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Pramod Kumar Bhandari Vs. State

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Court : Delhi

Decided On : Oct-18-1996

Reported in : 1996VAD(Delhi)545; 1997(1)ARBLR186(Delhi); 1997CriLJ1015; 64(1996)DLT732; 1996(39)DRJ504

Judge : N.G. Nandi, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 397

Appeal No. : Criminal Revision Appeal No. 152 of 1996

Appellant : Pramod Kumar Bhandari

Respondent : State

Advocate for Pet/Ap. : Mukul Rohatagi,; Manmohan Singh,; H.J.S. AhLuwalia,;

Judgement :

N.G. Nandi, J.

(1) This Criminal Revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') is directed against the order dated 19th April 1996 issuing general search warrant in the complaint under Sections 78 and 79 of the Trade & Merchandise Marks Act read with Section 63 of the Copyright Act and Section 420 Indian Penal Code . by the learned Metropolitan Magistrate, Delhi.

(2) The facts leading to the filing of this revision petition, shortly stated, are that petitioner Pramod Kumar Bhandari, respondent No.2 Ashok Kumar Bhandari and Mr.Vijay Kumar Bhandari are real brothers and were carrying on various businesses as partners and were also Directors/ Shareholders of private limited companies and were members of HUF; that differences arose between the three branches of the family and they jointly filed a petition under Section 20 of the Arbitration Act seeking reference of the disputes between them to arbitration, as agreed vide Agreement dated 25th January 1990; that in civil Suit No-245/90, Mr. Justice G.C.Jain (Retd.) was appointed as the sole arbitrator to adjudicate upon the disputes between the said parties; that the arbitrator passed an interim award dated 30th March 1996 and the same was filed before the High Court at New Delhi which was registered as Suit No.121/96 and the notices were issued by the High Court to the parties to the interim award; that respondent No.2 filed a criminal complaint in the court of Chief Metropolitan Magistrate, Delhi against 'Unknown persons' under Sections 78 and 79 of the Trade & M

(3) 3. On the application under Section 93 of the Code, the learned Metropolitan Magistrate, Delhi issued general search warrant against unknown persons referring the matter to the Dcp (Crime & Railways) for search and seizure of the. goods under the trade-mark 'MK' within the Union Territory of Delhi. Pursuant to the said general search warrant, the factory premises of the petitioner at C-106, Geetanjali Apartments, Karkardooma, Delhi was visited by the police and the portion of the factory premises was sealed and the Seizure Memo prepared in respect of the goods, as mentioned in the Seizure Memo itself. It is this order of issuance of general search warrant dated 19th April 1996 passed under Section 93 of the Code which is assailed and sought to be revised in this petition.

(4) It is submitted by Mr.Rohtagi, learned counsel for petitioner that the complainant knew the business of this petitioner and there was no question of any unknown person; that the parties are brothers and trade-mark 'MK' belongs to all the three brothers; that the F.I.R. does not speak of the obligation cast on the complainant under the interim award of 16th March 1996; that if the payment of Rs.l,4700000.00 by the complainant is a part of the interim award, then where is the question of seeking general search.warrant by stating unknown person and the

petitioner is the only person who is raided pursuant to the general search warrant granted by the learned Metropolitan Magistrate; that the grant of general search warra.nt under the facts and circumstances of the case is an abuse of the process of the court as the same has been obtained by supressing the fact with ulterior motive and by playing fraud upon the court; that the complainant, while obtaining the general search warrant from Magistrate's court, misrepresente to the court, that some unknown persons are infringing the trade-mark 'MK' of respondent No.2 and sought the relief of search and seizure. It is further contended that the general search warrant could not have been legally issued by the court without requiring respondent No.2 to disclose the name and address of the party who was going to be raided by the police when the complainant was aware of the identity of the person concerned; that the order of general search warrant has been intentionally obtained by respondent No.2 by tiling the complaint against unknown person which is not maintainable in the eyes of law; that no jurisdiction under Section 93(1)(6) of the Code could have been exercised in the present case; that had the complainant not stated the unknown person, then there would not have been issuance of general search warrant; that if the petitioner is a co-proprietor of trade-mark 'MK', then where is the question of unknown person; that there is absolutely no reason for issuance of general search warrant; that the term unknown person is a disguise; that the dispute was known to the complainant and the person involved/ concerned were also known.

(5) As against this, it is submitted by Mr.K.K.Luthra, learned counsel for respondent No.2 that there can be no interference with the investigation; that the accused is still making brake shoe lining in violation of the interim award; that even if search and seizure is illegal, even then investigation and trial are not rendered illegal or vitiated; that the accused was present at the time of search; that the complaint cannot be quashed even if search and seizure is illegal; that the investigation sought to be stayed is not permissible under the law; that as far as the petitioner Pramod is concerned, the search is executed; that the complaint is justified as the accused has been doing things in a clandestine manner; that the complaint cannot be said to be honest; that there are reasons for issuing general search warrant .looking to the facts and circumstances.

(6) On behalf of the petitioner, reliance has been placed on the decision in the case of Churiaram Aggarwal & Another v. Aggarwal Sweet Corner & Another rendered by the learned Single Judge of this court in Crl.Revision Petition No.67/89 wherein it is held that 'any criminal, complaint against unknown person. Magistrate's order for police enquiry and general search warrants, when complainant was aware of petitioner's business, is liable to be quashed and set aside under inherent powers of the High Court when exercisable on interlocutory orders.' In para 6(a),'it is held that although as per Sub- section (2) of Section 397 of the Criminal Procedure Code, in the interest of expeditious disposal of cases, the High Court had no power to entertain a revision petition in an interlocutory matter, yet as provided for in Section 482 of the Code, in a case where the High Court felt that due to abuse of the process of law a litigant stood to suffer grave injustice by an interlocutory order, the High Court could exercise its inherent power to invalidate such interlocutory order and hence the instant petition was maintainable. In sub- para (d), it is further held that under Section 93 of the Criminal Procedure Code in appropriate cases it was permissible to grant a request for issue of orders for a general search or inspection, but the court must give reasons which prompted it to do so as it was a serious matter to grant such requests. But in the instant case the petitioner was not. carrying on business clandestinely to justify issue of a general search warrant. The complainant could have collected evidence of incriminating nature, if any, from the petitioner's premises without organising a raid under a search warrant.'

(7) In the present case, it is suggested from the record that the complainant and the accused are the real brothers and along with other brother, Mr.Vijay Kumar Bhandari were carrying on various businesses as partners and were also partners/directors/shareholders; that the differences arose between the three branches; that a petition under Section 20 of the Arbitration Act seeking reference of the disputes to the agency of arbitration was filed, as agreed between the parties; that Mr.Justice G.C.Jain (Retd.) was appointed as the sole arbitrator who gave interim award dated 30th March 1996 which was filed in the court by way of Suit No.1211/96 and the notices were issued to the parties to the interim award. The dispute concerned the proprietorship of trademark 'MK' and the general search warrant obtained by the complainant was in respect of the material

produced/manufactured allegedly violating the interim award in relation to trade-mark 'MK'. It is also suggested that the manufacturer's name about the packing material is given as 'Bond Master' and it is revealed from the record that the said firm 'Bond Master' is also the subject matter of the arbitration proceedings in which the petitioner's wife is one of the partners.

(8) On behalf of respondents, reliance is placed on the decision reported in V.S. Kuttan Pillai Vs . Ramakrishnan & Another, : 1980 CriLJ196 wherein it has been held that 'even if the general search under Section 93(1)(c) of the Criminal Procedure Code provides incriminating evidence against accused, it cannot be styled as compelled testimony and it is not hit by Article 23(3) of the Constitution of India. It is further held that the power of issuing general search warrant under Clause (c) of Sub-section (1) of Section 93 of the Code cannot be cut down by reference to clause (b) and that the Magistrate should state the reasons for issuing the general search warrant under Section 93(1)(c) of the Code.'

(9) In the case of Devampalli Lakshminarayana Reddy and others Vs . V.Narayana Reddy and others, : 1976 CriLJ1361 , it has been held that even in complaint disclosing offences exclusively triable by the Sessions Court considering the provisions of Section 202(1) first proviso and Section 156(3) of the Criminal Procedure Code, the powers of the Magistrate to send complaint to police for investigation under Section 163(3) proviso does not debar the magistrate and that under Section 190 of the Code, the cognizance of an offence can be said to have been taken when the Magistrate applies his mind for proceeding under Section 200 of the Code.

(10) In the case of Kalinga Tubes Ltd. and others Vs . D. Suri and another, : AIR1953 Ori153 , it has been held that the absence of the word 'investigation' in clause Iii of Sub- section I of Section 96 indicates the requirement of a higher and a stricter standard for general searches, it cannot be said as a matter of law, that a general search cannot be ordered before an investigation under Chapter 14 of the Criminal Procedure Code has been commenced.

(11) In the case of State of Maharashtra v. Natwarlal Damodardas Soni A.I.R. 1980 S C 93, it has been held that even if search is held illegal, even then seizure

and consequent trial is not vitiated.

(12) As seen above, in this petition, the petitioner seeks revision of the order dated 19th April 1996 permitting general search and seizure under Section 93(1)(c) of the Code mainly on the ground that the order of general search and seizure has been obtained by supressing the fact that the same has not to be against the unknown person but against the respondent which the petitioner very well knew at the time of seeking the said order and that the general search warrant against unknown person could not have been legally issued by the Magistrate concerned.

(13) It is suggested from the record that arbitration disputes have been pending between the petitioner, respondent No.2 and the other brother in connection with the business of the trade-mark 'MK' and that the interim award is also filed in the civil court and that the civil court is seized of the matter and the. dispute concerns the proprietory right over the trade-mark 'MK' and the products manufactured under this trade-mark. It is also suggested that the general search obtained under Section 93(1)(c) of the Code has been executed against the petitioner only and against no other person.

(14) Looking to the facts revealed from the record, confining myself to the dispute raised in this revision petition, it appears that respondent No.2, by supressing the fact that it is the petitioner against whom the general search warrant is to be executed, obtained the orders of general search and seizure under Section 93(1)(c) of the Code in the name of/against unknown persons, though there was no such unknown person against whom the search warrant was to be executed.

(15) At this stage, the question is not whether because of the general search warrant under section 93(l)(c) obtained by respondent No.2, the trial and seizure would be vitiated or not. Confining myself to the question whether the general search warrant under Section 93(l)(c) of the Code obtained by respondent No.2 can be said to be illegal in light of the facts and circumstances, as aforestated. Following the decision of this court in case of Churiaram Aggarwal & Another v. Aggarwal Sweet Corner & Another (supra), the order dated 19th April 1996 issuing general search warrant in the name of/ against 'unknown person' would be liable to be revised/quashed and set aside. It may be appreciated that in the instant

case, the search warrant has already been executed qua the petitioner and it has been stated by counsel for respondent No.2 on 8th July 1996 that for the present, there is no question of again executing the order dated 19th April 1996 with regard to the search of the premises in dispute.

(16) Since the statement made by counsel for respondent No.2, as aforestated, is a qualified one, the search warrant dated 19th April 1996, though executed against the petitioner, in view of the aforesaid discussion, would be liable to be quashed and set aside.

(17) In the result, the present revision petition is allowed and the order dated 19th April 1996 issuing general search warrant under Section 93(1)(c) of the Code is revised, set aside and quashed.

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