

(2001) 12 CAL CK 0011
In the Calcutta High Court
Case No : Writ Petition No. 1562 of 1992

Kesoram Industries Limited	Vs	APPELLANT
Deputy Director		RESPONDENT

Date of Decision : 04-12-2001

Acts Referred:

Customs Act, 1962 — Section 110, 124

Citation : (2002) 83 ECC 407 : (2002) 141 ELT 327

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Sumit Talukdar, for the Appellant;None, for the Respondent

Judgement

Amitava Lala, J.—The Court : This writ petition is made challenging an order of search and seizure made by the office of Regional Textile Commissioner, Government of India, Ministry of Textile. From the face of the seizure memo, it appears that it was made in exercise of the powers conferred on them under Clause 12(e) of Textile Notification No. CER/(18)/88-CLB, dated 7-3-88. It appears that the described goods are bleached sucie shirting cloth (mercerised). Initially a criminal proceeding was initiated challenging the same before the appropriate Criminal Court for violation of the order by the authority and ultimately a writ petition was moved to this court in the year 1992 which is pending from then till the end of 2001 and now placed under the heading "Old Matters" for the purpose of early disposal with prior warning list but none appears on behalf of the respondents.

2. When the matter was repeatedly called today for hearing learned Counsel appearing on behalf of the petitioner contended before this court that seized articles have already been released long before. The criminal proceeding is actually infructuous. Be that as it may no finding is there which will be the actual basis for the purpose of making a search and seizure. Therefore, straightway it goes against the right of a citizen given under the Constitution.

3. Before going to the ratio of the State of Haryana and others Vs. Ch. Bhajan Lal and others, which normally I do in such circumstances I have taken note of certain other legal aspects of the matter. Since the matter is in respect of the Textile (Control) Order, 1986 21(i)(d) of the Notification Order is as follows :

"(d) enter and search, or authorise any person to enter and search, any premises and seize any article in respect of which he has reason to believe that a contravention of this Order has been committed and any other article in the premises which he has reason to believe has been or is intended to be used in connection with such contravention."

4. Therefore, if I make a conjoint reading in respect of both I shall be able to find that there should be a foundation for the purpose of making a search and seizure which is not available herein. Mere indication Clause 12(e) as aforesaid will not serve the purpose of search and seizure in respect of the violation, if any. It is clearly indicated therein that what type of markings will be there. One of such marking is known as "mercerised". From the search and seizure it is clearly indicated that all goods are recorded as "mercerised". Therefore, where is the violation is not known to the court. Not only from the affidavit but also from the copy of the FIR as annexed therein it appears that the basis of search and seizure is contravention of Clause 12(e) of the Notification to the extent that there is no required words "fast to normal washing" or "not fast to normal washing" as the case may be on the cloth. But from Clause 12(e) I find that these are not sole criteria for the purpose of giving marking on cloth. The word "mercerised" is also one of such marking available for the purpose which is the admitted position even under the list of search and seizure. Therefore, the search and seizure either to be construed a bare technical search and seizure or for the sake of harassment without any foundation whatsoever. In such case law is very clear in its application. In K.L. Subbaya Vs. State of Karnataka, it was held that the liberty of the citizen in order to protect them from ill-founded or frivolous prosecution or harassment has to be made because in search and seizure without foundation not only vitiates such right but also vitiates the proceeding, if any. Thereafter, I have considered the ratio of three Judge's Bench judgment of the Supreme Court reported in Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others, etc.) wherein it was held that the legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. The court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage. Now the further question is whether the similar principle which

is applicable for the criminal revision can also be made available for the Writ Court or not. It is well established under the State of Haryana and others Vs. Ch. Bhajan Lal and others, the conditions laid down therein are as follows :

"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

5. It is clearly hit by some of the conditions therein. According to me, specifically the FIR or complaint are so absurd and inherently improbable that no prudent person can ever reach a just conclusion. It also cannot rule out any malaice.

6. Under the circumstances, taken into totality of the matter I am of the view that the search and seizure as made by the authority cannot be allowed to continue any more. Therefore, the same is quashed under this order. As a result whereof the petitioner is directed to place the order before the Criminal Court for necessary action at the earliest.

7. Thus the writ petition stands disposed of.

8. There will be no order as to costs.

9. Let xeroxed certified copy of this Judgment be supplied to the parties by the

department within seven days from the date of putting in requisition for drawing up and completion of the order as well as the certified copy thereof.

10. All parties are to Act on a xeroxed signed copy minutes of the operative part of this judgment upon usual undertaking and as per the satisfaction of the officer of this Court in respect as above.