

Hanuman Traders Vs. the Commercial Tax Officer, Intelligence-ii, Bangalore

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Court : Karnataka

Decided On : Jan-11-1982

Reported in : 1982(1)KarLJ455; [1982]51STC76(Kar)

Judge : M.P. Chandrakantaraj, J.

Acts : [Constitution of India](#) - Article 226; Karnataka Sales Tax Act - Sections 3B, 3B(4), 28, 28(1), 28(2) and 28(3); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 100, 100(4), 103 and 165

Appeal No. : Writ Petition No. 1864 of 1981

Appellant : Hanuman Traders

Respondent : The Commercial Tax Officer, Intelligence-ii, Bangalore

Judgement :

ORDER

Chandrakantaraj Urs, J.

1. This writ petition under article 226 of the Constitution is directed against the search and seizure conducted by the respondent, inter alia, contending that the search is without jurisdiction, contrary to the express provisions of law, and therefore, illegal. In the result, the petitioner has prayed for quashing of the seizure order which is at exhibit-A to the petition and also for issue of a writ of mandamus

to the respondent directing him to return all books of account and other documents seized under exhibit-A above.

2. The facts leading to the filing of the petition may be briefly stated as follows :

3. The petitioner-Hanuman Traders, Huliya Road, Hiriyur, is a registered partnership firm and in these proceedings is represented by one of the partners M. H. Anjanappa. The petitioner-firm is a dealer under the Karnataka Sales Tax Act (hereinafter referred to as the Act). The firm is assessed by the Assistant Commissioner of Commercial Taxes, Assessment, Bangalore Division, Bangalore. The petitioner has asserted that he has filed all the returns due under the law. He has paid all the taxes payable under the Act. It is alleged that on 16th January, 1981, the respondent-Commercial Tax Officer, Intelligence-II, Bangalore, along with a number of officials of his department made a surprise raid on the firm's oil mill, office premises and the residential premises. It is alleged that the respondent arrived at the premises of the firm at about 3 p.m. and left the premises at about 10 p.m. The respondent did not have a warrant of search. The respondent had no authority of law to search or seize. It is also claimed that it has come to the knowledge of the firm that the respondent has not been authorised under sub-section (2) of section 28 of the Act to exercise the powers thereunder. It is also alleged that the respondent had no basis, reason or information against the petitioner to conduct the search and seizure. It is further alleged that the respondent is an authority subordinate to the Assistant Commissioner of Commercial Taxes, the assessing authority in the petitioner's case, and therefore he could not effect the search and seizure without the presence of the assessing authority. It is further alleged that the action of the respondent is not in accordance with the provisions of sub-section (2) of section 28 of the Act. It is also alleged that there is total violation of the provisions of sub-section (3) of section 28 of the Act. It is alleged that there is no proper application of mind in the matter of conducting the search and effecting the seizure. That about 9 p.m. on that evening the respondent sent for the police and in their presence the partner of the firm who was present at the time of search and seizure, M. H. Anjanappa under threats posed by the police and the respondent had no alternative except to submit to the recording of whatever statements the respondent (C.T.O.) wanted. It is further

alleged that the respondent ransacked all the belongings in the office premises, oil mill and also entered the residential premises and took away whatever was available. The respondent had not brought any independent witnesses to witness the search. The witnesses did not know the English language. The witnesses were induced to sign the mahazar by stating that they were not in any way involved in the search and seizure proceedings. The contents of the mahazar were not translated for the benefit of the witnesses. The mahazar was prepared before the witnesses came and the names of the witnesses were inserted at the end after their arrival. It is also alleged that no receipt was given in respect of the seized documents and books of account contrary to the express provisions contained in sub-section (3) of section 28 of the Act. It is also alleged that the witnesses to the search and seizure as recorded were not persons of the locality and therefore there was violation of section 100 of the Code of Criminal Procedure vitiating the entire search and rendering the seizure illegal and without the authority of law. It is also alleged that the witnesses were brought by the police at about 9 p.m. on that day well after the search and seizure was over.

4. It is necessary to state that after the filing of the petition and after the hearing of the petition had commenced, affidavits of S. Lingareddy and B. Basavalinga, the attesting witnesses to the search and seizure have been filed. In the said affidavit the deponents have asserted that they had gone on 16th January, 1981, to the police station at Hiriyr at about 8 p.m. and at that time certain officials of the commercial tax department came to the police station and they were told to accompany them to the oil mill of Hanuman Traders. They also stated that the two witnesses were asked to sign the mahazar papers and they were asked to be the witnesses and therefore they went in the jeep of the commercial tax department to the oil mill. They have asserted that they had not accompanied the Commercial Tax Officer at the time of the beginning of the search. They have also stated that they are not inhabitants of the locality in which the petitioner's oil mill is situated.

5. As against these facts asserted by the affidavit of the partner of the firm and the attesting witnesses, the respondent who has entered appearance after notice has filed his statement of objections together with the affidavit of the Sub-Inspector of Police of Hiriyr police station at the relevant time. In the statement of objections

the respondent has asserted that the inspection and search commenced at about 3 p.m. on 16th January, 1981. It is also asserted that a partner of the firm Shri M. H. Anjanappa was present at the premises of the oil mill. It is denied that the respondent ever entered any residential premises. It is therefore contended that the need for a search warrant was totally unnecessary under the provisions of sub-section (2) of section 28 of the Act. It is also stated in the objection statement that pursuant to the reorganisation of enforcement and intelligence wing of Southern Zone by Government Order No. FD 145 CSE 76 dated 5th January, 1977, the Commissioner of Commercial Taxes, Bangalore, in exercise of his powers under section 3B of the Act had made an order, inter alia directing the Commercial Tax Officer (Int-II), Bangalore, with headquarters at Bangalore to exercise the powers under section 28 of the Act in the Districts of Bangalore, Kolar, Tumkur, Chitradurga, Mysore, Mandya, Hassan, Chickmagalur and Shimoga, within the jurisdiction of the Deputy Commissioner of Commercial Taxes (Int.) Southern Zone, Bangalore. Therefore, it is asserted that the respondent was duly empowered in law to inspect the business premises of the petitioner. It is also asserted that the respondent acted on the information available and not on mere suspicion that the petitioner was evading sales tax; that there has been no violation of any of the provisions of the Act or other law. It is submitted that when the copy of the seizure order was served on the partner M. H. Anjanappa, the same was refused. In the result, the respondent was forced to leave the copy in the premises of the oil mill which fact is admittedly proved by production of the same by the petitioner along with the petition. It is stated that the inspection and search became necessary for the purpose of verifying the truth or otherwise of the information received against the groundnut oil mills of Hiriyyur to the effect that they were all indulging in large scale evasion of tax. The respondent has denied that the witnesses were fetched from the police station and has also denied that the witnesses were not present from the beginning of the inspection and search. It is also asserted that the police help was sought in the light of the physical resistance offered by the officials of the petitioner-firm headed by the firm's partner, the said Anjanappa. It is asserted that it was at about 4 p.m. on the arrival of the Deputy Commissioner of Commercial Taxes, Intelligence-II, Bangalore, who also came to Hiriyyur that the police help was sought and the police fetched as there was grave

threat to the person of the respondent who would have been otherwise severely manhandled. It is asserted that on the arrival of the police, peace was restored and the inspection and search was proceeded with resulting in the impugned seizure.

6. There are certain facts relating to the seized documents and their relevance in the statement of objection. A mere reference to the same is adequate and details are not necessary for the purpose of deciding the matters in issue.

7. The respondent has further denied that he ransacked the premises of the petitioner-firm as alleged by the petitioner. The allegation that the sister concern's books of account and documents have been indiscriminately seized is also denied. It is on the other hand asserted that the sister concern has the same partners and is situate in the same premises and that the business carried on by both are interlinked. The respondent has further asserted that all documents were seized, scrutinised and examined and only those which were required for further investigation were seized. It is in these circumstances that the respondent states that the petition is premature as further investigation pursuant to the seizure of documents and books of account is under way. It is therefore prayed, the writ petition be rejected.

8. In furtherance of the contentions raised in the petition, Shri B. P. Gandhi, the learned counsel for the petitioner, has argued the following five propositions :

(1) That the respondent-Commercial Tax Officer, Intelligence, is not authorised under sub-section (1) of section 28 of the Act in view of the notification of the Commissioner under section 3B(4)(a) of the Act.

(2) That the search and consequently impugned seizure order is rendered illegal and void inasmuch as there is no compliance of the requirement of section 165 of the Code of Criminal Procedure as enjoined by the proviso to sub-section (2) of section 28 of the Act.

(3) That the search and seizure is vitiated, as the same was done contrary to the express provisions contained in section 100 of the Code of Criminal Procedure, as

the mahazar witnesses were got up witnesses and as they did not hail from the locality.

(4) That the seizure of documents being indiscriminate and not directed against any particular books of account or other documents evidencing evasion of sales tax by the petitioner, the search and seizures was illegal.

(5) That the search is bad in law inasmuch as no receipt for the seized documents including the books of account was issued by the respondent, contrary to the express provisions contained in sub-section (3) of section 28 of the Act.

9. In support of the first of the propositions that the respondent had no jurisdiction nor authority under sub-section (1) of section 28 of the Act to conduct search and effect seizure, the learned counsel for the petitioner has relied upon sub-section (4)(a) of section 3B of the Act. The said sub-section is as follows :

'3B. Jurisdiction of officers (4)(a) The Commissioner may, by general or special order in writing, direct that the powers conferred on the Commercial Tax Officer by or under this Act, shall in respect of any specified case or classes of cases or any specified dealers or classes of dealers be exercised by the Assistant Commissioner.

..... Explanation. - In this section, the word 'case' in relation to any dealer specified in any order or direction issued thereunder means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.'

It is the argument of the learned counsel that having regard to the express language of the above sub-section, the Assistant Commissioner having been conferred the powers of the Commercial Tax Officer, the Assistant Commissioner alone being the assessing authority in the case of the petitioner-firm, he alone was competent to conduct the search and effect the seizure as even the search and seizure under section 28 of Act should be deemed to be proceedings within the

meaning of that term occurring in the explanation to sub-section (4)(a) of section 3B of the Act. In other words, the thrust of the argument is that notwithstanding the powers to be exercised by the State Government to empower any officer to enter, inspect, seize and cause production of accounts, once the case is assigned under sub-section (4)(a) of section 3B of the Act to the Assistant Commissioner of Commercial Taxes to exercise all the powers of the Commercial Tax Officer in assessing the case of the petitioner-firm, the search also should be conducted only by him and him alone. As against this argument, the learned Advocate-General appearing for the respondent, has drawn the attention of the court to sub-section (1) of section 3 of the Act, which is as follows :

'3. (1) The State Government may appoint a Commissioner of Commercial Taxes and as many Deputy Commissioners of Commercial Taxes, Assistant Commissioners of Commercial Taxes, Commercial Tax Officers, State Representative and Assistant Commercial Tax Officers as they think fit for the purpose of performing the functions respectively conferred on them by or under this Act or by or under any other law for the time being in force.'

As could be seen from the above sub-section, it is argued for the respondent that the State Government may appoint any of the officers as it thinks fit for the purpose of performing the functions respectively conferred on them by or under this Act. In other words, the freedom of the Government to make appointments and assign functions in accordance with the provisions of the Act is emphasised. It is further argued that the power exercised under sub-section (4)(a) of section 3B of the Act is the power exercised by the Commissioner who is subordinate to the State Government and in that view of the matter the State Government being the authority to empower under section 28(1) of the Act, it should be construed as overriding the powers of the Commissioner under sub-section (4)(a) of section 3B of the Act. No doubt, the proceedings referred to in the explanation to sub-section (4)(a) of section 3B of the Act include the proceedings of inspection, search and seizure. But when specific provision is made in the Act for causing production of certain documents and books of account, to inspect the premises of the assessee, to search the premises of the assessee and if necessary effect seizure in terms provided for under section 28 of the Act, the general power of assessment under

sub-section (4)(a) of section 3B of the Act should necessarily be held to stand excluded from the power required to be exercised by the State Government under section 28 of Act. In other words, if the arguments advanced by the petitioner are accepted and sub-section (4)(a) of section 3B of the Act is allowed to prevail over sub-section (1) of section 28 of the Act, it will have the effect of reading down and rendering otiose part of sub-section (1) of section 28 of the Act inasmuch as by so reading, the State Government is denied the power to authorise any officer to cause production of documents, search, inspect and seize the documents in given circumstances. Such a construction would hit the very purpose sought to be achieved by the scheme of the Act. One must not fail to notice that the power of search and seizure is not an ordinary power of the assessing authority. That power when exercised is likely to invade the fundamental rights of the citizens and viewed thus one should not hesitate to hold that section 28 of the Act, in the scheme of the Act, is a special provision which should be given effect to over the general distribution of jurisdiction carried out by the Commissioner under sub-section (4)(a) of section 3B of the Act. I, therefore, have no hesitation to reject the first proposition advanced by the petitioner that the respondent had no jurisdiction to effect the search and seizure. In this connection, I should not fail to notice that it is not disputed by the petitioner that the respondent is authorised or empowered by a notification to inspect the premises of the petitioner-firm and exercise the powers of the assessing authority under section 28 of the Act as per the notification dated 1st February, 1977, a true copy of which is produced at annexure-R1 to the statement of objections filed for and on behalf of the respondent.

10. Shri B. P. Gandhi has strenuously argued that having regard to the Supreme Court's ruling in Jhaver's case : [1967]66ITR664(SC) , the search and seizure, in the instant case, was wholly illegal inasmuch as there was total non-compliance with the provisions of section 165 of the Code of Criminal Procedure. It is useful to extract the passage relied upon in the judgment of the Supreme Court in the aforementioned case and it is as follows :

'.... We are therefore of opinion that safeguards provided in section 165 also apply to searches made under sub-section (2). These safeguards are - (i) the

empowered officer must have reasonable grounds for believing that anything necessary for the purpose of recovery of tax may be found in any place within his jurisdiction, (ii) he must be of the opinion that such thing cannot be otherwise got without undue delay, (iii) he must record in writing the grounds of his belief, and (iv) he must specify in such writing so far as possible the thing for which search is to be made. After he has done these things, he can make the search. These safeguards, which in our opinion apply to searches under sub-section (2) also clearly show that the power to search under sub-section (2) is not arbitrary.'

Mr. Gandhi has contended that in the instant case there has been nothing recorded by the respondent before the search was effected much less reasonable grounds having existed. He further states that no opinion as such as has been formed by the respondent that evidence could not be got except by search and seizure. He also states that no grounds have been recorded for formulating such belief. Even the fourth safeguard, that he must specify in writing the things he is looking for in the search has also not been complied with.

11. It is no doubt true that if these four prerequisites are not to be found in the search under the Act, this Court would have no hesitation to strike down as illegal and contrary of law such a search seizure. Apart from the assertions in the statement of objections that these have been complied with, the learned Advocate-General has made available the records of the case. It is seen from the records that the search was initiated not on mere suspicion but on definite information received by the Deputy Commissioner of Commercial Taxes, Intelligence, South Zone, Bangalore. It is not in public interest to disclose the source of information. But on perusal, I am satisfied that the information furnished to the intelligence wing of the department was sufficient to reasonably come to the conclusion that certain oil mills at Hiriyr which were listed were practicing evasion of tax under the Act. Even the mode of evasion was indicated. This information had been received as far back as in September, 1980. It was only thereafter that the respondent after making preliminary investigations, proceeded to record his reasons for forming the belief that some documentary evidence could be obtained if a surprise inspection and search was made of the factory and the business premises of the petitioner. He has recorded that if enquiries were made at the banks, the petitioner who was

one of the oil mills referred to in the information received, would become alert and manufacture his accounts in anticipation. He has further recorded that if the assessment records were to be got, then also the dealer would receive the information and manipulate the records. It was in that circumstance that he recommended to the superior officer, surprise inspection, search and if necessary seizure in order to gather incriminating documents that may be found in the premises of the petitioner. After recording his reasons the same were submitted to the superior officer and the necessary permission obtained. He then proceeded to conduct the search with a strong team.

12. The cumulative effect is that the four requirements set out by the Supreme Court in Jhaver's case : [1967]66ITR664(SC) are fulfilled and therefore it cannot be said that the search has been arbitrary, without application of mind, without forming the reasonable belief and without recording his reasons for such belief. Therefore even this contention should be rejected.

13. No doubt, the learned counsel for the petitioner, has cited numerous other cases under the Income-tax Act and the Sales Tax Acts to demonstrate the illegality of the search impugned. In some of the cases the High Courts and the Supreme Court have indeed struck down the searches questioned before them in those cases. But one must not forget that every case should be decided on the facts relating to that case. In none of the cases cited, the learned counsel was able to point out identical set of facts. I have already pointed out that the records of the case in the instant case do disclose due adherence by the respondent to the provisions of section 165 of the Code of Criminal Procedure.

14. However, Mr. Gandhi in respect of this limb of his argument drew my attention to the ruling of this Court in *Neminath Brothers v. Commercial Tax Officer (Intelligence) IV, North Zone, Belgaum* [1980] 45 STC 490. Jagannatha Shetty, J., construing the scope of sub-section (3) of section 28 of the Act held as follows :

'When the sub-section requires the officer to record reasons, it is obligatory that he should record such reasons as to the necessity to seize the documents, registers or accounts. In other words, he may seize only such documents, registers or accounts, etc., that may be relevant in any enquiry or proceeding pending or

proposed to be taken against the dealer. He cannot seize whatever is found lying in the premises on a subjective satisfaction that such books of accounts, documents or registers might be useful to prove the evasion of payment of tax. It may be necessary for the searching officers to scrutinise the accounts, registers or documents which he intends to seize. I may, however, hasten to add that a close examination of each and every document, book or register is neither expedient nor necessary. Nor is it necessary for him to record separate reasons as against every account book, document or register which he intends to seize. The officer may have a broad survey or a broad look over all the documents, registers and accounts, but the reason or reasons which he records must indicate that he has applied his mind and should prima facie disclose that such documents are relevant to prove the suspected evasion of tax, fee or other amounts due from the dealer under the Act.'

It is therefore argued by Mr. Gandhi that in the instant case that search has been without any objective, that the seized documents including torn pieces of papers have no relevance whatsoever to the assessment proceedings of the petitioner and therefore the fourth ingredient formulated by the Supreme Court as the need for indicating what is required by the searching officer was totally lacking in the instant case. A perusal of the seizure order which is at exhibit-A to the petition indicates the reasons given by the officer for seizing the documents. Those reasons clearly demonstrate that the respondent as the seizing officer has recorded the reasons in respect of each set of documents. These reasons cannot be said to be arbitrary. For instance in respect of item No. 3, the respondent has recorded that the firm had purchased the cotton seed oil worth Rs. 72,576 from M/s. Rama Thunga Oil Industries, Dharwar, vide invoice No. 133. The said purchase had not been recorded in the regular books of account. Item No. 3 are loose account slips containing the correspondence, form No. 39, invoices, purchase numbering 1 to 144. In other words, he has applied his mind to each and every document seized and formed objective assessment of the implications of the documents and thereafter only he has seized them for purpose of further investigation and verification. Thus, I cannot see how the decision of Jagannatha Shetty, J., in Neminath Brothers' case [1980] 45 STC 490 is of any assistance to the petitioner. One should not overlook that in the said decision, the learned single

Judge has taken the precaution to emphasise the need for time and pragmatism in the matter of scrutiny of the documents, registers and books of account at the premises where the search and seizure is being effected. All that is required is that the reasons recorded must indicate that the officer had applied his mind which prima facie disclosed that such documents are relevant to prove the source of evasion of tax. I, therefore, see no merit in this argument of the learned counsel for the petitioner.

15. Mr. Gandhi has next urged that the search and the consequential seizure should be declared as invalid inasmuch as the witnesses were not of the locality. It is not disputed that the witnesses do not belong to Hiriyur or any area in Hiriyur within the vicinity of the premises where the petitioner carries on its industry and trade. This is proved by the affidavits filed by the attesting witnesses at the instance of the petitioner. This is not disputed by the learned Advocate-General either. However, the learned Advocate-General relies upon a number of decisions of the High Courts and the Supreme Court to support the proposition that even if the witnesses were not of the locality, it would only make the search and seizure irregular but not illegal. It is unnecessary to go into the details of the decisions. Even under the Criminal Procedure Code [sub-section (4) of section 100 of the Criminal Procedure Code] now it is well-settled that if search witnesses are not of the locality, the search becomes irregular and not illegal. The emphasis in the Criminal Procedure Code is on the independent character of the witnesses and therefore presence at the time of search and not so much on the locality from which they hail. In this view of the matter, the best that the petitioner could claim is that the search was irregular and no more. It is useful to notice the decision of the Supreme Court in the case of *Radha Kishan v. State of Uttar Pradesh* : (1963) IILLJ667SC . In the said case while construing the provisions of sections 103 and 165 of the Code of Criminal Procedure, the Supreme Court observed as follows :

'It may be that where the provisions of sections 103 and 165, Criminal Procedure Code, are contravened the search can be resisted by the person whose premises are sought to be searched. It may also be that, because of the illegality of the search, the court may be inclined to examine carefully the evidence regarding the

seizure. But beyond these two consequences no further consequence ensues.'

I am therefore of the view that in the instant case the search and seizure cannot be held to be illegal merely because the witnesses did not come from the locality.

16. While on this question, it is useful to consider the arguments of the learned counsel for the petitioner on the question of the witness being absent at the time of search. This question is required to be decided by me in the light of the affidavits filed by the witnesses and the Sub-Inspector of Police as well as the assertions made by the respondent in his statement of objections. The petitioner claims that the witnesses were brought after the search was over at about 8 p.m. and that they signed at the behest of the police and officers of the commercial tax department. The Sub-Inspector of Police has filed his affidavit and produced the station house diary. He denies in his affidavit that the witnesses ever came to the police station. On the other hand, at the entry to be found with reference to 16th January, 1981, at 4 p.m., it is recorded that the commercial tax officials required police help. This lends credence to the assertion made by the respondent that at the search commenced there was resistance by the partner of the firm who was present at the premises and therefore the police help was sought for. Such search commenced at about 3 p.m. as asserted stands duly corroborated by the entry in the station house diary regarding the assistance of the police sought by the commercial tax department.

17. The fact that the witnesses did not know the language is not of much assistance to the petitioner. Neither of the witnesses have stated that any force was used or threat was used calling upon them to sign the mahazar or the seizure order. Nor is there any assertion that the contents were not read out and translated to them. To my mind it appears that the witnesses have been subsequently persuaded to file affidavits before this Court stating that they came at about 8 p.m. and not earlier. Any way, in the station house diary of that day, there is no mention of a compliant received from either of the witnesses at 4 p.m. or 8 p.m. This inevitably leads to the conclusion that the witnesses have deposed in their affidavits something which is far from the truth. The Sub-Inspector of Police who has filed his affidavit has no reason to be malicious towards the petitioner. His

statement that he was absent from 4 o'clock to 6 o'clock from the station house on account of search at the premises of the petitioner-firm should be believed. In that view of the matter, with regret I must hold that the petitioner has tried to improve his case on this count by filing the affidavits of the witnesses who having signed the mahazar and the seizure order, have gone back on the same, long after the event. I, therefore, hold that there has been no violation, in the instant case, of sub-section (4) of section 100 of the Code of Criminal Procedure except to the extent indicated.

18. I have already dealt with the question of indiscriminate search referring to the decision of Jagannatha Shetty, J., in Neminath Brothers' case [1980] 45 STC 490. I may however add here that the Supreme Court in the case of Pooran Mal v. Director of Inspection (Investigation) of Income-tax, New Delhi, : [1974]93ITR505(SC) in a Constitution Bench had occasion to consider this question arising under the Income-tax Act. It is very useful to extract the ruling which is as follows :

'It was next alleged that a very large number of documents were seized which were really irrelevant. The authorised officer has to seize books of account and other documents which will be useful for and relevant to any proceeding under the Income-tax Act. When in the course of a search voluminous documents and books of account are to be examined with a view to judge whether they would be relevant, a certain amount of latitude must be permitted to the authorities. It is true that when particular documents are asked to be seized unnecessary examination of other documents may conceivably make the search excessive. But when the documents, pieces of paper, exercise books, account books, small memos, etc., have all to be examined with a view to see how far they are relevant for the proceeding under the Act, an error of judgment is not unlikely. At the most this would be an irregularity - not an illegality. Nor can it be a valid objection to the search that it continued for about 16 hours. By their very nature the search and seizure as shown above would consume a lot of time.'

The position is clearly explained and this being a binding decision, the contention that the search was indiscriminate and therefore more in the nature of a fishing

expedition is not well-founded.

19. The last contention urged by Mr. Gandhi is that no receipts as required by sub-section (3) of section 28 of the Act was ever given for the seized documents and therefore the search and seizure should be held to be invalid. I do not think that the assertion is well-founded. It is stated by the respondent on oath that the seizure order was sought to be served on the partner who was present at the time of search of the oil mill after the search and seizure was over and the partner refused to receive the same and in the circumstances the respondent was compelled to leave the copy of the order in the premises and go away. Along with the petition the copies of the seizure order as well as the mahazar are produced at exhibits A and B respectively. These copies are carbon copies. They are signed by the respondent as well as the witnesses. They bear the date 16th January, 1981. At the end of exhibit-A there is an endorsement that Shri M. H. Anjanappa had refused to receive the copy of the order and the same is left in the business premises before the witnesses and again that endorsement has been signed by Basavalingappa and Lingareddy, the attesting witnesses. There is no prescription of the form of the receipt of seized documents and the records, required to be issued under sub-section (3) of section 28 of the Act. Therefore, any form of writing which evidences the seizure of documents and the detail relating to them should be construed as sufficient receipt. The seizure order in question, in detail sets out the documents and books of account and other records seized and the reasons for the seizure and the copy of the order is issued to the person who is in-charge of the premises from which the documents are seized. In such a case the seizure order must itself be held to be the receipt for the seized documents. The petitioner has produced the same which was left in its premises. The inevitable conclusion is that there was substantial compliance with the requirements of sub-section (3) of section 28 of the Act in the matter of issuing the receipt for the seized documents.

20. Mr. Gandhi, the learned counsel for the petitioner, was permitted to raise the additional ground that the retention of documents seized beyond 60 days without the permission of the superior officer as required by the proviso to sub-section (3) of section 28 of the Act, as that event occurred while the petition was pending in

this Court. I have carefully perused the records in this behalf. Search and seizure took place on 16th January, 1981. Sixty days would have expired on 16th March, 1981. Records disclose that permission was sought for retention beyond 60 days for another period of sixty days on 10th March, 1981. On the same day permission has been granted by the higher authority. Periodically further permission has been asked for and obtained by the respondent. I, therefore, do not see any merits in this contention either.

21. In the light of the above discussion and for the reasons given by me on the facts of this case and on the material placed before me I am unable to hold that the search and seizure in the case of the petitioner made on 16th January, 1981, was illegal.

22. This petition was heard at the stage of preliminary hearing in detail after notice. In the circumstances, it is unnecessary to issue rule and the petition is dismissed. There will be no order as to costs.

23. Petition dismissed.