

T.R. Pratt Vs. Emperor

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Court : Kolkata

Decided On : Jan-07-1920

Reported in : 55Ind.Cas.473

Judge : Asutosh Chaudhuri and ;Newbould, JJ.

Appellant : T.R. Pratt

Respondent : Emperor

Judgement :

Asutosh Chudhuri, J.

1. We do not think that we can uphold the order which has been passed by the learned Magistrate in this matter, The warrant which has been actually issued refers to an enquiry which is 'now being made.'

2. It is conceded that no enquiry is being made by the Magistrate and the enquiry which is therein mentioned probably refers to the investigation which is being made by the officer appointed by the Government to enquire into the dealings with the Munitions Board. The warrant does not refer to an enquiry 'about to be made,' What was prayed for was a general search warrant in respect of books and documents mentioned in the petition, namely, for the years 1917, 1918 and 1919. The warrant as issued is a general warrant referring to all accounts, ledgers, stock-books, etc, correspondence and documents which may have a bearing on

the transactions with the Munitions Board. It is said that the order was made under Section 96, Clause 3, of the Criminal Procedure Code, that is to say, when the Court considers that the purposes of any enquiry, trial or other proceedings under the Code will be served by a general search or inspection, but there is no enquiry or trial or other proceeding under the Code.

3. Then, as regards the Court 'considering' the matter, there is nothing stated in the petition about T.R. Pratt having any business transactions with the Munitions Board. It is urged that from the name of that firm appearing in the schedule to the petition, it ought to be inferred that there were business transactions between T.R. Pratt and the Munitions Board. We do not find that there is any material in the petition which the Magistrate could have considered in connection with the issue of a search warrant so far as T.R. Pratt is concerned. No doubt, great weight is to be attached to the statements made in the petition by the officer engaged in the investigation. There is nothing to suggest that he is not doing his very best in the matter and it is not the intention of the investigating officer to cause any damage to the parties named in the petition. In fact the petition has been very carefully worded so far as that is concerned. It seems to us, however, to be an investigation conducted by the officer to find out what offence, if any, was committed and by whom upon inspection of the books and other papers, if obtainable, of firms which had business transactions with the Munitions Board. It is not suggested that this is a case under chapter 14 of the Criminal Procedure Code, and, therefore, it is unnecessary for us to deal with it. Reference has been made to the case of *Clarke v. Brojendra Kishore Roy* : (1912)14BOMLR717 , but we do not think that the decision in that case affects the question arising in the case before us.

4. We, therefore, make the Rule absolute and direct that all the books and documents taken from T.R. Pratt be returned to him forthwith.

Newbould, J.

5. As I look at the case, the Rule must be made absolute on the following ground. That there were no materials before the Magistrate on which he could decide that a search warrant should be issued. A long petition was presented, stating that

certain offences appeared to have been Committed. There is nothing in the petition to connect T.R. Pratt with these offences. All that is stated to support the application for a search warrant against him is contained in paragraph 17 of the petition, which runs thus:

6. 'Enquiry is now being made into the offences mentioned above and it is essential for that purpose that the production of the books and accounts for the years 1917, 1918 and 1919 up to date of the firms stated below should be enforced by a search warrant, as for obvious reasons, the firms concerned are not likely to produce them otherwise,' In other words, the Magistrate granted a search warrant simply because the Police Officer informed him that it was necessary. When the law requires the sanction of a Magistrate before the issue of a search warrant, that means that the Magistrate should apply his mind to the facts and he ought not to issue a search warrant simply because a Police Officer asks him to do so. On this ground I agree with my learned brother that the order passed by the Magistrate is illegal and ought to be set aside.

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