

## **Mohammad Kunhi vs Mohammad Koya And Ors. on 24 July, 1979**

**Equivalent citations: AIR1980SC1742, 1980CRILJ1261, (1980)1SCC611, AIR 1980 SUPREME COURT 1742, 1980 TAX. L. R. 1310, 1980 SCC (TAX) 154, 1979 CRI APP R (SC) 316 (SC), (1979) ALLCRIR 469, 1980 (1) SCC 611**

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**Bench: O. Chinnappa Reddy, P.N. Shinghal, R.S. Sarkaria**

### **JUDGMENT**

O. Chinnappa Reddy, J.

1. Mohammad Koya was searched on suspicion by the Railway Police when he alighted at the Madras Central Station on 29th January, 1970 by the West Coast Express. A sum of rupees one lakh in currency notes of 100 rupee denomination was seized from his person. Mohd. Koya was arrested and produced before the Second Presidency Magistrate, Madras, who remanded him to custody. After investigation, the Inspector, Railway Police Madras Central, reported to the Magistrate that no cognizable offence was disclosed against Mohd. Koya and the proceedings may, therefore, be dropped. Mohd. Kunhi filed a petition before the Presidency Magistrate claiming that the money belonged to him and that he had entrusted Mohammed Koya with the money for being paid to a constituent at Bombay. Mohammed Koya also supported the petition filed by Mohammed Kunhi. Meanwhile Vth Income-tax Officer, V Madras, having been duly authorised by the Commissioner of Income-tax, Madras, Kerala and Bombay, filed an application before the Presidency Magistrate praying that the amount may be paid to him under Section 132 of the Income-tax Act as the amount represented the undisclosed income of Mohammed Koya. The learned Presidency Magistrate rejected the application of Mohammed Kunhi and allowed that of the Income-tax Officer. A Criminal Revision Petition filed by Mohammed Kunhi in the High Court of Madras was dismissed by Maharajan J., on 13th October, 1972. The present appeal has been filed by Mohammed Kunhi on a certificate granted by the High Court of Madras under Article 134(1)(c) of the Constitution. It was brought to the notice of Maharajan J., at the time of the disposal of the Criminal Revision petition, that Mohammed Koya from whom the currency notes were seized had subsequently been assessed to pay Income-tax of Rs. 62,375/- and a penalty of Rupees 50,000/-. It is now brought to our notice and it is not disputed by the learned Counsel for the respondents, that the order imposing the penalty has been set aside on appeal. The present prayer of Mohammed Kunhi is for a return of the amount in excess of the income-tax assessed on Mohammed Koya. The question of law to decide for which the certificate was granted by the Madras High Court has not now been pressed before us.

2. We do not see how the request of the appellant that the amount in excess of the tax assessed on Mohammed Koya should be returned to him can be refused. Mohammed Koya has no objection to this course and the learned Counsel appearing for Mohammed Koya has stated so before us. Under Section 132(5) of the Income-tax Act the Income-tax Officer can only retain the amount sufficient to satisfy the demand and is bound to release the balance. We, therefore direct the third respondent Income-tax Officer to return to the appellant Mohammed Kunhi the amount in excess of the Income-tax assessed on Mohammed Koya together with such interest as may be admissible under the provisions of the Income-tax Act. The appeal is dismissed subject to this direction.