 would be meaningless, and even the provisions contained therein may be turned nugatory, if the police officer so took in his head not to report about any such seizure for any length of time. No power is given to the police to deal with such property. A liberal construction has to be given to a provision like this and the spirit and substance behind such a provision has to be considered, so as not to frustrate the purpose behind it. There is no question of usurpation of the powers of the police—as none are given to them for disposal thereof after it is seized. The power is conferred to them to seize the property and it extends no further to deal with it as Section 523 immediately comes in effect and requires the Police Officer to report forthwith about such seizure and the Magistrate becomes entitled to deal with it as he thinks fit."

(9) Thus, the aforesaid authority is of no help to the petitioner. On the other hand, a conjoint reading of the above mentioned two provisions clearly supports the stand of the Department that till such time an order under Section 457 Cr. P.C. is made by the Magistrate, the seized property cannot be said to be held under the orders of the Court or on behalf of the Court. However, it is also clear that once the property is seized by the Police authorities, they cannot part with its possession without obtaining an order under Section 457 of the Cr. P.C. from the Magistrate having jurisdiction. This is clearly evident from the procedure laid down under Section 102 of the Cr. P.C. Similar procedure prescribed under sub-section (2) of Section 523 of the Cr. P.C., 1898 had come up for consideration before the Gujrat High Court in *Suraj Mohan Babu Mishra's case* (supra), wherein the Court had observed as under :—

"4 Chapter XLIII of the Criminal Procedure Code, deals with the orders that may have to be passed with regard to the disposal of the muddemal property in any criminal case. There are three stages in a matter in which the Magistrate may be required to pass orders regarding custody or disposal of any such property. The first is before the charge-sheet in any criminal case is received by the Court, and such a matter may well be covered under S. 523 of the Criminal

Procedure Code. Then the Court may have to pass orders relating thereto during the pendency of the inquiry or trial and that can be done under S. 516-A of the Code. Then comes S. 517 which requires the Court to pass orders in that respect when the trial is concluded. In the case before us, we have to consider the effect of S. 523 of the Criminal Procedure Code, and that covers the first stage-which obviously is prior to any proceeding before the Court. Now, S. 523 provides certain procedure to be followed both by the police and the Magistrate with regard to any property seized by the police Sub-section (1) thereof runs thus.

"The seizure by any police-officer of property taken under S. 61 or alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof. or, if such person cannot be ascertained, respecting the custody and production of such property."

Then comes sub-section (2) which says that if the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions, if any, as the Magistrate thinks fit. Then it refers to certain procedure where the owner of property seized is not known. It was urged by Mr. Sethna, the learned advocate appearing for the applicant, that the motor truck bearing GTA 3093 belonging to the applicant has come to be seized by the police in respect of some offences alleged to have been committed by one Babu-rao Raghojirao such as carrying prohibited articles under the provisions of the Bombay Prohibition Act. There is, therefore, no dispute that the property can be said to have been seized under such circumstances which create suspicion of the commission of any offence at that stage, and consequently the police has to follow the procedure as laid down under sub-section (1) which says "that it shall be forthwith reported to a Magistrate." These words have a two-fold significance. The first is that the provision gives a clear direction to the police making it obligatory to report the seizure of any such property to the Magistrate. The second direction is that it shall be reported forthwith. The use of the word 'forthwith' is

something more forceful than immediately or soon after the seizure of the property. It contemplates no loss of time. The idea behind it appears to be that no inconvenience or hardship should be caused to any bona fide owner of any such property, and the matter can immediately be considered by the Magistrate having jurisdiction to deal with any such matter. No discretion is allowed to the police in that respect as would justify him to delay in making any such report and if the police required the same for the purpose of any investigation it has got to move the Magistrate for the same. At any rate, the fact about its seizure has to be reported forthwith to the Magistrate. That in a way serves as a check on the police in dealing with any such property seized from any person. The police is thus bound to send a report there and then as it were, about any such seizure, to the Magistrate, as required under S. 523 (1) of the Code.

(5) Now in the present case though the motor truck has been seized by the police at any rate before 27th December, 1965 when the application by its real owner has been made to the learned Magistrate, and as his report shows, no intimation or report as required under S. 523 of the Criminal Procedure Code has been received by him from the police which seized that property, till 20th January, 1966. When such is the case, whether the Court has jurisdiction and authority to act on any such application given by the owner of the property in respect thereof, is a point to be considered in the petition. The learned Magistrate thought that unless actually a report from the Police Officer was seized that property is received he cannot act. According to him, he cannot even call for his report, much less deal with that property.

Mr. Chokshi referred to me a decision in a case of Ghulam Ali v. Emperor, AIR 1945 Lah 47. where it was held that "from a strict reading of S. 523, it was clear that order could be passed not on the application of a party but on a report by the police. The facts of that case were that the police acting on some information, recovered from petitioner's possession a horse on 10th September, 1941. The police did not reprot the seizure thereof to the Magistrate as they should have done. But the petitioner himself approached the Magistrate who passed an order on 15th September, 1941 directing the police to hand over the horse to him on security of Rs. 400. The Magistrate was then moved by the complainant to direct the police to send up a chalan. The police reported that there were no grounds on which they could send

up a chalan. That led him to put an application for the restoration of the horse to him and after making some inquiry, the Magistrate passed an order on 16th May, 1942 that the horse should be made over to the complainant namely the respondent and referred Ghulam Ali, petitioner, to the Civil Court if he had any objection. In the meanwhile, the horse was made over by the police to the petitioner as originally directed by the learned Magistrate. The petitioner then went in revision to the learned Sessions Judge against the subsequent order of the Magistrate who, holding the order of the Magistrate to be one under S. 517, Criminal Procedure Code, remanded it for further inquiry. On a matter taken to the High Court in revision, it was held that as there had been no inquiry or trial in the case, section 517 could not come into operation, and the order of the Magistrate could not come within S. 517 of the Criminal Procedure Code. It was further observed that the Magistrate had no right to review his own order, as the first order passed by him must be presumed to have been passed under S. 523 of the Criminal Procedure Code. Even the learned Sessions Judge was found to have erred in assuming jurisdiction for there is no right of appeal to, or revision by the Sessions Judge under S. 523 of the Code of Criminal Procedure. Then it has been further observed that all the proceedings in the case, except the original order making over possession of the horse to the petitioner were bad in law and must be set aside. Then come the pertinent observations relied upon by Mr. Chokshi, the learned Government Pleader for the State. They ran thus :

> "Even that order is not free from defect, because it would appear from a strict reading of the section that order should be passed not on the application of the party but on a report by the police. It seems to me, however, that though there should have been such a report in this case the absence of it has not occasioned any failure of justice. There are, therefore, no grounds for interference in revision with that order."

(10) In the light of the aforesaid discussion, we may now consider the authorities relied upon by the petitioner. In Balbir Singh's case (supra), the currency notes worth Rs. 2,99,000 had been seized from one Balbir Singh on 6th September, 1977. The said currency notes were produced before the Chief Judicial Magistrate who ordered that the same be deposited in the Treasury for safe custody. Thereafter Balbir Singh moved an application under Sections 451/457 of the Cr. P.C. for return of money. This prayer was accepted by the Chief Judicial Magistrate,—*vide* order

dated 15th October, 1977 who directed that the money be handed over to him on supurdari. In pursuance of the order of the Chief Judicial Magistrate, the said Balbir Singh approached the Treasury Officer to collect the money, who declined to hand over the money to him on the ground that the Senior Superintendent of Police had informed that the money had been requisitioned by the income-tax authorities,—*vide* requisition under Section 132A of the Act dated 15th September, 1977. It is under these circumstances that Balbir Singh had filed a writ petition and challenged the requisition dated 15th September, 1977 issued under Section 132A of the Act. The Court upheld the claim of Balbir Singh on the ground that the Treasury Officer was holding the case property under the orders dated 7th September 1977 of a competent criminal Court and, therefore, the custody of the property in law was that of the Court. It was further held that since a Court was neither an "officer" nor an "authority," the assets in the custody of the Court could not be requisitioned under section 132A(1) of the Act. Thus the treasury Officer could not have handed over the case property to any other person without the order of the Court. it is in the light of these facts that the requisition made by the Commissioner under Section 132A of the Act was held to be invalid. Thus. it is evident from the facts of that case that when the requisition under Section 132A of the Act was made, the competent criminal Court had already passed an order directing the deposit of the seized cash in the Treasury. Similar is the position in the Abdul Khader's case (supra). In fact, at page 492 of the report, it has clearly been observed that "there is no dispute on the fact while the warrant under Section 132A was issued, the gold was under the custody of Judicial Magistrate of Ist Class-II, Thiruvananthapuram and the first respondent is holding the property on bahalf of the Court." It was on this factual position that it was held that the Commissioner was not empowered tio make a requisition under Section 132 A of the Act. requiring the Court to deliver the assets. However, the facts of the present case are similar to the facts of the cases of Sadruddin Javeri (supra). In that case, the Andhra Pradesh High Court was considering the question whether the income tax authorities can justly and legally invoke Section 132A of the Act to take delivery of the assets from the police when the seizure was in connection with an alleged offence and the seized assets are held under Section 102 of the Cr. P.C. before the police authorities could report the seizure to the Court and obtain an order under Section 457 Cr. P.C. It was held that such a course was not open to the income-tax authorities and the possession taken by them by invoking Section 132A was illegal. The following

observations of the Court as appearing at page 595 of the report can be usefully referred to:—

> "Seen in this background the powers to requisition of books of accounts etc. and any assets as contemplated under Section 132A of the Income-tax Act, 1961, one has necessarily to consider, whether the expression "any officer or authority under any other law for the time being in force" in clause (c) of section 132-A(1) can in cases of seizure of by a police officer be held to be the officer or authority who has taken into custody the assets which represented either wholly or partly income or property which has not been or would not have been disclosed for the purpose of the Income tax Act, 1961. The police officer, who seized the property, we have already noticed, has a duty to transport the same to the Court or give custody thereof to any person on his executing a bond and undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same. Thus, pursuant to the seizure, his possession or the custody of the property with any person under the bond undertaking to produce the property before the Court is for and on behalf of the Court and is custodia legis. There can be no transfer or appropriation of any property seized by the Police except under the order of the Court.
>
> Learned Counsel for the Income-tax Officers has conceded before us that Section 132-A of the Income-tax Act does not authorise any notice to the Court as by no stretch of imagination the Court can be identified as any officer or authority under any other law for the time being in force as contemplated under clause (c) of Section 132A(1) read with clause (a) thereof. To say the least, there has been gross violation of law by the entry of the Income tax Officer to take delivery of the properties from the Police before the seizure is reported to the Court and the Court passed any order as to its custody."

The Court, accordingly, directed the immediate release of all the properties seized from the house of the petitioner. However, since there was some confusion as to whom the seized assets had to be released and also whether the prayer of the petitioner for quashing the notice under Section 132A of the Act had been

granted or not, a review petition was filed by the Commissioner of Police. The said review petition was dismissed in *Commissioner of Police and Others* Vs. *Sadruddin H. Javeri* (6) with the following observations:-

> "It is next contended by learned Counsel for the petitioner that the Police seized 127 articles from the premises of the writ petitioner, but handed over only 124 articles and not handed over items 26, 27 and 32. The writ petitioner in the writ petition sought for only 44 articles. Out of those 44 articles, the petitioner identified only 17 items and the remaining 27 items could not be identified by him. Now the Court directed release of all the articles seized by the police from the premises. It is the grievance of the petitioner that the Department is entitled to appropriate these articles of the petitioner, against the petitioner's arrears of income-tax. Hence the direction to return the articles is not warranted.
>
> Though it was prayed by the petitioner to set aside the notices issued under Sections 132 and 132A of the Income-tax Act and the enquiry that may be held in consequence thereof, the Court has not chosen to grant any such relief or to interfere with those proceedings. Hence, the Department is entitled to proceed with the enquiry. But, meanwhile as per the direction, the Income-tax Department is liable to return the articles to the petitioner. But it is made clear that the articles returned are subject to consequential orders that may be passed by the Department after enquiry is completed.
>
> Accordingly, this review petition is dismissed, subject to the above observations."

(11) From the above discussion, it clearly emerges that when a seizure is made by a Police Officer in connection with an alleged offence and held by him under Section 102 of the Cr. P.C., he is duty-bound to transport the same and produce the seized property before the Court of competent jurisdiction. In case, it is not convenient to transport the said property to the Court, he may give its custody to any person on his executing a bond and an undertaking to produce the property before the Court as and when required and to give effect to further orders of the Court as to the disposal of the same. There can be no transfer or appropriation of

(6) (2000) 243 ITR 615 (AP)

any seized property by the Police authorities except under an order of the Magistrate under Section 457 of the Cr. P.C. However, till the Magistrate issues an order about the custody of the seized assets, the possession will continue to be that of the Police Officer. It is only after the Magistrate passes an order under Section 457 of the Cr. P.C. that the person getting possession of the seized property shall be deemed to be possessing it under the orders of the Court. Viewed from this angle, in the present case, the possession and control of the seized amount on 23rd March, 1998 was that of the S.H.O., Police Station City, Phagwara. He cannot be said to be in possession of the seized amount under the orders of the Court. Consequently, the seized amount could not be said to be in the custody of the Court.

(12) We will now consider the validity of the requisition made under Section 132A of the Act on 23 March, 1998 in the present case. For the sake of convenience, the provisions of clause (c) of sub-section (1) and sub-section (2) of Section 132A which are relevant for this purpose are reproduced below:—

> "132A(1) Where the Director General or Director or Chief Commissioner or Commissioner in consequence of information in his possession has reason to believe that—
>
> (a) xxxxxx
>
> (b) xxxxx
>
> (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 Director General or Director or the Chief Commissioner or Commissioner may authorise any Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income Tax Officer (hereinafter in this section and in sub-section (2) of Section 278-D 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.

(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."

According to the above provisions, it is apparent that the first step is making of a requisition by the Income-tax authorities to an officer or authority who is in possession or control of the assets representing alleged undisclosed income for delivery of such assets. The second step is the compliance by such officer or authority who then delivers the assets to the requisitioning authority in accordance with Section 132A(2) of the Act. In the present case, as already observed, the possession on 23rd March, 1998 was with the Station House Officer, Police Station, City, Phagwara and as such, the respondent No. 1 was well within his competence to issue a requisition under Section 132A(1) of the Act. However, the respondent No. 3 who had seized the cash and was in its possession in accordance with the provisions of Section 102(1) of the Cr. P.C. was duty-bound to transport the same to the Court of the competent criminal jurisdiction or to give its custody to any person on his executing of a bond and undertaking to produce the property as and when required and to give effect to further order as to its disposal. It was his bounden duty to obtain an order under Section 457 of the Cr. P.C. before parting with the possession of the property. Therefore, his action under sub-section (2) of Section 132A of the Act in delivering the possession of the seized amount to respondent No. 1 is clearly contrary to the provisions of the Cr. P.C. as held by the Andhra Pradesh 'High Court in *Sadruddin Javeri's case* (supra). We are in agreement with the conclusions drawn by the Andhra Pradesh High Court in the aforesaid case and respectfully following the same, we hold as under:—

(i) The requisition made under Section 132A(1) of the Act by respondent No. 1 dated 23rd March, 1998 requiring respondent No. 3 to deliver the possession of the seized amount to him was valid.

(ii) The respondent No. 3 was not legally competent to deliver the possession of the seized amount to respondent No. 1 without obtaining an order of the Court of competent jurisdiction under Section 457 of the Cr. P.C. We, therefore, order that the amount so delivered to respondent No. 1 be returned to respondent No. 3 who may obtain necessary orders from the Court of competent jurisdiction in accordance with the provisions contained in Sections 102 and 457 of the Cr. P.C.

(iii) Since the notice under Section 132A(1) of the Act dated 23rd March, 1998 has been held to be valid, the consequential notice dated 20th July, 1999 issued under Section 158 BC of the Act is also held to be valid.

Accordingly, the writ petition is disposed of in the above terms. However, in the circumstances of the case, there shall be no order as to costs.

R.N.R.

Before Jawahar Lal Gupta & K.S. Garewal, JJ

M/S SHANTI KUNJ INVESTMENT (PVT.) LTD.—*Petitioner*

versus

U.T. ADMINISTRATION, CHANDIGARH & OTHERS—*Respondents*

C.W.P. NO. 959 OF 1999

2nd February, 2001

Constitution of India, 1950—Art. 226—Capital of Punjab (Development and Regulation) Act, 1952—S. 2—Chandigarh Lease Hold of Sites and Building Rules, 1973—Rls. 3, 12(2) and 13—Allotment of sites through auction—Allottees paying 25% of the amount of premium—Allottees defaulted in paying the instalments of premium and ground rent—Administration imposing penalty/interest on account of delay in making the payment and even cancelling the allotment—Administration failing to provide basic amenities/facilities and to remove the encroachments—Allottees unable to use and enjoy the rights in the property—Administration is under a duty to provide the amenities and to remove encroachments—Payment of premium, ground rent can be claimed only when the allottee can exercise the right to use the property—Allottees not liable to pay interest