
(1993) 03 RAJ CK 0052

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2951 of 1991 dated March 22, 1993.

CHANDRA PRAKASH AGRAWAL

APPELLANT

Vs

STATE OF RAJASTHAN AND OTHERS.

RESPONDENT

Date of Decision : 22-03-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102, 173
Income Tax Act, 1961 — Section 132, 132A
Penal Code, 1860 (IPC) — Section 332, 353

Citation : (1993) 119 CTR 216 : (1993) 205 ITR 562

Hon'ble Judges : M. B. Sharma, J

Bench : Single Bench

Judgement

M. B. SHARMA J. - The petitioner seeks registration of criminal cases against the respondents for their alleged illegal and high-handed activities and thereafter to get the cases investigated by the Central Bureau of Investigation. A few other reliefs have also been claimed including the relief of awarding compensation.

The case of the petitioner is that he is running a sarrafa business under the name and style of Messrs Garg and Co. in a shop situated below Halidya House, Johri Bazar, Jaipur. He also has "Dharam Kanta" in the corner of the said shop. Respondent No. 5 Chain Singh, joined as Station House Officer, Police Station, Manak Chowk, Jaipur, on or about January 10, 1991. According to the petitioner, respondents Nos. 6 and 7, namely, Anwar Khan and Sawai Singh, constables Nos. 3308 and 1842, respectively, were also posted at Manak Chowk Police Station under respondent No. 5, Chain Singh. Some time in the second week of January, 1991, each of them is said to have visited the shop of the petitioner and given out that Chain Singh has taken over as Station House Officer of the police station and if the petitioner wants to run his ship smoothly, it is better to fix up mahavari (monthly payment). The petitioner did not agree to it and the abovenamed two respondents threatened the petitioner. On January 16, 1991, at about 1.30 p.m., according to the petitioner, respondents Nos. 6 and 7 again came to his ship and asked him as to what had been decided by him finally, and

when the petitioner refused to agree to pay any monthly amount, it is alleged that they further threatened him. One Ashok Kumar Agrawal came to the shop. Ashok Kumar Agrawal is his own nephew and is running a shop of jewellery in Johri Bazar, Jaipur. According to the petitioner, the said Ashok Kumar Agrawal owed a sum of Rs. 2.90 lakhs to him which amount has been deposited by him with Ashok Kumar and Ashok Kumar Agrawal, on January 16, 1991, came with the said sum of Rs. 2.90 lakhs and was going to the bank and he gave a cheque to the petitioner to return the part of the amount which he (Ashok Kumar Agrawal) owed to the petitioner. It is the further case of the petitioner that the two constables, respondents Nos. 6 and 7, created an ugly scene there. It was at about 1.30 p.m. that Madan Lal happened to be at "Dharam Kanta" for weighing of gold and respondents Nos. 6 and 7 who were roaming outside the shop came up and picked one of the gold pieces from the "Dharam Kanta". The petitioner protested. He and Madanlal raised a hue and cry. The gold piece was returned by Anwar Khan, constable, but the accompanying constable, Sawai Singh, asked Anwar Khan to go to the police station and report the matter that the gold seized by them has been snatched away and he was asked to return with force. The petitioner left his shop for taking legal advice and when he returned at 4 p.m. to the shop, he was told that Chain Singh, respondent No. 5, the then Station House Officer, with 10 to 12 constables had come to his shop and threatened Ashok Kumar with dire consequences and he also hurled filthy abuses and forcibly took the search of the shop without showing any authority and seized a sum of Rs. 2 lakhs lying in a bag and about 4 1/4 kg. silver was also taken into his possession by Chain Singh and the police party and some papers were also taken without giving any receipt. Ashok Kumar and Madanlal were taken to the police station. The petitioner also reached the police station on coming to know this through his munim and Ashok Kumar gave out that severe beating was inflicted upon him and cash and silver and other account books have not been released. According to the petitioner, he tried to contract the higher authorities, but there was no response and, therefore, he met the Home Minister and on January 17, 1991, he submitted a complaint to various authorities.

The petitioner further gave out that, to cover up their illegal actions, a false report was made against the petitioner and Madanlal u/s 332 and 353, Indian Penal Code. The said report, according to the petitioner, is not only false but also a concocted one and has been made to prepare a defence by the police authorities.

It is yet the case of the petitioner that not only this, respondent No. 5, Chain Singh, managed with the Income Tax officials and handed over the case of Rs. 2 lakhs and silver weighing 4.865 kg. though it was not in accordance with law that such an action could have been taken. Respondent No. 4, Income Tax Officer, Ward-2, and his subordinates, under the influence of the local police, fabricated some documents showing the search having been conducted by them on January 16, 1991. The petitioner only came to know about the amount, silver and other documents having been seized u/s 102, Criminal Procedure Code, when he filed

an application before the Chief Judicial Magistrate for return of the cash taken by the police.

The respondents, in their reply, have justified their action and respondent No. 5 has come out with a case on affidavit that he acted in the discharge of his duties and the silver, cash and account books were seized u/s 102, Criminal Procedure Code. Besides respondent No. 5, affidavits have also been filed by respondents Nos. 6 and 7 and they have said that about half biscuit of gold with foreign marking was brought by a customer to the shop of the petitioner and it was suspected to be smuggled. Therefore, the constables wanted the matter to be reported to the Station House Officer. While they were discharging their duties, they were beaten by the petitioner and Madanlal and so far as Ashok Kumar is concerned, the case of the respondents is that he has been introduced to lead credence to the story otherwise Ashok Kumar was not present and he is a relation of the petitioner himself. So far as respondent No. 4 is concerned, he has come out with a case in the reply that it was in accordance with the provisions of the Income Tax Act, 1961, that the police and forwarded the silver and cash and action was taken in accordance with the provisions of the Income Tax Act, 1961 (for short, "the I.T. Act").

It was contended by learned counsel for the petitioner that, because the petitioner refused to agree to the illegal demand of fixing monthly payment for the new Station House Officer, he was humiliated and harassed and the silver was not contraband silver and it should not have been seized and Rs. 2 lakhs were brought by Ashok Kumar to deposit in the bank in lieu of which a cheque was already advanced to the petitioner. The allegations about asking for fixing mahavari (monthly payment) have been denied by respondents Nos. 5 to 7 on affidavits and, therefore, it cannot be held that the story of the petitioner that respondents Nos. 6 and 7, the two constables, had come to the shop and wanted the mahavari (monthly payment) to be fixed for the purpose of disposal of this writ petition being disputed cannot be acted upon. Besides this, it appears that there has been some inquiry into this incident which did not reveal any truth in the allegations. The incident took place on January 16, 1991, and there is no material that, on January 16, 1991, or immediately thereafter, any report containing the allegations that the constables had asked for fixing mahavari (monthly payment) was lodged. Even in the complaint sent on January 17, 1991, to the various authorities there is no mention that Ashok Kumar had come with a sum of Rs. 2 lakhs in the bag nor is there a mention that, when the petitioner left his shop for consultation with his advocate, he left behind Ashok Kumar and Madanlal. At any rate, in these proceedings, it is not possible because of denial on affidavit by the respondents and there being no clinching evidence that the incident had happened because of refusal of the petitioner to agree to fix mahavari (monthly payment) to the new Station House Officer. It cannot be said that the incident had taken place as alleged by the petitioner. u/s 102, Criminal Procedure Code, a police officer has power to 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. The power is said to have been exercised u/s 102, Criminal Procedure Code, by respondent No. 5 to seize the property, i.e., Rs. 2 lakhs and silver, etc. A bare reading of section 102, Criminal procedure Code will show that the said power can be exercised even if the property is found under circumstances which create suspicion of commission of any offence. It is not possible for this court to say how and in what circumstances the incident occurred, whether or not the gold which was being weighed at the shop of the petitioner on "Dharam Kanta" was or was not contraband and it was or was not having foreign marking, but this fact is not disputed even by the petitioner that a customer had come to his shop and a piece of gold was being weighed. There is no material that the power of seizure was exercised mala fide or for any ulterior motive or extraneous consideration, much less because the petitioner refused to agree to the demand of fixing monthly amount. Respondent No. 5 having joined on January 9, 1991, only there may be something, but mere possibility is not sufficient in a case u/s 332 and 353, Indian Penal Code, registered against the petitioner and others and after the investigation a charge-sheet has also been filed u/s 173 Criminal Procedure Code. It was contended by learned counsel for the non-petitioners Nos. 5 to 7 that, only after the case has been registered on January 16, 1991, and only after the silver and cash, etc., have been seized, the petitioner made a story on January 17, 1991, making false allegations about the demand for fixing mahavari (monthly payment) which was not true. It is the case of respondents Nos. 5 to 7 that the incident had taken place after 4 p.m. and not 1 p.m. as alleged by the petitioner and entries in the rojnamcha as well as the copy of the first information report have been filed. The contention of learned counsel for the petitioner is that they were manipulated later on, but there is no material to this effect and it is to be presumed that all official acts must have been performed. Therefore, taking into consideration that there are entries in the rojnamcha and a perusal of the first information report will show that the seizure had taken place after 4 p.m. and the incident is also alleged to have taken place with the constables about which I may say nothing and it is for the criminal court to decide whether the case set up by the petitioner cannot be relied upon.

Coming to the contention that even respondent No. 4, Income Tax officer, is in collusion with other respondents, it may be said that respondent No. 4 had come out with a case that action was taken u/s 132A of the Income Tax Act, 1961. It is also the case of respondent No. 4 that, in fact, the cash and silver were not seized but they have been taken in possession of from the Station House Officer, Police Station, Manak Chowk, and the proceedings u/s 132A of the Income Tax Act were initiated and the provisions of section 132 of the Income Tax Act are applicable. A perusal of section 132A, more so its sub-section (1)(c), will show that, even if the officer mentioned therein, in consequence of information in his possession, has reason to believe that any assets represent either wholly or partly income or property which has not been, or would not have been, disclosed for the purposes of the Income Tax Act by any person from whose possession or

control such assets have been taken into custody by any officer or authority under any other law for the time being in force, then such officer can authorise the Deputy Director, etc., to require the officer or authority to deliver such books of account, other documents or assets to the requisitioning officer. So far as documents are concerned, they are dealt with u/s 132A(1)(a) and (b). It will further be seen that as and when action is taken u/s 132A of the Income Tax Act, the provisions of section 132 of that Act are applicable. From the papers shown to the court, it appears that, in respect to cash of Rs. 2 lakhs and silver weighing 4.865 kg. an order u/s 132(5) read with section 132(7) of the Income Tax Act was made by the Assistant commissioner of Income Tax and the amount of Rs. 2 lakhs was taken in possession being unexplained and concealed income for the assessment year 1991-92. It will further be seen that the matter was taken to the Commissioner of Income Tax who so far as the retention of the jewellery is concerned, made an order in favour of the petitioner. Thus, it cannot be said that the Income Tax Officer was in collusion with respondent No. 5. The action was taken in accordance with the provisions of the Income Tax Act and there have been orders also referred to above under the Income Tax Act.

Learned Counsel for the petitioner has challenged the seizure of cash and silver as illegal and, in that connection, has referred to the following few cases, namely, L.R. Gupta and Others Vs. Union of India and Others, Motilal and Others Vs. Preventive Intelligence Officer and Others, Income Tax Officer, Special Investigation Circle-B, Meerut Vs. Seth Brothers and Others etc., and Commissioner of Income Tax, Haryana, Himachal Pradesh and Delhi and Others Vs. Tarsem Kumar and Another, but none of the above authorities is applicable because once the proceedings u/s 132 read with section 132A of the Income Tax Act have taken place, it is the authorities under the Income Tax Act who alone have jurisdiction in the matter and even in a case where search and seizure u/s 132 of the Income Tax Act may not be in accordance with law, if certain cash and valuable are found and seized, an order can be made under the provisions of section 132(5) and (7) of the Income Tax Act which will be subject to the final assessment.

So far as the argument of learned counsel that the first information report should be registered with the Central Bureau of Investigation and investigation should be made by the central Bureau of Investigation is concerned, learned counsel for the petitioner has referred to a few authorities. There can be no dispute that in case the court is satisfied that a prima facie case is made out, it can be directed to be investigated by the Central Bureau of Investigation, but, in this case, for the reasons stated above, no offence prima facie, appears to have been made out, or at any rate, it was open to the petitioner to file a complaint in the competent court which would have been tried in accordance with law.

Consequently, I find no merit in this writ petition. It is hereby dismissed with no order as to costs.