

**Haripada Gupta Vs. the State**

**Haripada Gupta Vs. the State**

**SooperKanoon Citation :** [sooperkanoon.com/129999](http://sooperkanoon.com/129999)

**Court :** Guwahati

**Decided On :** Dec-03-1958

**Judge :** J.N. Datta, J.C.

**Appellant :** Haripada Gupta

**Respondent :** The State

**Judgement :**

J.N. Datta, J.C.

1. This is a reference by the learned Sessions Judge, under Section 438 of the Criminal P. C., with a recommendation that the order of the learned Magistrate refusing to refund to the petitioner Pakistani currency seized from him by the Police, be set aside and replaced by an order for its refund to the petitioner, and arises out of a proceeding under Section 19(3) of the Foreign Exchange Regulation Act, 1947.

2. The facts, briefly stated are these: It is an admitted fact that the petitioner, Haripada Gupta, who is a refugee from East Bengal, has been dealing in foreign exchange without an authority as required by Section 3 of the Act, though he has applied for such an authority and the matter is still pending. Order 12-5-1958 he was proceeding to Calcutta by air with notes worth Rs. 46170/- out of the said foreign currency for getting it exchanged into Indian currency, and at the Agartala air-port made a declaration to the Custom authorities, that he was carrying with

him, this amount of foreign currency.

The Custom authorities then seized the foreign currency from the petitioner and handed it over to the Police who arrested the petitioner under Section 54, Criminal P. C., and seized the amount. The Sub-Divisional Magistrate however by his order dated 14-6-1958 discharged the petitioner and directed that the amount seized be refunded to him, obviously because the offence if any, was non-cognizable, which the Police were not entitled to investigate, though the learned Sub-Divisional Magistrate has not specifically said so in his order. But the memo of the Officer-in-charge of that date on which the learned Sub-Divisional Magistrate proceeded to take this action, makes that point clear. Nothing much however turns on this point in this reference.

3. On the same day, that is, Order 14-6-1958, the Officer-in-charge, Agartala Police Station, applied to the S. D. M., for a search warrant under Section 19(3) of the Act, stating in his application that he was authorised by the Deputy Director, Enforcement Directorate, Ministry of Finance, Department of Economic Affairs, Govt. of India, in that behalf, but without filing the written authority before the S. D. M.

4. The learned S. D. M. that very day granted the prayer for a search warrant and issued a search warrant to the Officer-in-charge, authorising him to search for documents and foreign currency notes etc., the business premises of the petitioner.

5. Order 17-6-1958 the Officer-in-charge purporting to act under this search warrant, seized from the possession of the Petitioner, at the Kotwali (Police Station) the foreign currency mentioned in Para 2 (Rs. 46,170/- In Pakistan currency notes), and it is not difficult to believe the version of the petitioner, as to what actually happened. It was held that the petitioner was called to the Police station, and asked to give a receipt for the amount which was ordered by the S. D. M. Order 14-6-1958, to be refunded to him, and after that the amount was again seized under the search warrant. That is, it was the same amount which was seized at the Air-Port, by the Custom authorities and forwarded to the Police, and which the S. D. M. had ordered to be refunded to the petitioner. It was thus no

doubt a mere paper transaction, as the learned Sessions Judge has characterised it.

6. The same day the Officer-in-charge, also searched the business premises of the petitioner, which are said to be at a distance of about a quarter of a mile from the Police station and seized some more foreign currency and documents bringing up the amount of Pak currency to Rs. 47,598/10/- as stated in the reference, (But it appears that there is some slight mistake in the addition, which will be clear by referring to the seizure lists). The amount also included some Pakistani coins. Some Indian currency was also seized, but I was told by the Counsel for the petitioner that it had been already returned to the petitioner and we are concerned only with the Pakistani currency seized,

7. His complaint is thus only against the seizure of the said foreign currency. He moved the D. M., but the D. M. passed an order Order 21-6-1958, that the foreign currency in question could not be returned at that stage. He again moved the S. D. M. thereafter but was unsuccessful.

8. According to the petitioner, the seizure of this foreign currency Order 17-6-1958 was most illegal, and he is entitled to its refund. Learned Counsel appearing on his behalf advanced a threefold contention in support of it as follows:

1. Under Section 19(3) the Magistrate has jurisdiction to issue a search warrant only when moved by a person authorised in that behalf by the Central Government or the Reserve Bank. But there was nothing to show, that the Officer-in-charge who applied to the S. D. M. had been so authorised.

2. In any case the search warrant can be only issued for the seizure of books and documents, as laid down in the said Sub-Section (3), and the learned S. D. M., exceeded the authority vested in him by law, in issuing the search warrant for foreign currency also.

3. That the search warrant being only in respect of the business premises, the Officer-in-charge exceeded the authority so given to him, by seizing foreign currency at the Police Station in circumstances already stated, and acted thereby

illegally.

9. It cannot be disputed that the Magistrate | gets jurisdiction to issue a search warrant under | Section 19(3) only, when he is moved by a person au-thorised in that behalf by the Central Government or the Reserve Bank. If such authority was wanting the search warrant would be illegal. As already stated no such authority was filed before the S. D. M. though it was necessary to do so. The learned Government Advocate appearing on behalf of the State, however, tried to meet this point by stating that under the Statutory Orders or Rules made by the President the Director and the Deputy Director of Enforcement were authorised to sign such authorities, but he failed to show any such order or Rule.

He also expressed a desire to file the letter of the Deputy Director authorising the Officer-in-charge, to move the Court under Section 19(3), but such a document could not be accepted at such a late stage and in any case, when no good cause was shown for the omission to file it before the S. D. M. Such an authority even if it existed would be of no avail unless it could be shown that the Deputy Director was authorised to issue such an authority under the Statutory orders or Rules framed by the President, as was alleged by the learned Government Advocate. It is difficult to see, why such Orders and Rules, if they exist were not placed before the Court.

10. It is however not necessary to labour further with this point, as the second contention advanced on behalf of the petitioner is well founded and must prevail, and the result would be the same even if it is presumed for the sake of arguments that the S. D. M. was moved under Section 19(3) by a person duly authorised in that behalf. Section 19 was clearly framed with the object of obtaining information, books or documents, and the language of Sub-Section (3) restricts the scope of a search warrant to books and documents only. It follows therefore that a search warrant for search and seizure of currency or foreign currency cannot be obtained.

The learned Government Advocate urged that Sub-Section (3) makes applicable the provisions of the Code of Criminal Procedure relating to searches under the Code to searches under that Sub-Section, and therefore, the Magistrate could issue the search warrant for foreign currency also.

But that argument is on its face fallacious and of no force, Sub-Section (3) first restricts the scope of the search warrant only to books and documents, and then makes applicable the procedure laid down in the Criminal P. C., to searches under that subsection, which means that the procedure for searches laid down in the Criminal P. C., has to be followed, and not that a search warrant for all purposes for which it can be issued under the Criminal Procedure Code, can be issued.

That would be also clear from the words 'so far as the same are applicable' occurring in subsection (3). Again if the intention of the Legislature was as was contended by the learned Government Advocate, there was no need to frame subsection (3) as was done, as it would have been enough to say that the Magistrate could issue a search warrant for the purposes as laid down in the Criminal Procedure Code.

11. Yet, a weak attempt was made on behalf of the State, to show that the expression document in Sub-Section (3) would cover currency notes. Document is not defined in the Act, but currency and foreign currency are defined (see Section 2) and therefore the word 'document' used in the Act will have to be given its ordinary meaning, as excluding currency notes, because they are included in the definition of the words 'currency' and 'foreign currency' given in the Act,

Support was tried to be drawn from the definitions of the word 'document' given in Section 29 of the I. P. C. and the General Clauses Act, but no case law was cited in support of the contention that a currency note would be covered by those definitions. But the point is not that, because it is mere than clear from the language used in the Act, that the word 'document' is used in a sense, which excludes 'currency' or 'foreign currency'. It is therefore not permissible to invoke the definitions under other Acts. It must therefore be Found that the learned S. D. M., exceeded the authority vested in him by Section 19(3) in issuing the search warrant in respect of foreign currency also, and its seizure must be declared to be illegal,

12. The last point urged on behalf of the petitioner is also not without force. The search warrant authorised only the search of the business premises of the petitioner, and not the search of the petitioner at any place. It is not the case of the

State, that an investigation on the part of the Police of the alleged offence against the petitioner was at the time pending. In fact offences under this Act are non-cognizable and Courts cannot take cognizance unless a complaint in writing is filed by the Director of Enforcement and the Police could not undertake an investigation of their own accord. It is thus clear that the foreign currency seized at the Police station could not be legally seized. Section 102 (3) of the Criminal P. C., aid of which was sought on behalf of the State, could not be attracted, as this seizure was made before the search of the business premises of the petitioner and by no stretch of imagination could the petitioner be said to be a person in or about the place of search.

13. The result is that the reference made by the learned Sessions Judge is accepted and the order refusing to return the seized foreign currency is set aside, with a direction that the foreign currency seized under the said search warrant shall be returned to the petitioner forthwith.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**