

Shyam M. Sachdev Vs. the State and Another

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Court : Delhi

Decided On : Aug-22-1990

Reported in : 1991CriLJ300

Judge : Y.K. Sabharwal, J.

Appeal No. : Criminal M.(M) 1495 of 1989

Appellant : Shyam M. Sachdev

Respondent : The State and Another

Advocate for Def. : K.K. Sud and ; Rajesh Batra, Advs.

Advocate for Pet/Ap. : R.N. Mittal and; Ms. Manjeet Arya, Advs

Judgement :

Y.K. Sabharwal, J.

1. The wife of the petitioner was daughter of respondent No. 2. She received burn injuries on 21st March, 1989 and died on 23rd March, 1989. On the statement of her father, respondent No. 2, FIR No. 69/89 under Section 498A/304B, IPC was registered on 25th March, 1989 against the petitioner. The petitioner was arrested on 10th April, 1989. The case has been committed to Sessions.

2. While the committal proceedings were pending, respondent No. 2 filed a complaint under Section 6 of Dowry Prohibition Act, 1961, and Section 406 read with Section 34, IPC against the petitioner and his parents. The complaint was filed on 7th July, 1989, inter alia, pleading that several articles which were given before, at the time of marriage and after the marriage, have been unlawfully and illegally retained by the accused persons who have no right to retain the istridhan of the deceased and it has been prayed that summons be issued to the accused persons for offences under Section 6, Dowry Prohibition Act and Section 406 read with Section 34 IPC. The details of the articles have been given in Annexure 'A' to the complaint. Along with the complaint an application for issue of search warrants and seizure of the property was also filed. On 7th July, 1989 the learned Magistrate directed that report be called from SHO under Section 156(3) of Criminal Procedure Code ('the Code' for short) for 31st August, 1989. The learned Magistrate also directed that the application for issue of search warrants and seizure of the property be kept pending for further orders as prayed by the counsel for the complainant. Between the date of the order dated 7th July, 1989 and submission of the report the only step which appears to have been taken by the police is to record the statements of respondent No. 2 and his brother. These statements were recorded on 14th July, 1989 and the report was submitted by SHO to the learned Magistrate on 14th July, 1989, inter alia, praying that search warrants in respect of House No. D2/59, East Kidwai Nagar, New Delhi and 139A, New Colony, Gurgaon, Haryana, be issued. It appears that Kidwai Nagar premises were allotted to the petitioner by his employer, namely, Air Force Authorities. On the said report an order was made by the learned Magistrate on 15th July, 1989 that 'Put up with the file on the date fixed.' The date fixed was 31st August 1989. However, on 24th July, 1989 search warrants in respect of the aforesaid premises were issued. On 29th July, 1989 an application was filed by respondent No. 2 praying that the good seized by the police on 27th July, 1989 may be returned to him on superdari on such terms and conditions as may be just and proper in the facts and circumstances of the case. On the said application an order was made by the learned Magistrate on 29th July, 1989 to the following effect :

'S.H.O. to report on 1st August, 1989. Put up on 2nd August, 1989 with file.'

3. The report was submitted by the SHO according to which the locks of premises No. D-2/59, East Kidwai Nagar, New Delhi, were broken and articles as per list were recovered and seized. The articles were identified by respondent No. 2. In regard to search of Gurgaon property from the report it appears that no article was recovered from the said premises. On 30th July, 1989 report was made by the SHO that the articles mentioned in the list have been seized and are lying in the Malkhana. It appears that no proceedings took place on 2nd August, 1989. The file does not contain any order dated 2nd August, 1989. On 4th August, 1989 the impugned order was passed directing the release of articles on Superdari to respondent No. 2 on his furnishing a bond in the sum of Rs. 60,000/-.

4. In this petition filed under Section 482 of the Code the petitioner has challenged the legality of the order dated 4th August, 1989 on various grounds. The petitioner has also challenged the legality of all the proceedings starting from the order dated 7th July, 1989 including the order directing issue of search warrants. It is urged that the order of search warrant is liable to be quashed. Counsel contended that if order of search warrant is quashed it will have the effect of automatically invalidating the superdari order dated 4th August, 1989, the legality of which has also been independently challenged.

5. In regard to the police case it may be noticed that an application filed by the Air Force authorities for transferring the petitioner for court martial was listed before the same learned Magistrate on 2nd August, 1989. On the said date when the application of the Air Force authorities was listed for arguments, an objection was taken by counsel for the accused to the appearance of Sh. K. K. Sud, advocate, in that court. It seems that the objection was that in certain private litigation Sh. Sud was appearing as a counsel for the learned Magistrate. The Air Force authorities also contended before the learned Magistrate that the private counsel should not be heard. In view of the said objections, the learned Magistrate, on 2nd August, 1989, made an order that she would not like to try the case and directed that the case be placed before learned Additional Chief Metropolitan Magistrate for proper orders. These facts in regard to police case have been noticed as one of the contentions of learned counsel for the petitioner is that on same parity of reasoning the learned Magistrate, on her own, ought to have transferred the

complaint case also as the complaint was filed by the same advocate. It is urged that instead of taking up the application of respondent No. 2 for release of goods on superdari on 2nd August 1989 the date fixed in the application and when the accused along with his counsel was present, the Magistrate chose not to pass any order on 2nd August, 1989. The said application was taken up ex parte on 4th August, 1989 and the impugned superdari order was passed.

6. The first contention of learned counsel for the petitioner is that the impugned order dated 4th August, 1989 is liable to be quashed as the same was made behind the back of the petitioner and without affording any opportunity to him to put forth his viewpoint.

7. The application on which order directing release of goods of superdari to respondent No. 2 was made was filed under Section 451/457 of the Code. The manner of disposal of the property produced before any criminal court is dealt with in Chapter XXXIV of the Code (Ss. 451 to 459). When any property is produced before any criminal court during any inquiry or trial, the court under Section 451 can make such order as it thinks fit for the proper custody of such property pending the conclusion of inquiry or trial. Admittedly, in the present case, the property was not produced during an inquiry or trial before the learned Magistrate. The condition precedent for invocation of Section 451 is the production of property before the criminal court during any inquiry or trial. The said condition precedent being absent there is no question of applicability of Section 451. Initially there was some controversy between the parties as to whether the order was made in exercise of power under Section 451 or was it made in exercise of power under Section 457 of the Code, but in view of the aforesaid position, Sh. Sud, learned counsel for respondent No. 2, did not seriously dispute the non-applicability of Section 451. It is evident that the impugned order was made by the learned Magistrate in exercise of power under Section 457 of the Code. When the seizure of property by any police officer is reported to a Magistrate under the provisions of the Code, and such property is not produced before the criminal court during an inquiry or trial, the Magistrate under Section 457 can make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to possession thereof or if such person cannot be ascertained

respecting the custody and production of such property.

8. The question to be determined in the present case at this stage is not as to who was the person entitled to the possession of the seized property but the question is whether the petitioner from whose house the property was seized was entitled or not to an opportunity to show that he was entitled to delivery of such property particularly in the facts and circumstances of the instant case. The said facts and circumstances are that the marriage between the petitioner and daughter of respondent No. 2 took place in the year 1985. The incident of burning is dated 21st March, 1989 resulting in death of the wife of the petitioner on 23rd March, 1989. The police case against the petitioner was registered on 25th March, 1989 for offence under section 498A/304B, IPC. The respondent No. 2 in his statement recorded on 25th March, 1989 made allegations of the demands of dowry etc. by the petitioner besides other allegations with regard to the behavior of the petitioner towards his daughter. The petitioner was arrested on 10th April, 1989. However, the complaint was filed on 7th July, 1989. No orders were made on the application of respondent No. 2 complainant for issue of search warrants. On the request of the complainants the said application was kept pending. However, on the report of the police, search warrants were issued on 24th July, 1989. Whether judicial mind was applied or not while issuing the search warrants and whether there is any illegality or irregularity in issue of search warrants and if so its effect are all separate matters which will be considered separately. For the present it may also be noticed that the property was seized after breack in the locks of the house which had been allotted to the petitioner by Air Force authorities and articles were seized. Furthermore, on the application for release of goods on superdari to respondent No. 2, the learned, Magistrate had called for the report of the SHO and had directed that the application be put up on 2nd August, 1989. On 2nd August, 1989 the police case was also fixed before the same Magistrate. The circumstances under which the police case was transferred have been noticed earlier. It has not been made clear under what circumstances the application for superdari was not taken up on 2nd August, 1989 and how it stood adjourned to 4th August, 1989. On 2nd August, 1989 accused and his counsel were present before the Magistrate but not on 4th August, 1989 when the impugned order was made. No notice was given to the petitioner before making the order on 4th August, 1989.

In face of these facts and circumstances this court is required to determine whether the petitioner was entitled to an opportunity before making the order impugned in this petition.

9. The requirement to issue notice or affording an opportunity to any person is not expressly provided in Section 457 of the Code. The principles of natural justice are, however, implicit in the said provision. Ordinarily a person likely to be adversely affected by an order is entitled to an opportunity before such an order is made. When seizure of property by police officer is reported to a Magistrate under the provisions of the Code, and such property is not produced before a criminal court during an inquiry or trial, Section 457(1) of the Code provides for three modes of dealing with such property. The three modes are : (1) The Magistrate may make such order as he thinks fit respecting the disposal of such property, or (2) Magistrate may make an order directing delivery of such property to the person entitled to possession thereof, or (3) If person as aforesaid cannot be ascertained, an order in respect of custody and production of such property may be made by the Magistrate. Section 457(2) of the Code postulates that if the person entitled to delivery of such property is known, the Magistrate can make an order directing delivery of property to such person with or without conditions, as the Magistrate may think fit. Section also provides that if such person is unknown, the Magistrate may detain the property and in that event, a proclamation specifying the articles, shall issue, requiring any person who may have a claim to such property, to appear before the Magistrate to establish his claim within the period stipulated in Section 457(2) of the Code. When the Magistrate directs that delivery of the property be given to a persons under one or other mode subject to the condition that such person shall produce that property as and when called upon to do so, the custody of such person will be the custody of the court. Though in legal sense the custody is of the court but it does not mean that the seized property can be arbitrarily directed to be delivered to any party without affording an opportunity to the person likely to be adversely affected. It is clear from the facts and circumstances of the present case that there was a serious controversy as to the person entitled to the delivery of the seized property. The law does not require the Magistrate to finally adjudicate upon the said controversy. The dispute in regard to title is not required to be adjudicated upon by the Magistrate. The Magistrate,

however, is required to form a prima facie opinion as to which of the rival claimant ought to be given the physical custody of the property when the legal custody remains with the court. In order to form such an opinion ordinarily it will be necessary to afford opportunity to rival claimant. There may, however, be compelling circumstances where an order under Section 457 of the Code may be made without opportunity to the person likely to be affected thereby but even such an order can be varied on the application of the affected party.

10. In *State Bank of India v. Rajindra Kumar Singh*, : 1969 CriLJ659 while considering the similar provisions of the old Code the Supreme Court held that though the Statute is silent and does not require issue of any notice, there is in the eye of law a necessary implication that the parties adversely affected should be heard before the court makes an order of return of the seized property. In the said case the Supreme Court was considering, it appears, the disposal of the property after the conclusion of the case but the principles laid down in the said decision, will be equally applicable to a case whether under Section 451 or under Section 457 of the Code. Even while directing disposal of the property on the conclusion of the inquiry or trial the criminal court does not go into the question of the title of the property which in the event of dispute is required to be determined by a civil court.

11. An ex-parte order directing delivery of the property under Section 451 was set aside by Karnataka High Court in *Basappa Durgappa Kurubar v. State of Karnataka* and the Magistrate was directed to take up the application of the aggrieved party and dispose of the same in accordance with law.

12. A learned single Judge of this Court in *Ishwar Parasram Punjabi v. Union of India* (1989) 4 DL 125 while considering similar question under Customs Act, 1962 held that the disposal of the case property can have very grave implications and the affected party is entitled to a notice before such an order is made. The principles of natural justice are implicit in such like provisions. On the facts and circumstances of the present case it was necessary to afford an opportunity to the petitioner before passing orders on the application of respondent No. 2 for delivery of articles to him and it not having been afforded I would have straightaway set aside the impugned order with direction to the Magistrate to dispose of the

application afresh after hearing the petitioner, the State and respondent No. 2. Learned counsel for the petitioner, however, strenuously contended that the order issuing search warrant itself is illegal and there are other glaring infirmities resulting in invalidation of all the proceedings right from the stage of issue of the search warrant up to the passing of the impugned order and counsel thus urged, that if his other contentions are accepted by the court, it would not be necessary to direct the Magistrate to decide the application afresh. In this view, I now proceed to consider the other contentions.

13. Mr. Mittal, learned counsel for the petitioner contended, that the allegations contained in the complaint as also the allegations contained in FIR are practically the same and as the police case was pending, the complaint based on the same allegations was liable to be stayed under Section 210(1) of the Code. Section 210(1) of the Code reads as under :-

'When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is subject matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.'

14. The aforesaid Section 210(1) postulates stay of proceedings of inquiry or trial in respect of the complaint case if it appears to the Magistrate during the course of inquiry or trial of the complaint, that investigation by the police in relation to the same offence which is subject matter of inquiry or trial of the complaint, is in progress. The question to be considered, therefore, is whether any inquiry or trial in respect of complaint case was being held by the Magistrate, and if it is so whether the investigation by the Police in relation to the same offence which is subject matter of the complaint was in progress.

15. On the complaint filed by the petitioner the Magistrate on 7th July, 1989 passed an order under Section 156(3) of the Code. Section 156 of the Code deals with the powers of the police officers to investigate cognizable case. Chapter XII of the Code provides the procedure the police is required to follow on receipt of

information about the commission of an offence, and the powers of the police to investigate and forwarding of reports to the concerned magistrate on completion of investigation. Under Section 156(3) the Magistrate empowered under Section 190 to take cognizance of any offence may order the investigation to be conducted by the police. The scheme of Chapter XII shows that whether the investigation relating to commission of a cognizable offence is undertaken by the police officer on his own or on an order made in that behalf by the Magistrate under Section 156(3), the procedure in respect of investigation is the same as envisaged from Section 157 onwards in Chapter XII of the Code. The procedure of dealing with the complaints made to the Magistrate is provided in Chapter XV of the Code. On complaint being filed before a Magistrate it is open to him to proceed under Chapter XV of the code. The Magistrate on receipt of complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192 may postpone the issue of process and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks it for the purpose of deciding whether or not there is sufficient ground for proceeding. The Magistrate can dismiss the complaint if he forms the opinion that there is no sufficient ground for proceeding with it. However, it seems clear that after the Magistrate has taken cognizance of the case he has no power to order a police investigation under section 156(3) of the Code. Section 156(3) can be resorted to at a stage before the Magistrate has taken cognizance of the offence and not later. The question to be considered here is whether it can be said that the Magistrate had taken cognizance of the offence by directing the investigation under Section 156(3) of the Code. On the complaint being received by him, as noticed earlier, an order for investigation under Section 156(3) was made by the Magistrate. In the present case the Magistrate did not direct the police investigation under Section 202 of the Code but instead proceeded under Section 156(3). The point in issue stands settled by the Supreme Court in *Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy*, : 1976 CriLJ1361 . In this case the Supreme Court has held that the power of the Magistrate to order police investigation under Section 156(3) of the Code is exercisable at pre-cognizance stage. The power to direct investigation under Section 202 of the Code is exercisable at the post cognizance stage when the Magistrate is in seisin of the

case. It has been further held in this case that once a Magistrate takes cognizance and embarks upon a procedure embodied in Chapter XV, he is not competent to switch back to pre cognizance stage and make an order under Section 156(3) of the Code. It has been further held that if the Magistrate instead of proceeding under Chapter XV makes an order such as issuing a search warrant for the purpose of investigation or ordering investigation by the police under Section 156(3) he cannot be said to have taken cognizance of the offence. In view of the judgment of the Supreme Court it is not possible to hold that the Magistrate had taken cognizance of the offence merely because he had made an order for investigation by the police under Section 156(3) of the Code. The condition precedent for applicability of Section 210(1) is the pendency of inquiry or trial. No inquiry or trial in respect of the complaint was pending before the Magistrate and thus Section 210(1) has no applicability. The question whether the investigation by the police in relation to same offence which was subject matter of complaint was in progress or not, is not necessary to be considered in view of aforesaid conclusion. I do not find any substance in the contention that the proceedings in the complaint were liable to be stayed under Section 210(1) of the Code.

16. Next, learned counsel for the petitioner contended that a search warrant cannot be issued on mere asking and on request being made for issue of search warrant the Magistrate is required to apply the judicial mind and state reasons in the order directing issue search warrant. The contention is well founded. It has been settled in a catena of judgments that order for issue of search warrant is not a sheer formality and the Magistrate has to apply judicial mind before making such an order as it has the effect of seriously infringing the life and liberty of the citizen.

17. The Kerala High Court in a decision reported in *Gangadharan v. Kochappi Chellappan* held that the order issuing search warrant must show that the Magistrate applied his mind. It further held that the Magistrate is not having an unfettered discretion to issue search warrant. The order cannot be arbitrary. The order without the necessary application of mind is illegal. The order for search cannot be given on mere asking, While ordering search the Magistrate is exercising a judicial function. The exercise of discretion must be judicial. It is not the subjective satisfaction of the Magistrate but the satisfaction must be objective.

The satisfaction is justiciable and, therefore, reasons in support of the satisfaction must be contained in the order itself in order to ascertain whether the Magistrate who issued the order has such satisfaction.

18. The Madras High Court in a decision reported in *A. P. Jain v. Bharat K. Parikh* 1985 Cri LJ 49 held that where the Magistrate had ordered search of premises and seizure of articles found therein without any application being made therefore and without giving any reasons for such order, the order would be in breach of Sections 93 and 94 of the Code which require application of judicial mind about the necessity of such orders.

19. The Supreme Court in a decision reported in *V. S. Kuttan Pillai v. Ramakrishnan* : 1980 CriLJ196 opined that issuance of search warrant is a serious matter and it would be advisable not to dispose of an application for search warrant in a mechanical way by a laconic order. It held that issue of a search warrant being in the discretion of the Magistrate it would be reasonable to expect of the Magistrate to give reasons which swayed the discretion in favor of granting the request. A clear application of mind by the learned Magistrate must be discernible in the order granting search warrant.

20. The Punjab and Haryana High Court in a decision reported in *Harbans Singh v. State of Punjab* again reiterated the principles that the court is required to record its reasons which should indicate that it has applied its mind before passing the order directing the issue of search warrants and for that it must see that there is sufficient material before it which justifies the drastic action which it is being invited to take. The order for issue of search warrant because of these infirmities was quashed. To similar effect are the decisions of other courts (See *Shri Melicio Fernandes v. Shri Mohan Nair* 1966 Cri LJ 1258 : AIR 1966 Goa 23 and *Shiv Dayal v. Sohan Lal Bassar*).

21. In view of the aforesaid the reliance by Sh. K. K. Sud learned counsel for respondent No. 2 on a decision of Calcutta High Court reported in *Manicklal Mondal v. The State*, : AIR1953 Cal341 holding that the Magistrate is not bound to record his reasons in writing before he issues search warrants and that the Magistrate only has to be satisfied that there is necessity for search warrants to be

issued because the thing would not be produced otherwise, is not of much avail. This decision does not appear to have been followed in any subsequent decisions. It has not been considered in various decisions referred to above requiring the Magistrate to record his reasons before issue of search warrants.

22. The question now to be seen is whether in the present case has the Magistrate given any reasons or clear application of mind by the learned Magistrate is discernible from the order granting search warrants and if not to what effect. The order dated 24th July, 1989 directing issue of search warrant reads as under :-

'TO

The S.H.O.

Police Station Kotla Mubarakpur,

New Delhi.

This is to authorise and require you to enter the House No. D-2/59, East Kidwai Nagar and 139-A, New Colony, Gurgaon, Haryana, with such assistance as shall be required and to use, if necessary reasonable force for the purpose and to search every part of the said house and to seize and take possession of articles (istridhan of deceased Ratna Sachdev gifted by her father A. D. Malik as per list attached) and forthwith to bring before this Court the said things as may be taken possession of returning this warrant with an endorsement certifying what you have gone under it, immediately upon its execution, if necessary the locks may be broken.

Sd/-

Metropolitan Magistrate

24-7-89.'

23. Apart from the aforesaid order, there is no other order on file directing issue of search warrants. Mr. Mittal, learned counsel for the petitioner, contended that in fact there is no order for issue of search warrant and the order reproduced above,

is only an authorisation in favor of the SHO to conduct the search. In the view I am taking it is not necessary to pronounce upon this contention of the learned counsel for the petitioner. It is apparant from a bare reading of the order extracted above that no reasons whatsoever have been given for issuing the order for search. The order does not show the application of judicial mind. It appears to have been made on mere asking of the police officials. The manner in which the order was made may also be recapitulated. Respondent No. 2 had also made an application along with the complaint for issue of search warrant. On request of respondent No. 2 that application was kept pending. No orders were passed. It was directed to be put up on 31st August, 1989. Even when the police submitted a report on 14th July, 1989 the Magistrate directed it to be put up with the file on the date fixed i.e. 31st August, 1989. It is not clear under what circumstances the order came to be made on 24th July, 1989. The order is laconic in nature. It does not show the satisfaction of the Magistrate. Form 10 and 11 of the Second Schedule of the Code are the relevant forms for issue of warrant to search. The first part of Form 10 deals with the satisfaction of the Magistrate and the second part is in the nature of authorisation to search. The order extracted aforesaid only refers to the second part of Form 10. The first part is conspicuous by its absence. No reasons have been given in the order. The clear application of the mind of the Magistrate is not discernible from the order. In this view of the matter thus the order dated 24th July, 1989 cannot be sustained.

24. Faced with the aforesaid difficulty Sh. Sud, learned counsel for respondent No. 2 complainant submitted that the illegality, if any, in the order of search warrant has no effect on the facts of the present case, as it was not necessary for the police to obtain orders for search and police could search the premises as part of their power of investigation under Section 165 of the Code as search is one of the step of investigation and even if there was any illegality or irregularity in the search order, it is of no consequence. It is correct that search is one of the step of investigation. The investigation is defined in S. 2(h) of the Code to include all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate. Various decisions were cited by both counsel interpreting the term 'investigation' as used in the Code. The basic decision under the old Code is of

Supreme Court as reported in H. N. Rishbud and Inder Singh v. State of Delhi : 1955 CriLJ526 . The principles laid down in Rishbud's case were again reiterated by the Supreme Court in its decision State of U.P. v. Bhagwat Kishore Joshi : 1964 CriLJ140 . It was held that investigation consists generally of the following steps : (1) Proceeding to the spot; (2) Ascertainment of the facts and circumstances of the case; (3) Discovery and arrest of the suspected offender; (4) Collection of evidence relating to the commission of offence which may consist of : (a) the examination of various persons (including the accused and the reduction of their statements into writing, if the officer thinks fit; (b) the search of places of seizure of things considered necessary for the investigation and to be produced at trial; and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so, taking the necessary steps for the same by filing of a chargesheet under Section 173.

25. There is no difficulty in accepting the contention that search is one of the steps of investigation. However, it is not possible to accept the contention that howsoever grave the illegalities or irregularities in search order may be, it is of no consequence. In the present case search was conducted pursuant to order of search made by the Magistrate. The search was not in connection with police case referred in earlier part of this judgment. It is not a case of search under Section 165 of the Code. It is a case where court is considering the legality of order of search made by the Magistrate under Section 93 of the Code.

26. Sh. Sud, relies upon a decision of the Supreme Court in State of Maharashtra v. Natwarlal Damodardas Soni : 1980 CriLJ429 in support of the contention that assuming the search order was illegal, then also, it will not affect the validity of the seizure. In the cited case the Supreme Court was considering the search and seizure made under Section 165 of the Code. In exercise of power under Section 165 of the Code, the police officers can conduct search and seize articles if they had reason to believe that a cognizable offence had been committed in respect thereof. It is not the case where any such satisfaction was reached. This court is also not considering the validity of the trial which was the case before the Supreme Court. The cited case has no applicability to the facts and circumstances of the present case.

27. Reliance was also placed by Sh. Sud upon a decision of the Supreme Court in *Shyam Lal v. State of Madhya Pradesh* : 1972 CriLJ638 . This decision also has no applicability. The Supreme Court was considering the appeal of the accused persons who had been convicted for having caused obstruction and committed other criminal acts against the person who had conducted the search. Illegality of search was pleaded before the Supreme Court as a justification for the criminal acts. While dismissing the appeal the Supreme Court held that 'even if the search is illegal it does not Justify any obstruction or other criminal acts committed against the person who had conducted the search'. The present case is altogether different and the court is not considering the effect of search and seizure on the trial.

28. In the decisions aforesaid the Supreme Court was considering the effect of illegality of search and seizure on the validity of trial which is not question before this court. The question being considered by this Court, is the validity of the order of search and seizure and order granting superdari of goods to respondent No. 2 Mr. Sud also contended that objection to the search cannot be decided by a Magistrate while exercising power under Section 457 of the Code. In support learned counsel relies on a decision of the Bombay High Court in *Administration of Dadra and Nagar Haveli v. C. B. Shah* . In the same decision it has been held that the jurisdiction of a High Court to deal with these cases is quite independent and extraordinary and when such an objection is raised it is not possible for the High Court to ignore the objection. There is no substance in this contention of Mr. Sud as well. For the reasons stated herein before it cannot be held that the illegalities referred to in this order does not have the effect of vitiating the seizure of the articles.

29. Before concluding two other contentions, one raised by Mr. Mittal and the other raised by Mr. Sud, may be noticed. The contention of Mr. Mittal is that there is difference between 'dowry' and 'istridhan' and as per the order of the Magistrate the police was authorised to only seize and take possession of istridhan but all the articles seized are not istridhan. The difference between the istridhan dowry has been noticed by Punjab and Haryana High Court in a case reported in 1989 CCC. 484 holding that while dowry signifies presents given in connection with the

marriage to the bridal couple as well as to others, istridhan is confined to property given to or meant for the bride. That appears to be the position in law. Counsel submitted that the number of the seized articles show that they could not be termed as istridhan as on the face of it it could not be said that they were meant only for the bride and thus those articles could not be seized pursuant to the orders dated 24th July, 1989. Counsel is right in his submission. I was taken through the list of articles seized. Various articles out of the list of articles seized are such which cannot be said to be meant only for the bride.

30. The contention raised by Mr. Sud is about the maintainability of the present petition. Counsel contended that the order under Section 457 is an interlocutory order and thus the present petition is not maintainable. In support Sh. Sud placed reliance on a decision of J. D. Jain, J. in the case of Anisa Begum v. Masoom Ali : 30(1986)DLT107 holding an order under Section 451 of the Code to be interlocutory and the revision under Section 397(2) of the Code against such an order being not maintainable. But in the cited decision it has also been held that the High Court, no doubt, can interfere with and set aside even an interlocutory order in exercise of its inherent power if it amounts to an abuse of process of the Court or if for the purpose of securing ends of justice the High Court considers its interference absolutely necessary and in that event a power contained in Section 397(2) cannot limit or affect the exercise of inherent power. There is no doubt that the power under Section 482 of the Code is to be exercised sparingly, it being extraordinary in its very nature. It is well settled that the High Courts have wide inherent power and in appropriate cases even though the impugned orders are interlocutory it has ample power to interfere with a view to prevent the abuse of the process of the court and to secure the ends of justice. In my view, the present case is amply fit to invoke the inherent power of this court under Section 482 of the Code in view of the various illegalities in the proceedings referred to above and there is no substance in the contention of Mr. Sud.

31. For the reasons stated above, the petition is allowed. The impugned orders dated 4th August, 1989 and 24th July, 1989 are set aside. The articles seized pursuant to the order dated 24th July, 1989 are directed to be returned to the petitioner. The trial court record is directed to be sent back forthwith.

32. Petition allowed.

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