Paramjit Singh Vs. the Chief Enforcement Officer (Enforcement Directorate), Fera, Madras Camp at Bangalore and Another

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Court : Karnataka

Decided On : Jul-17-1996

Reported in : [1999]95CompCas423b(Kar); 1998CriLJ915; ILR1997KAR1410; 1998(2)KarLJ614

Judge : J. Eshwara Prasad, J.

Acts : Foreign Exchange Regulation Act, 1973 - Sections 37 and 38; Code of Criminal Procedure (CrPC) , 1973 - Sections 165; Madras General Sales Tax Act, 1959 - Sections 41; Karnataka Sales Tax Act - Sections 28; Mysore Excise Act, 1966 - Sections 53 and 54; Central Excises and Salt Act, 1944 - Sections 18

Appeal No. : Writ Petition No. 19543 of 1990

Appellant : Paramjit Singh

Respondent : The Chief Enforcement Officer (Enforcement Directorate), Fera, Madras Camp at Bangalore and Another

Advocate for Def. : Sri J.M. Rajanna Shetty, Advs.

Advocate for Pet/Ap. : Sri S.G. Shivaram, Adv. ;M/s. Vasan Assoicates

Judgement :
ORDER

1. The petitioner-the Chairman of M/s. Manjog at 16/16-1, Lalbagh Road, Bangalore, challenges the search and seizure conducted by the 2nd respondent-Enforcement Officer on 20th September, 1990 at his residential premises as well as the office premises of M/s. Manjog, along with a team of Officers of the Enforcement Directorate, on the ground that there was non-compliance of Sections 37 and 38 of the Foreign Exchange Regulation Act, 1973 ('FERA' for short). He therefore prays for issuance of a writ of mandamus, directing the respondents to return all the seized documents and the computer machine and for a further direction to respondents not to proceed further on the basis of search and seizure proceedings at Annexure-A to F.

2. The case of the petitioner is, that he is the Chairman of M/s. Manjog and that the 2nd respondent, without authority of law and without complying with the provisions of Sections 37 and 38 of the FERA, illegally conducted the raid of his residential and office premises and seized several documents including the computer machine.

3. In the counter filed by the 2nd respondent it is stated that on information received, the Assistant Director, Enforcement, authorised the 2nd respondent to conduct a search at the residence of the Chairman of M/s. Manjog and also at the office premises and to seize the documents which are necessary for investigation. It is further stated that the procedure laid down under Sections 37 and 38 of the FERA has been followed and there is no violation of the procedure laid down thereunder. It is stated that the officer need not record his reasons as he has to maintain secrecy and on the basis of the information, the 2nd respondent was satisfied that there is good reason for causing search and seized the documents. It is also the contention of the respondents that the writ petition is not maintainable, inasmuch as the petitioner has filed the writ petition in his individual capacity and not as Managing Director of M/s. Manjog.

4. The learned Counsel, for petitioner submitted that the question of maintainability of the writ petition was not raised in the counter filed by the 1st respondent and that the same cannot be permitted to be raised at this stage. He further contends that the petitioner being the Chairman of M/s. Manjog was entitled to maintain the

writ petition inasmuch as his residential as well as his office premises were searched and seizure was conducted at both the places. In view of the said submission of the learned Counsel for petitioner, it has to be held that the writ petition is maintainable, as it is not disputed that the petitioner is the Chairman of M/s. Manjog and his residential premises was also searched and materials were seized from his residence as well as from office.

5. It was next contended by the learned Counsel for petitioner that there is violation of the provisions of Section 37 as there was no investigation or proceeding pending on the date of search and further the 2nd respondent had no reason to believe that any document will be useful or relevant to any investigation or any proceeding under the Act and in the absence of such reason, the search and seizure were illegal. He further submits that the provisions of Section 165, Cr. P.C. are applicable mutatis mutandis while conducting search under Section 37 of FERA. He also contends that the petitioner had no prior notice of the search that was to be conducted.

6. In support of his contention the learned Counsel for petitioner relied on Commissioner of Commercial Taxes, Board of Revenue, Madras and Another v Ramkishan Shrikishan Jhaver and Others , in submitting that the provisions of Section 165, Cr. P.C. are applicable mutatis mutandis, while making the search under Section 37 of the FERA and that the safeguards enumerated in the said decision have to be observed.

7. In order to appreciate the contention of the learned Counsel, it is necessary to set out Sections 37 and 38 of the FERA.

'Section 37. Power to search premises.-

(1) If any Officer of Enforcement, not below the rank of an Assistant Director of Enforcement, has reason to believe that any documents which, in his opinion, will be useful for or relevant to, any investigation or proceeding under this Act, are secreted in any place, he may authorise any Officer of Enforcement to search for and seize or may himself search for and seize such documents.

(2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches, shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of Section 165 of the said Code shall have effect as if for the word 'Magistrate' wherever it occurs, the words 'Director of Enforcement or other Officer exercising his powers' were substituted.

Section 38. Power to seize documents, etc.-

Without prejudice to the provisions of Section 34 or Section 36 or Section 37, if any Officer of Enforcement authorised in this behalf by the Central Government, by general or special order, has reason to believe that any document or thing will be useful for, or relevant to, any investigation or proceeding under this Act or in respect of which a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has taken place, he may seize such document or thing'.

The decision in the R.S. Jkaver's case, supra, arose under Madras General Sales Tax Act, 1959. The Supreme Court held that sub-section (2) of Section 41 of the Madras General Sales Tax Act itself did not provide any safeguards, but the provisions of Section 165, Cr. P.C. are mutatis mutandis applicable so far as may be. It was observed as follows:

'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 subsection (2) also clearly show that the power to search under sub- section (2) is not arbitrary'.

From these observations of the Supreme Court, the learned Counsel for petitioner contends that the provisions of Section 165, Cr. P.C. are applicable to the search made under Section 37 excepting certain provisions relating to the reference to

Officer-in-charge of the Police Station making investigation and the reference made to 'Magistrate in issuing warrants'.

8. The learned Counsel further relies on Sha Puckaraj Parasmal and Company v Commercial Tax Officer (Intelligence) III, South Zone, Bangalpre-9, in support of his contention that the Officer has to record reasons on the basis of which he entertained suspicion and in the absence of such record of reasons in the exercise of power under sub-section (3) of Section 28 of the Act, the impugned order is illegal and is liable to be quashed. This decision is also rendered under the Karnataka Sales Tax Act, where the learned Judge dealt with the provisions of sub-section (3) of Section 28 of the Act.

9. The learned Counsel for petitioner nextly placed reliance on K.L. Subhayya v State of Karnataka, wherein it was held that the search was without jurisdiction, as the safeguards provided under Sections 53 and 54 of the Mysore Excise Act (21 of 1966) were not followed and the grounds for the belief of the Officer who conducted the search were not recorded.

10. Lastly, the learned Counsel relies on State of Rajasthan v Rehman, wherein it was held by the Supreme Court that it is obligatory to record reasons under Section 165, Cr. P.C. while conducting search and seizure under Section 18 of the Central Excises and Salt Act, 1944. The learned Counsel contends that the power conferred under Chapter IV, Cr. P.C. is to be considered only during investigation and in the absence of any investigation by respondents, conducting search is not legal.

11. In the counter, the respondent stated that on information the Enforcement Officer viz., the Assistant Director of Enforcement authorised the 2nd respondent to conduct the search. No reasons were given as secrecy has to be maintained, as the matter relates to violation of the provisions of Sections 37 and 38 of FERA.

12. However, the Officer was satisfied that there is good reason for causing raid of the premises and seized the documents. In the mahazars Annexure-A and F it was mentioned that the Officer acted under the reasonable belief that the documents will be useful for further proceedings under the FERA and conducted

the search and seized the same, So far as the computer is concerned, the same was voluntarily surrendered to the 2nd respondent and Annexure-G would show that certain files could not be read because of non-availability of passwords and therefore the petitioner surrendered the computer machine (DECK) with identification mark 'KMIL PC-PLVS' and undertook to present himself at the institution of the 2nd respondent, at the time of reading the programme.

13. It is therefore clear from the counter that the concerned Officers had reasonable belief that the seized documents etc., would be useful and relevant for further proceedings under the FERA and in order to maintain secrecy the reasons were not mentioned.

14. It is to be noted that the entire proceedings were conducted under the provisions of FERA. The decisions rendered under the Madras General Sales Tax Act or the Central Excise and Salts Act really are not applicable in view of the decision of the Supreme Court rendered under FERA.

15. In Dr. Partap Singh and Another v Director of Enforcement, FERA and Others, it was held that if the duty to record reasons which furnish grounds for entertaining reasonable belief were to be recorded in advance, the same could have been incorporated in Section 37(1). Otherwise, a simple one line section would have been sufficient that all searches as required for the purpose of this Act shall be carried out in the manner prescribed in Section 165, Cr. P.C. At Paragraph 12, the Supreme Court observed as follows:

'The provisions of sub-section (2) of Section 37 has not been cast in any such language. It merely provides that the search may be carried out according to the method prescribed in Section 165(1). If the duty to record reasons which furnish grounds for entertaining a reasonable belief were to be recorded in advance, the same would have been incorporated in Section 37(1), otherwise a simple one line section would have been sufficient that all searches as required for the purpose of this Act shall be carried out in the manner prescribed in Section 165 of the Code by the officer to be set out in the section, In order to give full meaning to the expression 'so far as may be', sub-section (2) of Section 37 should be interpreted to mean that broadly the procedure relating to search as enacted in Section 165 shall be followed. But if a deviation becomes necessary to carry out the purposes of the Act in which Section 37(1) is incorporated, it would be permissible except that when challenged before a Court of law, justification will have to be offered for the deviation. This view will give full play to the expression 'so far as may be'.

16. It is therefore clear that the provisions of Section 165, Cr. P.C. are not mutatis mutandis applicable to the provisions of Sections 37 and 38 of FERA and they are applicable only so far as permissible. If there is a deviation from the procedure laid down under Section 165, Cr. P.C. to carry out the purpose of FERA in which Section 37 is incorporated, it would be permissible to accept that, when challenged before a Court of law, justification will have to be offered for the deviation. This will give full play to the expression 'so far as may be'. Having regard to the object of FERA which is enacted for the purpose of regulating the foreign exchange, which is in the interest of the nation, it is necessary to maintain secrecy with regard to the information received by the officials engaged in investigation into violation of the provisions of FERA.

17. In order to satisfy myself whether deviation was necessary to carry out the purpose of the Act. I have perused the records which reveal that investigation is pending against the petitioner and there was material to show that search and seizure of documents which will be necessary and useful for the investigation had to be seized. In the face of the record produced by the learned Standing Counsel for respondents, it has to be held that there was justification for the deviation in carrying out the purpose of the Act.

18. For the aforesaid reasons I see no grounds to issue the writ which is prayed for. Writ petition is accordingly dismissed. No costs.