
(1963) 07 BOM CK 0013

In the Bombay High Court

Case No : Criminal R. Application No. 415 of 1963

Eastern Machinery and Trading Co. (M/s.)

APPELLANT

Vs

Assistant Enforcement Officer, Bombay

RESPONDENT

Date of Decision : 09-07-1963

Acts Referred:

Foreign Exchange Regulation Act, 1947 — Section 19(3)

Citation : (1964) MhLj 79

Hon'ble Judges : H.R. Gokhale, J

Bench : Single Bench

Advocate : S.K. Kalal, for the Appellant; C.C. Vaidya, Asst. Govt. Pleader for State, for the Respondent

Judgement

H.R. Gokhale, J.—This revision application is in respect of an order made by the learned Chief Presidency Magistrate, Bombay, permitting the Assistant Enforcement Officer, Enforcement Directorate, Government of India, Bombay, to retain in his possession certain documents which were seized as the result of a search warrant issued by the Chief Presidency Magistrate u/s 19(3) of the Foreign Exchange Regulation Act, 1947. It appears that the Assistant Enforcement Officer made an application on June 23, 1962, to the Chief Presidency Magistrate for the issue of a search warrant u/s 19 {3} of the Foreign Exchange Regulation Act, 1947 {hereinafter referred to as the Act}. The search warrant was directed to be issued on the same day, and it is common ground that it was in fact executed on June 25, 1962. Certain documents were seized from the Eastern Machinery and Trading, Company, who are the present Petitioners. Applications were made for retaining the documents with the Enforcement Officer even after the expiry of the period of four months prescribed in Section 19A of the Act. The four months" period expired on October 24, 1962. We are not concerned as to whether or not any applications were made for the extension of this four months" period prior to February 19, 1963, on which date, admittedly, an application was made to the learned Chief Presidency Magistrate for permitting the Assistant Enforcement Officer to retain custody of the

documents which were seized in the search. The learned Chief Magistrate made an order on February 28, 1963, granting further time up to August 2, 1963 and thus enabling the Assistant Enforcement Officer to retain the documents with him. It is this order made by the learned Chief Magistrate on February 28, 1963, that is challenged in this revision application.

2. Mr. Kalal, who appears for the Petitioners, contends that the learned Magistrate had no jurisdiction to grant extension of time so as to permit the Assistant Enforcement Officer to retain custody of the documents, as the period of four months had admittedly expired on October 24, 1962. He says that since the four months' period prescribed u/s 19A of the Act has expired, it was obligatory on the Enforcement Officer to return these documents to the Petitioners, from whose possession they were seized as a result of the search warrant issued by the learned Magistrate. In support of this argument, he relies on the provisions of Section 19 and Section 19A of the Act.

3. In order to appreciate this argument it will be necessary to reproduce, to the extent relevant for the purposes of this argument, the provisions of Sections 19 and 19A of the Act. Sub-section (3) of Section 19 is relevant. It provides as follows:-

(3) If on a representation in writing, made by a person authorised in this behalf by the Central Government or the Reserve Bank, a District Magistrate, Sub-Divisional Magistrate, Presidency Magistrate or Magistrate of the first class, has reason to believe that a contravention of any of the provisions of this Act has been, or is being or is about to be committed in any place, or that a person to whom an order under Sub-section (2) of this section has been or might be addressed, will not or would not produce the information, book or other document, or where such information, book or other document is not known to the Magistrate to be in the possession of any person, or where the Magistrate considers that the purposes of any investigation or proceeding under this Act will be served by a general search or inspection, he may issue a search warrant and the person to whom such warrant is directed may search or inspect in accordance therewith and seize any book or other document, and the provisions of the Code of Criminal Procedure, 1898 relating to searches under that Code shall, so far as the same are applicable, apply to searches under this Sub-section.

We are not concerned with the remaining parts of Section 19. Section 19A of the Act provides as follows:

19A. Where, in pursuance of an order made under Sub-section (2) of Section 19 or of a search warrant issued under Sub-section (3) of the said section, any book or other document is furnished or seized, and the Director of Enforcement has reasons to believe that the said document would be evidence of the contravention of any of the provision of this Act or of any rule, direction or order made there under, and that it would be necessary to retain the document in his custody, he may so retain the said document for a period not exceeding four

months or if, before the expiry of the said period of four months, any proceeding u/s 23-

(a) have been commenced before him, until the disposal of those proceedings, including the proceedings before the Appellate Board, if any, or (b) have been commenced before a Court, until the document has been filed in that Court,

Section 19 (2) of the Act provides for a requisition being made by the Central Government or the Reserve Bank requiring any person to furnish to the Central Government or the Reserve Bank, as the case may be, with such information, book or other document, it is considered necessary or expedient to obtain and examine such information, book or other document which is in the possession of any person. Thus, for an order of requisition to be u/s 19(2) of the Act no question of obtaining any orders from the Magistrate arises. Sub-section (3) of Section 19, however, provides for different contingencies when the examination or the obtaining of such information may not be possible otherwise than by seizing the documents concerned by effecting a search or getting a search warrant issued with the orders of the Magistrate. There is no doubt that one of the conditions is that before a search warrant is issued under Sub-section (3i) of Section 19 of the Act, the Magistrate has to be satisfied that the purposes of any investigation or proceeding under the Act will be served by a general search or inspection. On such satisfaction of the Magistrate, the Magistrate may issue a search warrant and the person to whom such search warrant is directed may search or inspect, and in accordance with the directions of the Magistrate, seize any book or other document. It is expressly provided in the said Sub-section that the provisions of the Code of Criminal Procedure shall, so far as they are applicable, apply to searches under this Sub-section. In the present petition the order made by the learned Magistrate for the issue of a search warrant was not challenged. What was challenged was that even if a search warrant is issued and even if documents are seized by execution of the search warrant, the Magistrate has no power under the Act to permit retention of such documents for a period exceeding a period of four months which is the maximum period prescribed u/s 19A of the Act. The question, therefore, which arises is, has the Magistrate any power either under the Act or under the Code of Criminal Procedure to extend the period of four months so as to permit the retention of documents, seized by a search warrant, for a period exceeding four months ?

4. Mr Kalal contends that Section 19A takes into account only two contingencies in which and in which alone the documents may be retained for a period exceeding four months, and those two contingencies are: (1) when any proceedings u/s 23 have been commenced before the Director of Enforcement, and (2) when any proceedings u/s 23 have been commenced before a Court. Mr. Kalal says that in the former case the documents can be retained by the Enforcement Officer until the disposal of the proceedings u/s 23 pending before him, whereas, in the latter case, the documents can be retained until the documents have been filed in the Court, in proceedings commenced u/s 23. But,

if neither of these two contingencies exist, Mr Kalal contends, there is no power, either in the Enforcement Officer or in the Magistrate who issued the search warrant, to retain the documents for a period exceeding four months. For a proper construction of this section it must be noted that Section 19A refers to two possibilities in which documents may come in the possession of the Enforcement Officer. One possibility is when under Sub-section (2) of Section 19 the requisition issued by the Reserve Bank or the Central Government is complied with and the documents are produced by the person against whom the requisition is made. The other possibility is when a search warrant is issued by the Court and certain documents are seized in execution of the search warrant. Mr. Kalal says that since the four months" period is the statutory limit u/s 19A, even the Magistrate is subject to that limit and he cannot extend the period of four months on an application made by the Director of Enforcement or in any other manner, even if proceedings u/s 23 have commenced. In the alternative, he argues that in this case proceedings u/s 23 have not been commenced either before the Enforcement Officer or before the Court. According to him, therefore, the question of retaining these documents with the Director of Enforcement beyond a period of four months cannot arise. Prima facie, it does appear that the intention of the Legislature was to put a limit in respect of time in the matter of possession or custody of documents seized or produced u/s 19. It must be remembered that the Act contemplates proceedings not only before the Court but also before the Director of Enforcement, and it is not disputed that even the Director of Enforcement, in proceedings u/s 23, is competent to impose certain penalties under that section. Therefore, the argument will have to be considered in two parts: (1) Have any proceedings before the Director of Enforcement or before the Court been commenced u/s 23 of the Act, so that the period of four months gets automatically extended ? or (2) If none of these proceedings are pending, has the Magistrate the power to extend the period beyond four months ?

5. Mr. Vaidya, the learned Assistant Government Pleader appearing for the State, contends that in this case proceedings u/s 23 have been commenced and since those proceedings are pending before the Director of Enforcement, even without a formal order of extension by the Magistrate, the Enforcement Officer could have retained possession of these documents until the disposal of those proceedings. He, however, does not dispute that no proceedings have been commenced before the Court. But that would not make any difference to his argument that if proceedings are commenced and are pending before the Enforcement Officer, the question of any limit of the period of four months would not arise and the Officer would be entitled to retain custody of the documents till the disposal of those proceedings. In the affidavit which has been filed before me by the Assistant Enforcement Officer, he has stated as follows:

I also submit that the show cause notice has since been served on the Petitioners on 20-11-1962. The Petitioners have been asking for time to file their reply to the show cause notice. On the Petitioners" last letter dated 6-6-1963 for extension of time, the Director of Enforcement, New Delhi, has granted their

request and has allowed them to file their reply by 15-7-1963. The Petitioners have also not replied to the directives dated 20-11-1962 and 1-12-1962 issued by the Assistant Director of Enforcement Bombay, as yet.

Mr. Vaidya, therefore, says that, in fact, the usual show cause notice has been issued and, therefore, the proceedings u/s 23 have commenced before the Director of Enforcement. The affidavit is very vaguely worded ; the officer should have stated in some greater detail the nature of the proceedings, the stage at which the proceedings are and the matter in respect of which the proceedings have been commenced. Mr. Vaidya says that these proceedings are in respect of offences u/s 23 and he invited my attention to Section 23D(1) of the Act. Section 23D (1) provides as follows:

23D. (1) For the purpose of adjudging under Clause (a) of Sub-section (1) of Section 23 whether any person has committed a contravention, the Director of Enforcement shall hold an inquiry in the prescribed manner after giving that person a reasonable opportunity of being heard and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty as he thinks fit in accordance with the provisions of the said Section 23.

The proviso to Sub-section (1) of Section 23D is not relevant for our purposes. Mr. Vaidya points out that Section 23D (i) has of necessity to be read with Section 23, which is the only section providing for imposing a penalty. Section 23 provides for penalties in respect of contraventions of certain provisions of the Act. Section 23D (i) says that for the purpose of adjudging whether a person is liable to a penalty under Clause (a) of Sub-section (i) of Section 23 and for the purpose of adjudging whether a person has committed a contravention of the provisions referred to in Section 23, the Director of Enforcement shall hold an inquiry in the prescribed manner. Section 23D (7) also provides that the Director of Enforcement should give a reasonable opportunity of being heard to the person against whom an inquiry u/s 23D is to be held.

After such an opportunity is given, the Director of Enforcement may impose a penalty in accordance with the provisions of section. 23, if he is satisfied that the person concerned has committed a contravention. Now, since Section 23D 11) provides that an inquiry has to be held in the prescribed manner, the manner in which the inquiry is to be held is provided for in the rules which have been framed in exercise of the powers conferred by Section 27 of the Act. These rules are styled as the "Adjudication Proceedings and Appeal Rules, 1957". Rule 3 of these rules provides as follows:-

3. Adjudication Proceedings.-(1) In holding an inquiry under Sub-section (1) of Section 23D of the Act for the purpose of adjudging under Clause (a) of Sub-section (1) of Section 23 whether any person has committed contravention, the Director shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than ten days from the date of service thereof) why adjudication proceedings

should not be held against him.

(2) Every notice under Sub-rule (1) to any such person shall indicate the nature of the offence alleged to have been committed by him.

(3) If after considering the cause, if any, shown by such person, the Director is of opinion that adjudication proceedings should be held, he shall fix a date for the appearance of that person either personally or through his lawyer or other authorised representative.

(4) On the date fixed, the Director shall explain to the person proceeded against or his lawyer or authorised representative the offence alleged to have been committed by such person indicating the provisions of the Act or of the rules, directions or orders made there under in respect of which contravention is alleged to have taken place.

(5) The Director shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary, the hearing may be adjourned to a future date ; and in taking such evidence the Director shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (I of 1872).

(6) If any person fails, neglects or refuses to appear before the Director on any date fixed by the Director under this rule, the Director may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

(7) It, upon consideration of the evidence produced before the Director, the Director is satisfied that the person has committed the contravention, he may, by order in writing, impose such penalty as he thinks fit in accordance with the provisions of Clause (a) of Sub-section (1) of Section 23.

Sub-rule (1) of Rule 3 requires that a notice has to be issued in the first instance to a person against whom an inquiry is to be held to show cause, within a specified period, why adjudication proceedings should not be held against him. In the remaining sub-rules elaborate procedure is provided for as to the manner in which the inquiry is to be held. It would thus appear that the provisions of Section 23, Section 23D and Rule 3 of the Rules quoted above will have to be read together to understand the nature and scope of the inquiry and the power of the Director of Enforcement in respect of adjudications. If the Director of Enforcement comes to the conclusion that a person has committed a contravention of the provisions of the Act referred to in Section 23, he has the power to impose a penalty u/s 23. Similarly, since the inquiry u/s 23D has to be in the manner prescribed, it is also obligatory on him to issue a show cause notice on the person concerned asking him to show cause why an inquiry should not be held against him. Mr. Vaidya says that for the purposes of the condition given in Section 19A, viz., the commencement of proceedings before the Director of Enforcement, it is not necessary that the inquiry must reach a stage when the person concerned has already shown cause as to why the inquiry should not be

held or that it must reach a stage when the Enforcement Officer has already come to the conclusion that the cause shown by the person concerned is not sufficient and that the inquiry must proceed further. Mr. Vaidya says that the issuing of a show cause notice under Rule 3, prior to the actual commencement of the inquiry, is also a part of the inquiry u/s 23D, since even this procedure is prescribed under Rule 3. It is common ground that a show cause notice under Rule 3 has already been issued to the Petitioner. The Petitioner, however, says that even then proceedings cannot be said to have commenced. Mr. Kalal argues that this is only a preliminary inquiry and the Enforcement Officer has as yet to come to a conclusion as to whether proceedings should commence against the Petitioner. Until he comes to that conclusion, and the proceedings have been commenced as a result of that conclusion, says Mr. Kalal, there are no proceedings pending before the Enforcement Officer so as to attract the application of Section 19A of the Act. It would appear, prima facie, that in view of the provisions of Rule 3 the proceedings can be said to have been commenced only after the preliminary stage is completed, i. e., only after the Enforcement Officer has come to the conclusion that the person concerned has failed to show adequate cause. However, on a proper consideration of Section 19A and Section 23D, I do not think that it would be the right construction.

6. Section 19A undoubtedly refers to "proceedings", whereas Section 23D refers to "inquiry". The expressions "proceedings" and "inquiry" have not been defined in the Act. Section 23D in terms provides that if the Director of Enforcement is satisfied "on such inquiry" that the person has committed the contravention, he may impose such penalty as he thinks fit in accordance with the provisions of Section 23. The entire proceeding in which the Director of Enforcement comes to a conclusion that a person has contravened the provisions of the Act are styled as "an inquiry" and not "a proceeding". It does not appear that the Legislature has made any distinction between the words "proceedings" and "inquiry", in so far as the provisions of Sections 19A and 23D are concerned. They have been used synonymously, and I am unable to accept the argument of Mr. Kalal that the proceeding u/s 23D and Rule 3 commences only after the inquiry relating to the show cause notice issued under Rule 3 is completed. The language used in the two sections, in my view, shows that these words are used in meanings which are interchangeable and merely because the word "inquiry" is used in Section 23D it cannot be said that proceedings have not commenced. The reasonable view, in my opinion, is that as soon as the Director of Enforcement issues a show cause notice under Rule 3, proceedings u/s 23 have commenced before him and the condition given in Clause (a) of Section 19A would apply. In this view which I am taking, the question of any permission to be granted by the Magistrate for the retention of the documents with the Director of Enforcement does not arise since section 19A itself enables the Director of Enforcement to retain possession of such documents until the disposal of the proceedings which have been commenced before him u/s 23.

7. In this case, however, in spite of the fact that proceedings had been

commenced before the Director of Enforcement, an application was made to the learned Chief Presidency Magistrate for permission to retain the documents beyond the period of four months, and that is how the question as to whether the learned Chief Presidency Magistrate had the power to grant such an extension has arisen for consideration. Mr. Kalal appearing for the Petitioner says that Section 19A leaves no option to the Chief Presidency Magistrate in the matter of granting an extension of time for the retention of documents, if none of the conditions given in Clauses (a) and (b) of Section 19A is shown to exist. " According to him, the possession of the documents is of the Director of Enforcement and the Court retains no control over the document seized, even though initially the seizure was as a result of the search warrant issued by the Chief Presidency Magistrate. He further argues that the provisions of the Code of Criminal Procedure can have application only subject to the special provisions of this Act. He says that under the ordinary law there is no provision requiring the issue of a search warrant by the order of a Magistrate, unless the Magistrate is seized" of the case by way of a complaint or otherwise. It is only under this Act, in which the offences are non-cognizable, that a special provision is made by which the order of a Magistrate is required for carrying out a search. He further contends that since these are special provisions, they must be strictly construed and it cannot be held that the limitation of four months prescribed by this Act cannot apply to a Magistrate so that he could extend the period beyond the period of four months. Now, it is true that the Act does contain special provisions relating to searches and also relating to the period for which documents which are seized can be retained in the possession of the Enforcement Officer, It is also true that the general powers of the Magistrate under the Code of Criminal Procedure will be subject to the special restrictions as may be found in the provisions of the Act itself. If Section 19 or Section 19A did contain a provision that even the Magistrate had no power to extend the period of four months, undoubtedly the general provisions of the Code of Criminal Procedure would have been of no avail so as to enable the Magistrate to extend the period. But the question is, is there such a restriction either in Section 19 or Section 19A of the Act ? As I have already stated, Section 19A in terms refers to two contingencies. The first contingency is when in consequence of a requisition made under Sub-section (2) of Section 19 certain documents are produced before the Director of Enforcement by the person concerned- In such a case, the intervention of a Magistrate or the need for obtaining the orders of a Magistrate for effecting a search does not arise. The documents in such a case are not seized but are produced by the person concerned on a requisition asking him to produce those documents. In such a case, where the documents are produced on a requisition, the Enforcement Officer cannot retain the documents for a period longer than four months, unless either or both the conditions which are given in Clauses (a) and (b) of Section 19A are in existence. The question of any extension being granted in such a case either by the Director of Enforcement or by the Magistrate would not arise because there is a statutory restriction that either he institutes proceedings u/s 23 before himself or before the Court within a period of four

months or he loses the right to retain control over the documents which have been produced on a requisition under Sub-section (2) of Section 19 of the Act. But the question which arises in respect of documents which are produced in a search has to be considered differently. When the documents are seized in a search, there is an obligation that those documents which are seized are produced before the Court. Even in this case my attention was drawn to the warrant issued by the learned Chief Presidency Magistrate on June 23, 1962. The warrant is in accordance with the form prescribed u/s 96 of the Criminal Procedure Code. As the form shows, the warrant is an authority given to the Assistant Enforcement Officer u/s 19(3) of the Act to search for all the incriminating documents etc. referred to in the warrant, and, what is more material, "to produce the same forthwith before this Court, returning this warrant, with an endorsement certifying what you have done under it immediately upon its execution". The warrant is a direction to produce the documents forthwith before the Court along with an endorsement certifying as to what has been done under the warrant by way of execution. The mere fact that the Enforcement Officer obtains an order for seizure and seizes certain documents in a search does not mean that the Court which issues the warrant loses all control over the property which is authorised to be seized under the warrant. In fact, since it is property seized by the direction of the Court, it is required to be produced before the Court and until an order is otherwise made by the Court, the Court retain control over such property, which is brought before the Court by execution of the search warrant. I am unable to agree with Mr. Kalal that because of Section 19A the general power which is vested in the Court under the Code of Criminal Procedure in respect of property seized under a search warrant is taken away. All that Section 19A, in my view, means is that the powers are curtailed to the limited extent that within a period of four months the Court cannot direct the return of the documents to the person concerned, since the Act in terms gives him an authority to retain them for a period of four months. The restriction is only this much that the Enforcement Officer shall retain the documents for a period of four months and the general powers of the Court regarding disposal of the documents under the Code of Criminal Procedure cannot be exercised so as to curtail the period of four months. But it cannot be said that the section provides the other way round, viz., that the Court could have no power to extend this period in respect of documents which are seized as a result of its own warrant issued u/s 19A. In my view, reading Section 19A to that effect would be unwarranted by the language of the section and it would also not be in consonance with the object which is sought to be achieved.

8. Mr. Vaidya invited my attention to two authorities of the Calcutta High Court. The two authorities referred to pertain to the interpretation of Section 172 of the Sea Customs Act, 1878. Section 172 of the Sea Customs Act is as follows:

Any Magistrate may, on application by a Customs-Collector, stating his belief that dutiable or prohibited goods or any documents relating to such goods are secreted in any place within the local limits of the jurisdiction of such Magistrate,

issue a warrant to search for such goods or documents.

Such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the law relating to criminal procedure.

Now, it is obvious that a limitation as to the period for which the goods which are seized can be retained is not there in Section 172. Similarly, the general provision relating to the powers of the Magistrate in respect of execution of search warrants under the Code of Criminal Procedure is to be found in Section 172. The corresponding provision is Section 96 of the Criminal Procedure Code. Section 96 of the Code of Criminal Procedure is in the following terms:

96. {1) Where any Court has reason to believe that a person to whom a summon or order u/s 94 or a requisition u/s 95, Sub-section (1), has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition, or where such document or thing is not known to the Court to be in the possession of any person, or where the Court considers that the purpose of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection, it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained", Sub-section (2) of Section 96 is not relevant for our purposes. The question which arose before the Calcutta High Court was whether in respect of goods seized as a result of a search warrant issued u/s 172 of the Sea Customs Act, the Court, which issued the warrant, retained any control over the property seized. In S.K. Srivastava Vs. Gajanand Patriwalla, , it has been held by the learned single Judge of that Court that the Magistrate must retain responsibility for and control over the search warrant which he issues. The learned Judge observed as follows (p. 611):

... When a Magistrate issues a search warrant he acts judicially and cannot be deemed to be acting like a rubber stamp. He must retain ultimate responsibility for seeing that the search warrant is not abused. Section 172,, Sea Customs Act itself provides that a search warrant issued under that section shall be executed in the same way and shall have the same effect as a search warrant issued under the Code. This provision must be given its full meaning and it supports the conclusion that the Magistrate must retain responsibility for and control over the search warrant which he issues. He must see that it is executed in same manner as a search warrant issued under the Code, that the property seized is produced before him or temporarily disposed of under his order as property seized in execution of a search warrant under the Code and that the final disposal of property seized is also done by him under Sections 517 to 523 of the Code subject to any express provision of the Sea Customs Act.

Further on; the learned Judge observed as follows (p. 611):

... After seizure by the police in execution of the search warrant, the goods and documents must normally be produced before the Court issuing the search warrant. That is implied by the issue of a search warrant by a Magistrate for

search of a place within his jurisdiction and is expressly provided for in the prescribed forms for search warrant under Sections 96 and 98 of the Code. Since the search warrant issued u/s 172, Sea Customs Act, must be executed in the same way and shall have the same effect as a search warrant issued under the Code, the requirement of producing the goods and papers seized before the issuing Magistrate must attach also to a search warrant issued u/s 172, Sea Customs Act." Thus, the learned Judge held that even though the issue of a search warrant was under the provisions of Section 172 of the Sea Customs Act, the provisions that the execution of the search warrant will be in accordance with the Code of Criminal Procedure implied that the Magistrate did not lose control over the search warrant once the search warrant was issued and that he retains control over the property seized by execution of the search warrant. He retains control over the manner in which the property should be disposed of either temporarily or finally under Sections 517 to 522 of the Criminal Procedure Code. It is true that the learned Judge has said that this would be good in the absence of an express provision to the contrary. I have already mentioned that in the Sea Customs Act there is no provision relating to a period of four months. But I have already pointed out that the four months" period referred to is in respect of the custody of the Enforcement Officer who is disabled from retaining control over the documents beyond the period of four months, unless either one or both the conditions mentioned in Clauses (a) and (6) of Section 19A are satisfied, I am unable to accept the contention that the restriction with regard to the limitation of four months" period can be read as a restriction on the Court, in the absence of a specific provision in the Act curtailing the powers of the Court. It is difficult to accept the contention that even the Court's powers in respect of search warrants and in respect of property seized in. search warrants are also curtailed. A similar view was taken in *Ganpatrai v. Collector, Land Customs* AIR 1960 Cal. 572. The learned Judge was concerned with a case u/s 172 of the Sea Customs Act. An application was made by the income tax Authorities to the Magistrate that the seized books should-be made over to them for a time, and the Magistrate ordered that the documents should be handed over to the income tax Authorities who, in turn, should hand them over to the Petitioner in that case. It was held that the Magistrate had such power of directing the documents to be handed over to the income tax Authorities. We are not concerned in this case with any exercise of power to the extent to which, it was exercised in that case. What is material is that the Court retains control over the-property which is seized by a search warrant and can direct its disposal at any time after the goods are seized. The learned Judge has observed as follows (p. 574):

...I do not think that there is any difference of opinion on the question that the learned Magistrate could issue a search warrant and whether the goods are to be produced in his Court are taken possession of by the Customs authorities the Magistrate continues to be in see sin of the matter and after the conclusion of the proceedings before the Customs authorities, he has authority to order that the books and documents should be delivered to the owner or dealt with in a

manner which he thinks fit.

9. It is clear, in my view, that whenever property is seized or any documents or papers are seized as a result of a search warrant, it is the Court which retains control over the documents which are seized and there is an obligation to produce these documents before the Court, which are seized on a specific authorisation issued by the Court. I am, therefore, unable to accept the contention that the powers of the Court under the Code of Criminal Procedure were curtailed and even the Court could not extend the period of four months because of the limitation provided for in Section 19A of the Act.

10. In the view which I have taken, I think that the order made by the learned Chief Presidency Magistrate is right and will have to be confirmed. Rule is, therefore, discharged.