
(1963) 12 P&H CK 0022
In the Punjab And Haryana At Chandigarh

Nawal Kishore Thakur

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 20-12-1963

Acts Referred:

Penal Code, 1860 (IPC) — Section 124A, 153A, 295A

Citation : AIR 1964 P&H 269 : (1964) CriLJ 696 : (1964) 1 ILR (P&H) 690

Hon'ble Judges : R.P. Khosla, J;P.D. Sharma, J;Gurdev Singh, J

Bench : Full Bench

Judgement

R.P. Khosla, J.—Criminal Original No. 74 of 1963 comprising the petition u/s 99-B of the Code of Criminal Procedure had been in view of the provisions of Section 99-C of the said Code placed for disposal before this Full Bench together with other so called connected petitions, namely, Criminal Writs Nos. 4 and 6 of 1963 and Criminal Miscellaneous Nos. 1022 and 1023 of 1962.

2. The case made out and as gathered from the said petition u/s 99-B of the Code of Criminal Procedure was that a search carried out pursuant to warrants issued under the order of Sub-Divisional Magistrate, Kulu, and recovery of articles Including a cyclostyle machine were unauthorised and Illegal. These averments were not opposed, in fact could not have been, for the said warrants admittedly had Issued under the provisions of Press Emergency Powers Act, 1931 which enactment clearly stood repealed by Act 56 of 1951 (The Press Objectionable Matters Act) which in itself subsequently was repealed by Act 36 of 1957 that came Into operation on some date In September 1957. Obviously, therefore, the impugned order directing Issuance of warrant and the recoveries following were void and Ineffective for the Press Emergency Powers Act at the relevant date e.g., 8th of June, 1962, when the warrants Issued, ha no legal existence.

3. The real question that arises, has been canvassed and requires determination however Is whether the instant petition u/s 99-B of the Code of Criminal Procedure subject-matter of Criminal Original No, 74 of" 1963 was at all

competent.

4. The perusal of that provisions of Section 99-A of the Code of Criminal Procedure which alone condition a petition u/s 99-B and reads:

99-A (1) Where?

(a) any newspaper, or book as defined in the Press and Registration of Books Act, 1867, or

(b) any document wherever printed, appears to the State Government to contain any seditious matter or any matter which promotes or is Intended to promote feelings of enmity or hatred between different classes of the. citizens of India or which Is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class, that, is to say, any matter the publication of which Is punishable u/s 124A or Section 153A or Section 295A of the Indian Penal Code, the State Government may, by notification in the Official Gazette, 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 thereupon 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 Sub-section (1) "document" includes also any painting, drawing or photograph, or other visible representation.

clearly indicates that the complained of action had to be-initiated at the instance of the State Government, notified in the Official Gazette stating the grounds of Its opinion and declaring the copy of every issue of the newspaper etc. in view forfeited. It further was to be in respect of seizure of issues of the newspaper etc containing repugnant matter as contemplated Under Sections 124A or 153A or 295A of the Indian Penal Code. The cause set out In the instant petition had nothing whatever to do with the matters comprising Section 99-A supra.

5. The Impugned search, as already observed, had been carried out under the provisions of the Press Emergency Powers Act which no longer was alive.

6. The learned Counsel appearing in support of the-petition in fact frankly and fairly conceded that the Instant petition u/s 99-B did not lie. Criminal Original No. 74 of 1963, therefore, must fail and Is-dismissed. We would however in view of the issuance of warrants leading to the impugned recoveries having been wholly unjustified, direct that the articles recovered be restored to the petitioner forthwith.

7. The other matters had been tagged on to Criminal Original No. 74 of 1960. Of them Criminal Writ No. 4 of 1963 Is a matter appropriately for decision by a

Single Bench. Criminal Writ No. 6 of 1963 is for ad" mission by a Division Bench. The other two petitions, namely, Criminal Miscellaneous Nos. 1022 of 1962 and 1023 of 1962 are also cognizable by Single Bench. These petitions, therefore, must be placed for disposal before the respective Benches as indicated.

Gurdev Singh, J.

8. I agree with the opinion of my learned brother, R. P. Khosl J., and the order proposed by him.

9. The petition (Criminal Original No. 74 of 1963), was directed to be heard by a Special Bench of three judges of this Court in accordance with the provisions of Section 99-C of the Criminal Procedure Code as it purported to have been made u/s 99-B of the Criminal Procedure Code. The petitioner complained that certain issues of the newspaper "Andhian" of which he is the editor, printer and publisher, were forfeited after having been seized In the course of a search (which according to him was illegal and mala fide) conducted by S.I. Partap Singh, Station House Officer, Kullu, on 9th June, 1962, and he prayed that the forfeiture of those documents be set aside.

10. It was only at the hearing before this Bench that It came to light that no order of forfeiture u/s 59-A of the Criminal Procedure Code had been made by the State Government. Thus no application u/s 99-B was competent as it Is provided therein that It Is only against an order of foreiture made u/s 99-A that the person having any Interest In any newspaper, book or other document has a right to approach the High Court for setting aside the order of forfeiture. On that short ground the petition must fail.

11. In his affidavit filed by the Deputy Commissioner, Oharamsala, in reply to the petition, it was admitted that a search of the premises of the petitioner Nawal Kishore was conducted by S. I. Partap Singh on 9th June, 1962, In the course of which he seized two news-sheets relating to Shri Daya Nand Dhir, Sub-Divisional Officr (Civil), Kullu, and various other articles, Including a syclostyle-machine and a Will. This search was carried out in pursuance of the search warrant, Exhibit PL, issued by the said Shri D. N. Dhir respondent on 8th Juno, 1962, under Sees. 16 and 17 of the Indian Press Emergency Powers Act, 1931. We, however, find that this warrant of search on the faco of it Is Illegal as the Indian Press Emergency Powers Act, 1931, under which the Sub-Divisional Officer purported to have issued it, was no longer on the Statute Book having been repealed by the Press (Objectionable Matter) Act, 56 of 1951 as far back as 22nd October, 1961. It Is surprising indeed that Instead of realizing their mistake and releasing the property which had been unlawfully seized, the respondents should have attempted to justify the search and the seizure of the petitioner"s property referred to above. Even though the present petition 1\$ not competent u/s 99-B of the Criminal Procedure Code, I am of the opinion that glaring illegality having come to cur notice, it is the duty of this Court to interfere, and in exercise) of its power u/s 561-A of the Criminal Procedure Code prevent the abuse of the

process of the Court and to secure the ends of Justice by calling upon the respondents to restore the property seized from the petitioner on the basis of the search warrant, Exhibit P-L, dated 18th June, 1962, and I would order accordingly.

12. The other connected matters do not require-, consideration by the Special Bench, and they may be. placed before the appropriate Benches.

P.D. Sharma, J.

13. I agree with the order proposed, by my learned brother R. P. Khosla, J., and have nothings to add.