

ALLAHABAD HIGH COURT

State of U.P

Vs.

Chambers of Commerce
(S.N. Dwivedi and S.N. Singh, JJ.)

22.12.1969

JUDGMENT

Dwivedi, J.

1. The Chamber of Commerce, Chandausi, Madan Lal, a member of the Chamber of Commerce and the Bullion and Agricultural Produce Exchange Private Limited are the contesting respondents in these appeals. They filed three writ petitions against the search of certain premises and the seizure of certain documents belonging to the first and the third respondents. Their plea was that the search and seizure were illegal. They prayed for the quashing of the proceedings connected with the search and for the return of the seized documents. A learned single judge allowed the petitions. His judgment is reported in A. I. R. 1968 All. 338.

2. The pattern of facts in the appeals is similar except for the differences in the particulars of time, place and person. Counsel for the parties have stated that the Special Appeal No. 830 of 1968 should be regarded as the leading case and have based their submissions on the facts of that case. We have decided to give a common judgment for all these appeals.

3. Counsel for the respondents has raised a preliminary objection. It is said that the appellants have no locus standi to file the appeals. The appellants are the State of U. P. and Chhadami Lal Sharma, Inspector, Criminal, Investigation Department, Crime Branch, U. P. They were respondents in the writ petition. The order of the learned Single judge seems to be directed against them as well as other respondents in the writ petition. The order for payment of costs to the respondents in the appeal also seems to be directed against them. Again, the seized documents appear to be in the custody of the second appellant. The order of the learned single judge directs that the documents should be handed back to the respondents. The search and seizure of documents was made allegedly in the course of an investigation into certain cognizable offences. The state of U. P. has interest in the enforcement of law and order in the State. For all these reasons we overrule the preliminary objection.

4. The first and third respondents carry on the business of commission agents in respect of forward trading in certain goods. Forward contracts are regulated by the Forward Contracts (Regulation) Act, 1952. In 1960 the Act was amended by the Forward Contracts (Regulation)

Amendment Act No. 62 of 1960. The Act, as amended, creates certain offences. Some of them are cognizable; others non-cognizable. It appears from the counter affidavit of Chhadami Lal that the first respondent was suspected of committing certain cognizable offences. So he raided the office of the respondent, searched it and seized certain documents on December 6, 1966. This search and seizure is the subject of impeachment before us. The appellants seek to justify the search and seizure with the aid of Sec. 165, Code of Criminal Procedure. Sec. 165 empowers the officer in charge of a police station and a police officer investigating a case to make a search of any place and seize anything which is necessary for the purpose of an investigation into any offence. Prima facie, Sec. 165 applies to the facts of the case. But counsel for the respondents submits that the search and seizure were not made in accordance with Sec. 165. In the first instance, it is said that as Chhadami Lal was neither the officer in charge of a police station nor a police officer making any investigation, the search and seizure is in contravention of Sec. 165. It appears from the counter affidavit of Chhadami Lal that he is an Inspector in the Criminal Investigation Department, Crime Branch, U. P. He exercises powers throughout the State. As he is an Inspector, he is superior in rank to the officer in charge of a police station who is generally a Sub-Inspector. Chhadami Lal has stated in his counter affidavit that he is superior in rank to the officer in charge of the police station Chandausi within whose area the place searched is situate. Sec. 551, Code of Criminal Procedure provides that a police officer superior in rank to the officer in charge of a police station may exercise the same powers, throughout the local area to which he is appointed, as may be exercised by such officer within the limits of his station. Accordingly, Chhadami Lal could search and seize the documents under Sec.. 165, Code. of Criminal Procedure. It may also be mentioned here that the officer in charge of the police station Chandausi was also present while the search and seizure were madam.

5. It is clear from the counter affidavit of Chhadami Lal that the search and seizure were made by him while he was investigating into certain cognizable offences under the Forward Contracts (Regulation) Act, (hereinafter called the Act) . He said that he received a first information report on September 19. 1966 from the Research Officer, Forward Markets Commission, Bombay that the Chamber of Commerce, Chandausi was carrying on illegal forward trading in mustard seed in the guise of non-transferable specific delivery contracts. This report was sent to the Superintendent of Police, Crime Branch, C. I. D. Lucknow. A copy of the report has been annexed to his counter affidavit. The Superintendent of Police entrusted the report to him. The report ends with the request that necessary action should be taken. This report was treated. as the first information report by Chhadami Lal. Thereafter he recorded an entry in the general diary, a serial number 24 on December 6, 1966 regarding the raid of the office of the respondent that he proposed to make. And then he raided the office and seized the documents. Several persons were also arrested by him and released on bail at the spot. After seizure of records and arrest of persons he recorded an entry in the general diary of the police station Chandausi at serial No. 34 dated December 6, 1966. So his counter affidavit shows that the search and seizure of documents were made by him in the course of an investigation into certain cognizable offences alleged to have been committed by the first respondent.

6. Counsel for the respondents then submits that the search and seizure are illegal as Chhadami Lal did not record in writing the grounds of his belief that anything necessary for investigating into the offences could be found in the office. It is also said that he did not specify in such writing the things for which the search was to be made. In his counter affidavit Chhadami Lal has clearly stated that he has recorded the reason for his belief in the case diary of the case prepared by him.

7. It may be observed that the allegation in the petition of the first respondent regarding the failure of Chhadami Lal to observe the conditions of sub-sec. (1) of Sec. 165 are verified to be true on legal advice. No reliance can accordingly be placed on this allegation. Further assuming that the requirements of sub-sec. (1) of Sec. 165 have not been followed, the search and seizure will not be rendered illegal. The omission to follow them is an irregularity.

8. Counsel for the respondents also submits that Chhadami Lal did not follow the requirements of sub-sec. (5) of Sec. 165. There is no specific allegation to this effect in the petition of the first respondent. It is vaguely stated that the requirements of Sec. 165 were not fulfilled. Again, this allegation in the petition is based on legal advice. Chhadami Lal has denied it in his counter affidavit. Moreover, the requirements of sub-sec. (5) are in the nature of conditions subsequent and not conditions precedent. The breach of condition subsequent in sub-sec. (5) would not render the search and seizure illegal.

9. We are satisfied on a perusal of the counter affidavit of Chhadami Lal that the search of the office of the first respondent and the seizure of certain documents from the office were made in conformity with Sec. 165, Code of Criminal Procedure.

10. Counsel for the respondents has also submitted that Sec. 22-A of the Act excludes the operation of Sec. 165, Code of Criminal Procedure in the investigation of offences created by the Act. Admittedly the search and seizure were not made after obtaining a search warrant under Sec. 22-A. Accordingly the search and seizure are illegal. In order to dispose of this contention it is necessary to examine certain provisions of the Code of Criminal Procedure and of the Act. Sec. 5 (2), Code of Criminal Procedure provides that all offences under any law other than the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions of the Code of Criminal Procedure, but "subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences." Chapter VII of the Code of Criminal Procedure deals with processes to compel the production of documents and other moveable property and for the discovery of persons wrongfully confined. It consists of four parts. We are concerned with the two parts dealing with search warrants and with the general provisions relating to searches. Sec. 98 is included in the former part. It provides that if a District Magistrate, Sub-Divisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and After such inquiry as

he thinks necessary, has reason to suspect that any place is used for the deposit or sale of stolen property, or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place, then he may by his warrant authorize any police officer above the rank of a constable to enter with such assistance as may be required, such place specified in the warrant and take possession of any property, documents, seals, stamps or coins etc. There is no provision in this part authorizing it District Magistrate, Sub-Divisional Magistrate, Presidency Magistrate or Magistrate of the first class to issue a, search warrant for the search of a place and seizure of documents connected with offences created by the Act.

11. The part dealing with the general provisions relating to searches provides for the mode of making a search under the authority of a search warrant issued under Sec. 98. Chapter XIV of the Code of Criminal Procedure deals with information to the police and their powers to investigate. Sec. 154 speaks about the first information report in a cognizable offence. Sec. 156 provides that any officer in charge of a police station may, without the order of a Magistrate, investigate in a cognizable case. Sec. 165 provides for the search of it place and seizure of things connected with the offence which is being investigated by the officer in charge of a police station or a police officer making an investigation. All these provisions are included in Chapter XIV.

12. Sec. 98 included in Chapter VII deals with powers of a Magistrate to issue a search warrant for searching a place and seizing certain kinds of documents. Sec. 165 included in Chapter XIV, on the other hand, deals with powers of the investigating Officer investigating an offence with respect to search of a place and seizure of incriminating things there from. The object of Sec. 98 is different from the object of Sec. 165. They are not overlapping.

13. The Act, as it stood until its amendment in 1960, did not contain Secs. 22-A and 22-B. Until then no Magistrate could issue a search warrant for searching a place and seizing documents connected with offences created by the Act. Sec. 98 of the Code of Criminal Procedure did not enable a Magistrate to search a place and seize such documents there from. There was this lacuna in the Act. The unamended Act created offences both cognizable as well as non-cognizable. The unamended Act did not contain any provision regulating the manner or place of investigating any offence created by the Act. So Chapter XIV of the Code of Criminal Procedure including Sec. 165 were undoubtedly applicable to the investigation of cognizable offences created by the Act. There can hardly be any doubt that until 1960 the officer in charge of a police station and a police officer investigating a cognizable offence created by the Act could search a place and seize documents therefrom connected with any offence created by the Act without a search warrant from any -Magistrate. Indeed, then no Magistrate could issue a search warrant for this purpose. In order to fill up this lacuna Parliament has amended the Act in 1960 as already stated. The amending Act introduced Secs. 22-A and 22-B and also made certain amendments in Secs. 20 and 21 of the Act. The amendment in Secs. 20 and 21 raised the number of cognizable offences.

14. The picture of the Act emerging after the amendment in 1960 is this : The Act creates offences both cognizable as well as non-cognizable. The Act introduces Secs. 22-A and 22-B. Sec. 22-A reads :

"22-A (1) Any Presidency Magistrate or Magistrate of the first class may, by warrant, authorise any police officer not below the rank of Sub-Inspector to enter upon any place where books of account or other documents relating to forward contracts or options in goods entered into in contravention of the provisions of this Act, may be or may be reasonably suspected to be, and such police officer may seize any such book or document, if in his opinion, it relates to any such forward contract or option in goods.

(2) The provisions of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to any search or seizure made under sub-sec. (1) as they apply to any search or seizure made under the authority of a warrant issued under Sec. 98 of the said Code."

Under Sec. 22-B of the Act the books of account or other documents seized from any place shall be admitted in evidence without witnesses having to appear to prove the same and the entries therein shall be prima facie evidence of the matters therein recorded.

15. Evidently, Sec. 22-A deals with powers of a Presidency Magistrate or a Magistrate of the first class to issue a search warrant. He may issue a search warrant in a non-cognizable case which may ordinarily not be investigated by the police. He may issue a search warrant in a cognizable case suo motu or when the police makes a request to that effect while investigating the case connected an offence created by the Act. But we have little doubt in our mind that Sec. 22-A does not deal with the manner and place of investigating into an offence created by the Act. Even after its amendment, it contains no provision regarding the manner and place of investigating into an offence created by the Act. So Sec. 5 (2), Code of Criminal Procedure will still apply to the Act and accordingly Sec. 165 will be available to a police officer investigating into an offence created by the Act.

16. Sec. 22-B does not deal with the investigation of offences created by the act. It deals with the evidentiary value of the documents seized. Counsel for the respondents has submitted that Sec. 22-B is closely related to Sec. 22-A and it will not apply to documents seized in the course of a search made under Sec. 165. It is not necessary for us to express any opinion on this question in this case. It is sufficient to say that even if Sec. 22-B is closely related to Sec. 22-A, the position is not altered. Sec. 22-A, in isolation or in conjunction with Sec. 22-B, does not provide for the manner and place of investigating into an offence created by the Act. So by virtue of Sec. 5 (2) Chhadami Lal could search and seize documents under Sec. 165 without a search warrant under Sec. 22-A.

17. Counsel for the respondents has vigorously maintained that Sec. 22-A is a specific provision and that it overrides Sec. 165, Code of Criminal Procedure. All are unable to agree. We have already pointed out one essential difference between Sec. 22-A and Sec. 165. To repeat, Sec. 22-

A deals with powers of a Magistrate to issue a search warrant while Sec. 165 deals with powers of an investigating officer to make a search and seizure of incriminating documents or things without a search warrant in certain contingencies. Sec. 22-A, is analogous to Sec. 98 contained in Chapter VII, Code of Criminal Procedure.

18. There are other significant differences between Sec. 22-A and Sec. 165. Sec. 22-A empowers a Presidency Magistrate or a Magistrate of the first class to authorize by warrant a police officer not below the rank of a Sub-Inspector. Sec. 165, on the other hand, empowers a police officer even below the rank of a Sub-Inspector to search and seize incriminating things while he is investigating into an offence. Sec. 22-A comes into play when books of account or other documents relating to forward contracts or options in goods entered into in contravention of the provisions of the Act may or may be reasonably suspected to be in any place; Sec. 165 empowers the investigating officer to search and seize (1) when he has reasonable grounds for believing that anything necessary for the purpose of investigating into an offence may be found in any place (2) when such thing cannot in his opinion be otherwise obtained without undue delay and (3) after he has recorded in writing grounds for his belief and specified in such writing so far as it is possible the thing for which the search is to be made. If the investigating officer has no reasonable ground for so believing or if there is sufficient time to obtain a search warrant, he should not make a search and seizure of documents under Sec. 165. The second condition indicates that the scheme of Sec. 22-A is different from the scheme of Sec. 165. While Sec. 22-A is a general provision for making search and seizure of documents, Sec. 165 is an emergency provision for that purpose. Ordinarily an investigating officer should obtain a search warrant for making a search and seizure of documents. But if he is of opinion that delay in obtaining a search warrant may result in the disappearance of the incriminating material, he may search and seize it without a search warrant. Sec. 165 is designed to ensure effective action in an emergency. So Sec. 165 is not inconsistent with, but really supplementary to, Sec. 22-A. In our opinion, Sec. 22-A does not override Sec. 165. It was therefore open to Chhadami Lal to search and seize documents without a search warrant while he was investigating into a cognizable offence created by the Act.

19. Counsel for the respondents has relied on certain cases. In *Wazir Chand v. The State of Himachal Pradesh*¹, it was held that any illegal seizure of goods amounts to an infringement of the right to property. The case is distinguishable on facts from the cases before us. It was found in that case that conceivably no offence was committed by the person in possession of the goods seized. It was also held that the Chhamba police could not investigate an offence committed in Jammu and Kashmir. Accordingly no search could be made under Sec. 165. In *State of Rajasthan v. Rahman*², it was held that as the reasons required by sub-sec. (1) of Sec. 165, Code of Criminal Procedure were not recorded by the investigating officer, the search was illegal. It was urged on behalf of the State that even if reasons were not recorded, it was only an irregularity. This argument was not examined on merits by the Supreme Court. The Supreme Court said that as this point had not been raised earlier, it could not be raised for the first time at

the stage of arguments. In *Delhi Administration v. Ram Singh*³, it was held by majority that a police officer who is neither a special police officer under the Suppression of Immoral Traffic in Women and Girls Act, 1956. nor a police officer subordinate to a special police officer, can validly investigate into the offences under the Act. The Act contains a special provision for investigation, while the Act before us does not contain any provision into an offence. So the case is distinguishable. In *Nilratan Sircar v. Lakshmi Narayan Ram Niwas*⁴, it was held that the provisions of the Code of Criminal Procedure relating to searches apply to search warrants issued under sub-sec. (2) of Sec. 19 of the Foreign Exchange Regulation Act only in so far as they may be applicable. The provision dealing with the circumstances in which, and the authorities by which, search warrants can be issued cannot apply. in view of the specific provision of Sec. 19 (3). The scheme of the Foreign Exchange Regulation Act is different from the Scheme of the Act before us. In *M/s. Seth Brothers v. The Commissioner, Income Tax*⁵, a Division Bench of this Court held that the search and seizure of documents made in contravention of Sec. 132, Income Tax Act were illegal. *Jawahar Lal v. The Commissioner of Income Tax*⁶,

¹ AIR 1964 S.C. 415

³ AIR 1962 S.C. 63

⁵ AIR 1965 All. 487

² AIR 1960 S.C. 210

⁴ A.I.R. 1965 S.C. 1

⁶ Civil Misc. Writ No. 1588 of 1966 decided by Division

Bench, dated 22.05.1969 U. P.

Lucknow takes the same view.

20. None of the cases relied on by counsel for the respondents helps him. On the other hand, the case of *M/s. Motilal Vijbhukhandas v. M. R. Pillai*⁷, is against him.

21. The appeals are accordingly allowed and the judgments of the learned Single Judge are set aside. The writ petitions are dismissed with costs.

Appeals allowed.

⁷(1969) Vol. XXI Bombay Law Reports 619