
(1987) 12 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No's. 10650, 14339 and 14760 of 1986 and 9799 of 1987

Akhila Publishers Pvt. Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 18-12-1987

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (a), 21
Penal Code, 1860 (IPC) — Section 292, 292 (1), 79

Citation : (1988) ILR (Kar) 481 : (1987) 3 KarLJ 378

Hon'ble Judges : Rama Jois, J

Bench : Single Bench

Advocate : R.N. Narasimha Murthy, Udaya Holla, B.G. Naik and H.B. Datar, for K.S. Desai, and, for the Appellant; N. Santosh Hegde and U. Abdul Khader, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Rama Jois, J.

In all these Writ Petitions, presented by the publishers of certain magazines questioning the legality of the seizure of all the copies of certain issues of the magazines the following question of law arises for consideration:

"Whether a Police Officer has the power to seize all the copies of an issue of a magazine printed and published and/ or kept for sale in the Book stalls on the ground that an offence u/s 292 of the Indian Penal Code ("the IPC" for short) is suspected to have been committed through writings, articles and/or pictures published in the said issue of magazine?"

2. Briefly stated, the facts of the case are these:

(i) In W.P.10650/86 :- This Writ Petition is by Akhila Publishers Pvt. Limited, Bangalore. They are the publishers of a weekly film magazine entitled ""Chitravihari"" and a monthly magazine entitled "Surathi". On 6-6-1986 the Upparpet Police in the City of Bangalore seized 20,000 copies of "Surathi"

magazine comprising of different monthly issues. The Police party who seized the magazines consisted of two Sub-Inspectors and a few Constables. The Police has also filed a case against the petitioner for an offence u/s 292 of the I.P.C. Questioning the legality of the seizure of the magazines, the petitioners have presented this Writ Petition.

(ii) W.P. 143397 1986 :- The petitioner is the proprietor of a firm which publishes magazines entitled "My My" "Pussy Cat", "O Boy" and "Uff" and other English magazines on the first day of every month from New Delhi since the year 1980. He is also the Chief Editor of these magazines. On 6-6-1986 the magazines published by the petitioner and which were kept for sale in various book-stalls in the City of Bangalore were seized by the Police and a case has been filed against the petitioner u/s 292 of the I.P.C. Questioning the said seizure, the petitioner has presented this Writ Petition.

(iii) Re:W.P. 14760/1986 :- The petitioner in this petition is the Editor and Publisher of Kannada monthly magazine "Rathi-Vijnana Darpana" published for Punarvasu Prakashana, Vijayanagar, Bangalore. According to the averments made in the petition, in the first week of June 1986, the Police came down heavily on publishers, distributors of sex and obscene magazines and seized several magazines including the magazine of the petitioner. A case has been registered against the petitioner for an offence u/s 292 of the I.P.C. Questioning the legality of the seizure, the petitioner has presented this Writ Petition.

(iv) Re:W.P.9799/1987 :- The petitioner is the owner, printer and publisher of a Kannada monthly magazine "Chakori". The registered office is in Rajajinagar, Bangalore. The copies of the magazine of the petitioner had been seized by the Police and a case has been registered against this petitioner u/s 292 of the I.P.C.

3. In each of the petitions, the concerned petitioner has stated that the magazine contains educative and instructive material and the magazines have got very wide circulation and that respectable people have contributed articles to the magazines, and the nude photographs of a man and a woman in compromising position printed in the magazine are not obscene within the meaning of the definition of that word in Section 292(1) of the I.P.C. and that articles and writings in the magazines were intended to provide sex-education. Their main plea is that the Police had acted arbitrarily in seizing the magazines and thereby the valuable right guaranteed to the petitioners, namely, the freedom of speech and expression under Article 19(1)(a) of the Constitution which includes the freedom of the press and freedom to circulate their magazine as also the liberty of publishing such material which flows from Article 21 of the Constitution, has been deprived. In support of their submission that freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution includes the right of publication of books and magazines, the learned Counsel for the petitioners relied on the Judgment of the Supreme Court in SAKAL PAPERS (P) LTD v. UNION OF INDIA AIR 1963 SC 305

4. The freedom of the Press is part and parcel of the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution, is not at all in controversy. Not only that, a free and fearless Press is one of the four corner pillars on which our democratic structure stands, the other three being the Legislature, the Executive and the Judiciary. Our democratic structure can stand only so long each of the four pillars are healthy and strong. Even if one of them gives way, the structure collapses. Therefore, we have to take care that none of them is made weak either by external attack or by internal weakness. It is in this background, I proceed to consider the challenge to the action of the Police, to find out as to whether the action was an attack or onslaught on the freedom of the Press as alleged by the petitioner.

5. In order to maintain foster and strengthen each of the three organs of the State and the Press which form the four pillars of our democratic system, each of them has to be manned by persons who have character and integrity, and who hold fast to the objectives enshrined in the Preamble to the Constitution and reflected in its various provision, in a substantial measure. There can be no sound or everlasting contribution in any of these areas from any one who has, during the formative period of his life had lost his moral and physical strength on account of an unhealthy environment or allurements created by selfish and unscrupulous individuals. In this regard it is necessary to remind ourselves the time honoured quotation

"If wealth is lost, nothing is lost ; if health is lost something is lost, if character is lost, everything is lost."

Obscene publications are so pernicious as would bring, about the loss of physical and mental health and moral character among children and youth and therefore have disastrous consequences to the Nation.

6. The great "Jnani" Narayana in his Hitopadesa", has, in his inimitable language, explained the difference between man and animals thus:

vkgkjfunzkHk;eSFkquap lkekU;esrRi"kqfHkuZjk.kkeA

/keksZ fg rs"kkef/kdks fo"ks"kks /kesZ.k ghuk% i"kqfHk% lekuk%AA

"Ahara Nidra Bhaya Maithunancha Samanyametata Pashubhirnaranam Dharmohi Teshamadhiko Vishesho Dharmena Heenahaha Pashubhisamanaaha"

Consumption of food, sleep, fear and enjoyment of carnal pleasures are the four qualities which are common to human beings and animals. The special attribute of man is, his capacity and desire to conform to Dharma (the Laws made or code of conduct made by him which control and regulate his natural impulses and conduct). Bereft of Dharma, man is equal to an animal", Hitopadesa, Prastavika - (25)

The eminent Jurist and thinker Lon L. Fuller in his "Anatomy of the Law" has expressed the same thoughts forcefully thus:

"In man's capacity to perceive and legislate against his own defects, we can discern his chief claim to stand clearly above the animal level. Philosophers of former ages have, indeed, not hesitated to see some kinship with the divine in man's ability to reorder his own faulty nature and, in effect, to recreate himself by the rule of reason"...."To say that man can reshape himself by rules is to confess that he is a creature who has to put a halter on himself before he can live safely with his fellows. If this is something no other animal can do, it is something no other animal needs to do, for mankind is the only species that chooses its own kind as its preferred prey," Anatomy of the Law" by Lon L. Fuller, p.3.

Therefore, in order that an individual citizen raises higher than animal level and develops good character, not only a proper education should be imparted to him in schools and colleges, but also a proper environment should be created. They should get man-making character building literature and they should not get books, magazines or films, containing obscene matter which pull them down to the animal level by rousing baser instincts. It is obviously for the above reason the founding fathers of our Constitution took care to incorporate in the part of Directive Principles of State Policy, not only Article 41 under which the State is under a duty to ensure the right to education; that is, the right education ; to all citizens but also incorporated Article 49(f), which reads :

"39. The State shall, in particular direct its policy towards securing -

XXX XXX XXX (f) that children are given opportunities and facilities to develop In a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

(Underlining by me)

Therefore, it is one of the fundamental duties of the State to ensure that no obscene material is published and made available to children and youth which detracts them from their study and attracts them towards baser and prurient interests and brings about dissipation of moral and material strength. As one of the measures to implement the aforesaid Directive principle of State Policy a new Sub-section (1) was inserted into Section 292 of the IPC by the Amending Act of 1969. It reads:

"292. Whoever -

(1) For the purposes of Sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprive and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it."

(Underlining by me)

The nature of the offence u/s 292 is such, it visits the Society with incalculable injury, by way of bringing about loss of moral and material strength among the children and youth. Therefore, the Parliament by the same Act, amended Sub-section (2) enhancing the quantum of penalty for the offence, from imprisonment of 3 months to 2 years on first conviction and upto five years for subsequent convictions. A reading of the above provision at once shows that it is a restriction on the exercise of the right guaranteed under Article 19(1)(a) of the Constitution in the interest of decency and morality and also in the interest of preventing incitement to an offence and on the face of it a reasonable restriction too, falling within the enabling clause (2) of the Article. While a citizen as an individual has the fundamental right of freedom of speech and expression, the State as representing the Society has not only the power but also the duty to ensure that such a sacred right conferred on the individuals is not abused by selfish and unscrupulous individuals to produce books or magazines containing obscene matter, that is, which, are lascivious and/or appeal to the prurient interest such as to tend to deprave and corrupt persons who are likely to see and/or read them.

7. (i) It is a matter of common knowledge and concern that owing to unhealthy environment created by the exhibition of obscene matters through magazines, advertisements and films coupled with the scenes of offences associated with sex and violence, substantial number of youths fall a prey to undesirable habits during the formative period of their life and thereby stand deprived of the physical and moral strength and as a result by the time they are expected to shoulder onerous family and social responsibilities, they would not be having the moral or physical strength required for the discharge of those responsibilities.

(ii) On this aspect, the observations of the Supreme Court in the two cases of Raj Kapoor and Others Vs. State and Others, and Raj Kapoor Vs. Laxman, are apposite. The two cases arose out of challenges made to the ordering the issue of notices to the producer of the film "Satyam, Shivam, Sundaram" and others, who were prosecuted for offence u/s 292 IPC before a Magistrate at Delhi and in the State of Madhya Pradesh respectively by lodging private complaints. The film had secured certificate for public exhibition from the Censor Board constituted under the Cinematograph Act, 1952. The first case was remitted to the High Court for considering the revision petition on merits. In that case explaining the necessity and purpose of Censor Board the Supreme Court said thus:

"13. It is deplorable that a power for good like the cinema, but a subtle process and these days, by a ribald display, vulgarises the public palate, pruriently infiltrates" adolescent minds, commercially panders to the lascivious appetite of rendy crowds and inflames the lecherous craze of the people who succumb to the seduction of sex and resort, in actual life, to "horror" crimes of venereal violence. The need to banish cinematographic pornos and the societal strategy in that behalf had led to the Cinematograph Act, 1952. The Censor Board, under

this Act, is charged with power to direct doctoring, tailoring, sanitizing and even tabooing films so that noxious obscenity may not befoul and erotic aroma make mass appeal."

In the second case, the prosecution was quashed on the ground that in view of the certificate issued by the Board, the producer and others could not be prosecuted in view of the protection afforded by Section 79 of IPC. However, the observations made at paragraph 10 of the Judgment regarding the certificates issued by the Board are of utmost importance. They read :

" 10. Two things deserve mention before we close. Prosecutions like this may well be symptomatic of public dissatisfaction with the Board of Censors not screening vicious films. The ultimate censorious power over the censors belongs to the people and by indifference, laxity or abetment, pictures which pollute public morals are liberally certificated, the legislation, meant by Parliament to protect people's good morals, may be sabotaged by statutory enemies within. Corruption at that level must be stamped out."

These observations not only disclose the havoc which is being played by the obscene films but also the deplorable state of affairs in the matter of grant of certificate by the Censor Board.

(iii) As far as books and magazines are concerned, there is no such precondition. Whatever that may be, the fact remains, whether a person is a publisher of a magazine or book or a producer of a film, in many cases, the experience is, as an appeal to baser instinct of man enables such producer or publisher, to make more money, there is a tendency to resort to do so. In such persons, selfishness dominates and interests of the society becomes subservient. They are least worried as to the adverse effect of such magazines, books or films on children and youth, which ultimately results in enormous harm to the society as a whole. But the law is anxious to protect children and youth against such onslaught by making such an act an offence u/s 292 IPC. In view of that provision, no person can claim that the right flowing from Article 19(1)(a) of the Constitution includes the right to publish obscene magazines and that the Police should not seize such magazines.

8. The petitioners also do not claim; very rightly too; that they have any such right. But their case is that the issue of magazines seized do not contain obscene material, whereas the learned Advocate General says that he had a cursory glance of the magazine and he found that the material published in the magazine prime facie and per-se constitute an offence punishable u/s 292 of the IPC. It is not within the scope of these petitions to consider as to whether the contents of the magazines seized constitute an offence punishable u/s 292 of the IPC. The said question has to be considered by the concerned Magistrate before whom the petitioners are being prosecuted, in the light of the judgment of the Supreme Court in Samresh Bose and Another Vs. Amal Mitra and Another, and other decisions on the point.

9. The learned Counsel for the petitioners, however, submitted that if this Court were to hold that the Police have the power to seize copies of magazine on the ground that it contains obscene matter, it would seriously impair the freedom of the Press and would be injurious to public interest, for, the Police can seize any magazine or news paper, containing severe criticisms of those in power, at their instance, in the guise of seizing obscene magazines or news papers. It is true that any unjustified or unreasonable encroachment on the freedom of the Press is injurious to the public interest. Therefore if in a given case it is alleged and made out that the Police have abused their power on collateral consideration and have seized copies of any magazine though there was absolutely no basis to do so and that action was mala fide, this Court will certainly inquire into such allegation and if the allegation is established the Court would certainly interfere and protect freedom of the Press. But these are not cases in which there is any allegation that power is abused by the Police on collateral consideration, without there being any prime facie basis to seize the magazine.

10. Lastly the learned Counsel for the petitioners maintained that the Police had no power to, seize all the copies of the magazines and to file cases against the petitioners before several Courts not only in the City of Bangalore but also in other Courts in the entire State of Karnataka. They maintained that even assuming, that they have the authority u/s 102 of the Code to seize the magazines on the ground that an offence u/s 292 of IPC has been committed through the publications in the magazine, they could only seize a limited number of copies sufficient for filing criminal cases against them, but they cannot seize all the copies of the magazine within the jurisdiction of each of the Police Stations and such seizure would be an infringement of the right guaranteed under Article 19(1)(a) read with Article 21 of the Constitution. Elaborating the above submission, the learned Counsel submitted as follows :- Section 94 prescribes the procedure for seizing the magazines under an order of a Magistrate. Section 95 empowers the Government, inter alia, to make an order proscribing any magazine or Book in which an offence u/s 292 is alleged to have been committed and pursuant to such an order it is open for the State to seize every copy of such book or magazine. Section 96 of the Act-having regard to the importance of the freedom of the Press- provides an appeal to the High Court against any declaration made by the State Government u/s 95. These are special provisions relating to the offences u/s 292 and therefore the general power of the Police u/s 102 of the Code cannot operate in the very area covered by Sections 94 and 95 of the Code.

11. As against this, the learned Advocate General submitted that the power conferred on the Magistrates u/s 94 for dealing with the offences to which there is reference in that Section and Section 95 which confers power on the Government to prescribe any printed matter through which any one of the offences specified therein had been committed, cannot be interpreted as excluding the power conferred u/s 102 of the Cr.P.C. on the Police in respect of every offence in respect of which the Police have the authority to investigate and

launch prosecution.

12. In order to appreciate the rival contentions it is necessary to set-out the provisions of Sections 94, 95, 102 as also Section 455 of the Code.

"94. (1) If a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or for the deposit, sale or production of any objectionable article to which this Section applies, or that any such objectionable article is deposited in any place, he may by warrant authorise any police officer above the rank of a constable -

(a) to enter, with such assistance as may be required, such place,

(b) to search the same in the manner specified in the warrant.

(c) to take possession of any property or article therein found which he reasonably suspects to be stolen property or objectionable article to which this Section applies,

(d) to convey such property or article before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose of it in some place of safety,

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or production of any such property or article knowing or having reasonable cause to suspect it to be stolen property or, as the case may be, objectionable article to which this Section applies.

(2) The objectionable articles to which this Section applies are -

(a) counterfeit coin ;

(b) pieces of metal made in contravention of the Metal Tokens Act, 1889, or brought into India in contravention of any notification for the time being in force u/s 11 of the Customs Act, 1962 ;

(c) counterfeit currency note ; counterfeit stamps ;

(d) forged documents;

(e) false seals ;

(f) obscene objects referred to in Section 292 of the Indian Penal Code ;

(g) instruments or materials used for the production of any of the articles mentioned in clauses (a) to (f).

95. (1) Where

(a) any newspaper, or book, or

(b) any document.

wherever printed, appears to the State Government to contain any matter, the publication of which is punishable u/s 124A or Section 153A or Section 153B or Section 292 or Section 293 or Section 295A of the Indian Penal Code, the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and there upon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In this Section and in Section 96, -

(a) "newspaper" and "book" have the same meaning as in the Press and Registration of Books Act, 1867;

(b) "document" includes any painting, drawing or photograph, or other visible representation.

(3) No order passed or action taken under this Section shall be called in question in any Court otherwise than in accordance with the provisions of Section 96.

**** ** 102.** (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every Police Officer acting under Sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.

**** ** 455.** (1) On a conviction u/s 292, Section 293, Section 501 or Section 502 of the Indian Penal Code, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had and which are in the custody of the Court or remain in the possession or power of the person convicted.

(2) The Court may, in like manner, on a conviction u/s 272, Section 273, Section 274 or Section 275 of the Indian Penal Code, order the food, drink, drug or medical preparation in respect of which the conviction was had, to be destroyed."

As can be seen from Section 94 it confers certain powers in respect of offences

specified therein on the District Magistrate and other Magistrates named therein. Whenever the Magistrates have any information about the commission of offences to which that Section applies, they have the power to authorise any Police Officer by issuing a warrant to make a search and seize the offending material. One of the offences in respect of which action could be taken by the Magistrate is the publication of obscene material, constituting an offence u/s 292 of IPC. The contention of the petitioners that the above Section is a special provision and therefore the general provision in Section 102 cannot be invoked by the Police is on the face of it untenable. For instance, Section 94 refers to several objectionable articles such as counterfeit currency note, forged documents, false seals, and instruments and materials used for production of such objectionable materials. If the contention of the petitioners is correct, then the Police cannot take action even when they get the information that such objectionable articles are found with any particular person. Such an interpretation is clearly unwarranted. It would lead to absurdity. Therefore, it should be held that the power conferred u/s 94 on the Magistrate is such as could be exercised by them on receiving necessary information, whatever be the source and is independent of the power available to the Police u/s 102 of the Code and that the latter is not excluded from the former. Similar is the position regarding the power conferred u/s 95 of the Code on Government. If the Government comes to know that any printed material published or likely to be published constitutes an offence punishable u/s 124-A, 153-A, 153-B or Section 292, 293 or 295 of the I.P.C., the Government can declare every Such printed material as forfeited to Government and pursuant to such declaration the Police can seize all and every one of the copies of such printed material wherever available. Such a wide power is conferred on the Government in order to prevent the mischief that might result from publication and/or circulation of such material. Further by such an order the State has the power to prevent circulation or sale of such matter any where in the State. This is an extraordinary power conferred on the Government to meet an extraordinary situation and is not intended to curtail the power of the Police u/s 102 of the Act. Section 455 of the Act gives the clearest indication that power u/s 102 includes the power to seize all the copies of the magazine. That Section provides that the Court could order destruction of all the copies of the thing in respect of which the conviction was passed for an offence u/s 292 of the Act. Unless all the copies of the magazines are seized by the Police, it would be impossible for the Magistrate to order the destruction of all the copies of the magazines. Therefore, it should be held that u/s 102 the Police could seize all the copies of a magazine in which an offence u/s 292 of the IPC is suspected to have been committed and to produce them before the Magistrate to enable their destruction by an order made u/s 455, if the (commission of an offence u/s 292 is proved.

13. In fact it is not the plea of the petitioners that the Police have no authority to investigate in respect of an offence u/s 292, which is a cognizable offence, and seize copies of magazines in which an offence u/s 292 is suspected to have been

committed, in exercise of their power u/s 102 of the Code. The plea of the petitioners that the Police can seize only a few copies required for filing the criminal case and not all the copies, would defeat the very purpose of conferment of power u/s 102 of the Code, for, it would mean that for instance if 10000 copies of a magazine contain any obscene material and therefore an offence u/s 292 of the I PC is committed, if they have the authority to seize only a few, say, five copies, which might be sufficient for filing a case against them, the circulation of 9995 copies would go unchecked and would get into the hand of children and youth, who are likely to fall a prey to the obscene material contained therein and consequently the very object of preventing the effect of the commission of such an offence by seizure would be defeated.

14. For the aforesaid reasons, I answer the question set out first, as follows:

"A police officer has the power to seize all the copies of an issue of a magazine printed and published and/or kept for sale in the book stalls on the ground that an offence u/s 292 of the Indian Penal Code is suspected to have been committed through writings, articles and/or pictures published in the said issue of magazine."

Further, it is also clear that having regard to the Directive Principle enshrined in Article 49(f) and the nature of the offence u/s 292, the Police would be failing in their duty if they do not seize the magazines, books etc., through which an offence u/s 292 IPC appears to have been committed and prosecute the offenders, but I should add that the Police Officers should; before embarking upon seizure of books, magazines etc.; carefully scrutinise and examine the matter and make sure that an offence u/s 292 IPC is prima facie disclosed in them.

15. Before concluding, it is however, necessary to deal with another submission made by the learned Counsel for the petitioners regarding the manner of exercise of the power of seizure and launching prosecution. They submitted that even assuming that the Police have got the power to seize all the copies of the magazine, on the allegation that an offence u/s 292 IPC has been committed, they cannot prosecute the publisher and others in several Courts in respect of the same publication. They submitted that even if the seizure of all the copies of a magazine on the allegation that an offence u/s 292 IPC had been committed through them cannot be regarded as violation of the freedom of the Press and liberty guaranteed under Article 19(1)(a) and Article 21 of the Constitution, the prosecution of publisher and printer before number of Courts, would be violative of the right guaranteed under the said article. They pointed out, that in that event they would have no work other than attending the Courts through out the year. They relied on the Judgment of the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India* (UOI) and *Another*, to show that procedure followed in taking actions under substantive law must be fair and this was the combined effect of Articles 14 and 21 of the Constitution.

16. In the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, the Supreme Court, after referring to the earlier decision interpreting Article 21, observed at the end of paragraph 54 thus :

".....We find that even on principle, the concept of reasonableness must be projected in the procedure contemplated by Article 21, having regard to the impact of Article 14 and Article 21."

Summarising the impact of Article 14 of all State actions and in particular on Article 21 the Supreme Court at Paragraph 56 stated thus:

"Article 14 strikes at arbitrariness in State actions and ensues fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful, or oppressive ; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."

17. Relying on the above observation they submitted that calling upon the petitioners to appear before the Police in each of the police stations and filing of cases before the large number of Courts amounts to great harassment and physically prevents them from bringing out other issues of the magazines.

18.1 see considerable force in the submission It is true that as pointed out by the learned Advocate General that registering cases in different police stations and filing of cases before the respective jurisdictional Magistrates is under the provisions of the Code of Criminal Procedure which is the procedure established by law and therefore cannot be regarded as violative of Article 21. It is also true that the petitioners could approach this Court or the Sessions Court under Sections 407 and 408 respectively seeking transfer of cases to one Court within the State or the District, as the case may be. Even so it appears to me that the learned Counsel for the petitioners is right in their submission that the exercise of the power under the procedural law should be reasonable. Therefore, calling upon a Printer Publisher to appear before large number of police stations in respect of the same publication, as also prosecuting them before several Courts would be a procedural harassment and renders the exercise of the substantive right guaranteed under Article 19(1)(a) of the Constitution difficult, if not impossible. In the nature of things, when some magazine or book is published, it would be kept for sale at various book stalls and at different places for sale, which would be innumerable, and, in such a case calling upon the Printer and Publisher of the magazine or any other person connected with the publication to appear before each of the police stations and thereafter filing cases against them before each of the jurisdictional Magistrates, would amount to a great harassment to the persons concerned as they would have no other job than appearing before the police and Magistrates on the date of hearing and on the

adjourned dates of hearing and as a result the exercise of the right guaranteed under Article 19(1)(a) and Article 21 gets greatly impaired. Even if they want to publish magazines which do not contain obscene material they would be unable to do so. In the circumstances, it appears to me that the reasonable way of dealing, by the Police Administration, in respect of an offence u/s 292 of the IPC is, as far as the publishers printers etc. are concerned, to entrust the entire task of investigation and filing of prosecution to anyone of the police stations, preferably the police station within whose jurisdiction the main office or publication division is located and also to ensure that the case is filed before the Magistrate within whose jurisdiction that police station is situate. In this behalf it is necessary to refer to Sections 156 and 166 of the Code. They read:

" 156. (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this Section to investigate.

(3) Any Magistrate empowered u/s 190 may order such an investigation as above-mentioned.

** ** 166. (1) An officer in charge of a police station or a police officer not being below the rank of sub-inspector making an investigation may require an officer in charge of another police station, whether in the same or a different district, to cause a search to be made in any place, in case in which the former might cause such search to be made within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of Section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police station to cause a search to be made under Subsection (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police station or a police officer making any investigation under this Chapter to search, or cause to be searched, any place in the limits of another police station in accordance with the provisions of Section 165, as if such place were within the limits of his own police Station.

(4) Any officer conducting a search under Sub-section (3) shall forthwith send notice of the search to the officer in charge of the police station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared u/s 100, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in

Sub-sections (1) and (3) of Section 165.

(5) The owner of occupier of the place searched shall, on application, be furnished free of cost with a copy of any record sent to the Magistrate under Sub-section (4)."

Section 156 read with Section 178 of the Code empowers an officer in charge of a Police Station to conduct investigation out side the jurisdiction of his police station. Section 166 of the Code enables an officer in charge of a police station to request any other Police Officer to make search in places within his jurisdiction and seize the articles required to be seized and send them on to him. These provisions should be used to deal with the offence u/s 292 I.P.C. so as to ensure investigation by one police station and prosecution before one Magistrate.

19. Learned Counsel also submitted that having regard to the nature of the offence u/s 292 of the IPC, it would be difficult for police officers belonging to the lower categories to find out whether a publication contains obscene material and further having regard to the fact that freedom of the Press is also involved, it was not safe that the power of seizure of magazines should be exercised by Police Constables or Head Constables. I see force in this submission also. In the present case, the seizure has been made by the Sub-Inspector of Police and not by Constable. Whatever that may be, Section 102 does not impose any such condition and there is no special provision specifying the rank of Police Officers who could exercise the power of seizure of books or magazines on the ground that an offence u/s 292 of the IPC is said to have been committed. It is true that the nature of the offence itself is such as would only enable a Superior Police Officer to make out whether such an offence is committed. However, this is also a matter to be taken note of by the police administration and to issue circular instructions regarding the rank of officers who should exercise the power of seizure and the procedure for screening the matter before action is initiated, as observed in paragraph 14 of this order.

20. The learned Advocate General submitted that any observations made by this Court regarding procedural safeguard would be taken as a guideline in the matter. In my view this assurance is sufficient to avoid the inconvenience and hardship likely to be caused in the matter of investigation, seizure and prosecution, in respect of an offence u/s 292 of the IPC.

21. In the result, I make the following order:

(i) The Writ Petitions are dismissed, but subject to the observations made and assurance given on behalf of the State, recorded in paragraph 19 and 20 of this order.

(ii) No costs.