(1979) 11 P&H CK 0074

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2860 of 1975

Bansal Tool Co. APPELLANT

Vs

K.L. Guglani, ITO RESPONDENT

Date of Decision : 27-11-1979

Acts Referred:

Arms Act, 1959 — Section 25, 26, 27, 28, 29
Customs Act, 1962 — Section 111, 112
Penal Code, 1860 (IPC) — Section 411

Citation : (1980) 3 TAXMAN 486

Hon'ble Judges : S.S. Dewan, J;Bhupinder Singh Dhillon, J

Bench : Division Bench

Advocate : Bhagirath Dass, S.K. Hiraji and B.K. Gupta, for the Appellant; D.N. Awasthy, B.K. Jhingan and M.P.S. Gill, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Dhillon, J.—Petitioners Nos. 2 to 4 are partners in a firm, petitioner No. 1. All the petitioners are income tax assessees. On March 1, 1975, first information report No. 32 was registered with Civil Lines Police Station, Patiala, u/s 25-54 of the Arms Act, 1959, and sections 111, 112 of the Customs Act of 1962 and section 411 of the IPC, at the instance of Shri Bahl Singh, Inspector of Police, on the ground that secret information had been received that Shri Shanti Lal Kapur, petitioner No. 2, and his sons and servants were importing arms, cigarette lighters, micrometers and other raw material of foreign countries which were being imported without payment of import duty and were selling the same in the black market. In pursuance of the said first information report the police on the same day, i.e., March, 1, 1975, visited the house of the petitioners and also the factory premises. It is not necessary for us to give other details as the same are not relevant for the determination of the point raised before, us. However, in the meantime, the income tax authorities also received information that the assessees had concealed income and in that connection the Commissioner also issued warrant of. search of the residential and factory premises of the assessees on March 1, 1975. It is an admitted fact that on March 2, 1975, respondent No. 16, Shri Bahl Singh, Inspector of Police, City Kotwali, Patiala, on having a secret information that certain high speed steel bars were in possession of the assessees, dug out the premises of Auto Valves Industries which is owned by the wife of Shri Shanti Lal Kapur, petitioner No. 2. In pursuance of this information, the Inspector dug out the earth up to the depth of 4/5 feet of the ground level and he recovered 13 bars of high speed steel worth Rs. 80,000. The said bars were removed by the Inspector on March 2, 1975, to the police station. The reading of the averments in the petition and also in the return filed on behalf of the respondents, make it clear that the said bars were again brought to the premises of M/s. Auto Valves Industries on March 3, 1975, and also on March 4, 1975. The said bars were taken into possession by the income tax authorities in pursuance of a warrant of search and seizure issued by the Commissioner. It may be pointed out that on March 2, 1975, the Commissioner, having received information that the assessees were in possession of high speed steel bars, issued search and seizure warrant for the seizure of the said high speed steel bars from the premises of M/s. Auto Valves Industries. The said bars were actually taken into possession in pursuance of the said warrant on March 4, 1975. On the facts mentioned above, it has been contended by the learned counsel for the Revenue that the bars in question were taken into possession, in pursuance of the search and seizure warrant issued by the Commissioner, from the premises of M/s. Auto Valves Industries and the said bars, at the time of taking into possession, were in the possession of the assessees and thus no objection can be taken to the search and seizure of the said bars. We find that it cannot be disputed that the Inspector Bahl Singh searched the premises in question, in pursuance of the first information report which had been lodged on March 1, 1975. It was in pursuance of the investigation of a cognizable offence that he received further information that the assessee was in possession of high speed steel bars and on that information having been received, admittedly, he dug out the said bars and took into possession the same and took the same to the police station on March 2, 1975. It is no doubt true that in the return it has not been stated on behalf of the police that the said bars were seized by the police in pursuance of the first information report. But the question of possession at the time when the warrants were issued by the Commissioner is the relevant factor which has to be decided first. It goes without saying that on March 2, 1975, when the bars were taken into possession by the police, the police took the same to the police station. If the police had not seized the said bars it had no jurisdiction to touch the said bars. In this context, Mr. Awasthy, learned counsel for the Revenue, contends that the police took the bars to the police station only with a view to keep the bars in safe custody and, if so wanted, could be made available at the spot. It is not the case of the income tax authorities that the police party went at the instance of the income tax authorities and that the police went to the premises to aid the execution of the search and seizure warrant issued by the Commissioner. There is not any averment in that respect. If the contention of the Revenue is accepted that the police in fact did not seize the bars, the possession of the police shall have to be held illegal. From the facts of the case, it is clear that as far as the 13 bars are concerned, the police was proceeding with the investigation independently and the income tax authorities were also proceeding independently for seizing the incriminating articles by the issue of a search warrant. In this view of the matter, it is difficult for us to hold that on March 4, 1975, when the income tax authorities took possession of the bars from the premises of M/s. Auto Valves Industries, the possession was that of the assessees against whom the warrant of search and seizure had been issued by the Commissioner. It is proved that the police took possession of the said bars on March 2, 1975, and they took the same back to the premises of M/s. Auto Valves Industries. There is nothing on the record to show that the police ceased its possession at any stage before they were taken into possession by the income tax authorities. In that view of the matter as has been held by this court in Commissioner of Income Tax and Others Vs. Ramesh Chander and Others, and Tej Pal Oswal Vs. Income Tax Officer and Others, the possession of the income tax authorities, in pursuance of the warrant for search and seizure, as far as these 13 bars is concerned cannot be held to be legal. We, accordingly, direct that the income tax authorities should return the said 13 high speed steel bars to the Station House Officer, Police Station Civil Lines, Patiala. It is for the police then to proceed with the case or it is for the police to find out if the said bars are not needed in the said case. The request for the delivery of possession made by the income tax authorities regarding the said bars to the police shall be disposed of in accordance with law. We order accordingly.

2. The only other contention raised by Mr. Bhagirath Dass, learned counsel for the petitioners, is that certain wearing apparel of the assessees were also taken into possession by the income tax authorities and the same being not incriminating articles should be returned to the petitioners as they are being devalued while in the possession of the income tax authorities. Mr. Awasthy, learned counsel for the Revenue, has stated before us that on a proper application being made, the income tax authorities shall return the wearing apparel to the assessees which were taken into possession. We accordingly direct that the income tax authorities should return the wearing apparel of the petitioners which were taken into possession during the raid in question on an application being made by the assessees to the income tax authorities. No other point has been pressed. The writ petition is allowed to the extent indicated above. In all other respects the petition is dismissed. There will be no order as to costs.

S.S. Dewan, J.

I agree.

