courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 31/08/2026

(1980) 10 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1044 of 1980

Nemi Chand Singhvi and Others APPELLANT

Vs

D.S. Sandhu and Others RESPONDENT

Date of Decision : 06-10-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 132

Citation : (1980) WLN 364

Hon'ble Judges : K.D. Sharma, Acting C.J.;Kanta Bhatnagar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.D. Sharma, Actg. C.J.

1. This is a writ petition filed by Nemi Chand Singhvi, Surendra Chand Singhvi, Shyambehari Chand Singhvi and Omprakash Chand Singhvi under Article 226 of the Constitution of India for the following reliefs:

(a) the proceedings that were taken on 24-4-80 may be quashed, declared void and any order issued in this respect authorising to initiate proceedings of 24th April, 1980 may also be quashed;

(b) the subsequent proceedings in furtherance of the proceedings of 21th April, 1980 be quashed and declared void;

(c) the authorization letters dated 25th April, 1980 may be declared to have been issued without jurisdiction and be quashed;

(d) the proceedings taken against the petitioners on 25th and 26th April, 1980 in consequence of the authorization dated 25th April may be quashed;

(e) the proceedings that were taken on subsequent days until late night on 28th April, 1980 be quashed;

(f) the notice Anx. 5 dated May 9, 1980 issued by non-petitioner No. 2 Mr. R.K. Chopra under Rule 112 read with Section 132(5) be declared null and void and of no consequence;

(g) the Income Tax Department may be restrained from taking any further proceedings against the petitioners in furtherance of the proceedings taken against the petitioners so tar as any proceedings that may have been taken by the Department after 28th April, 1980 may also be quashed;

(h) the non-petitioners be directed to hand over all the articles and documents and the account books that were taken in possession in pursuance of the invalid and malafide raids;

(i) any other appropriate writ, direction or order be issued to the non-petitioners which my be deemed fit and proper by the Court in the facts and circumstances of the case;

(j) the writ petition of the petitioners be allowed and the total proceedings that have been taken or may be taken under the provisions of Section 132 may be quashed;

(k) costs of this writ petition may be allowed to the petitioners;

2. The writ petition arises under the following circumstances: The petitioners are partners of a registered partnership firm known as Om Electricals and Winding Stores, situated opposite to the Gol Building, Jalori Gate, Jodhpur. The said firm is an Income Tax assessee having registration No. Order 309/SSC whereas the petitioners Nos. 2 and 3 also are assessees under the Income Tax Act At about 11 a.m. on April 24, 1980, Shyambehari Chand Singhvi, petitioner No 3, was present at the shop of his firm. The Income Tax Officer, Shri Chopra, non petitioner No 2. came to the shop of the petitioners along with two Inspectors, namely. Shri Choudhary and Gurnani, non-petitioners Nos. 8 and 9 respectively. Shri Chopra and his two associates started searching the shop without letting know the petitioners the purpose of doing so. They forcibly obtained the signatures of Shyambehari Chand on a piece of paper and refused to give a copy thereof to the petitioner despite his repeated requests. During the search. Chopra and his companions asked Shyambehari Chand petitioner for cold drinks and other eatables and the petitioner had to comply with their wishes. After the search was practically over, the Income Tax Officer Mr. Chopra left the premises for some time leaving behind his two associates Inspector Gurnani, in the absence of Mr. Chopra, demanded a sum of Rs. 2500/-, as bribe from the petitioner for sparing the latter. The petitioner, however, did not accede to the demand and asked the Inspectors to demand bribe from his ether partiers, who were scheduled to arrive at the shop after some time. At about 1 p.m. the Inspectors asked for meals and Shyambehari Chand petitioner fetched meals from Pankaj Hotel. After the meals were served to the inspectors, Shri Surendra Chand, Singhvi, petitioner No 2, came to the shop directly from Pali. The Inspectors present at the shop told Surendra Chand that per instructions of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nemi-chand-singhvi-and-others-…

Income Tax Officer Shri Chopra they had demanded a sum of Rs. 2500/-, as bribe for winding up the survey and the search. Surendra Chand declined to give the bribe and told the Inspectors that there was no irregularity in the accounts of the firm and the latter were free to proceed against the petitioners in any manner they asked. By that time the Income Tax Officer Shri Chopra also arrived at the shop and enquired from petitioner No. 2 Surendra Chand Singhvi whether the latter bad satisfied the demands of the Inspectors. However, petitioner No. 2 refused to meet the demand. Mr. Chopra, thereupon, lost his temper and started threatening the petitioners with dire consequences in case the bribe was not given. Hs misbehaved with the petitioner and went to the extent of snatching money from the pocket of petitioner No. 2. In the course of such attempt he pushed the petitioner No. 2 and began to hurle vulgar abuses at him. The other two Inspectors also joined Mr. Chopra in manhandling the petitioners. This eventually led to a scuffle that ensued between the two petitioners on the one hand and the Inspectors on the other. A small crowd of persons assembled there and the two Inspectors ran away from the scene of the occurrence. Petitioner No. 2 tried to inform the police upon telephone but Mr. Chopra, non-petitioner No. 2, did not allow him to do so. The two Inspectors, who had run away from the shop, contacted the Impeding Assistant Commissioner of Income Tax Mr. Parekh non-petitioner No 6 on telephone, who sold the petitioners that he had rebuked Mr. Chopra for indulging in nefarious activities and directed to withdraw the raid party. Mr. H.C Parekh requested the petitioner No. 2 on telephone to patch up the matter immediately at d not to submit any first information report of the accident to the police but forget and forgive. Thereafter Mr. R.K. Chopra also apologised to the petitioners. The petitioners, therefore, did not lodge any first information report with the police against Mr. Chopra and the two Inspectors.

3. Despite all the assurances the Inspecting Assistant Commissioner of Income Tax, Mr. Parekh the non-petitioners Nos. 3 to 7 along with other officers of the Department and with armed police force arrived at the shop of the petitioner at Jalori gate at their residence at Chipon-ki-Ghati on April 25, 1980 and searched the entire shop and ire residence of the petitioner for several days, i.e. on 25th, 26th and 27th April, 1980 and seized documents and gold ornaments belonging to female adult members and minor members of the family Thereafter the non-petitioner No 2 Mr. R.K Chopra, Income Tax Officer, Special Survey Circle issued notice dated 9th May, 1980. Under Rule 112A read with Section 132(5) of the Income Tax Act, 1961, (hereinafter referred to as the Act,) requiring the petitioners to explain the nature of possession, and source of acquisition and the seized gold ornaments as per Annexure D. The petitioners have, therefore, challenged the actions so far taken by the Income Tax authorities on 24-4-1980 and onwards upto the 28th April, 1980 & the validity of the authorization letter issued by the Commissioner of Income Tax dated 25th April, 1980 and the notice dated 9th May, 1980 issued by Mr. Chopra requiring the petitioners to explain the nature of possession and the source of acquisition of the seized gold ornaments on several grounds mentioned in the writ petition.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nemi-chand-singhvi-and-others-…

4. In support of the writ petition, Mr. Shyambehari Chand, petitioner, has put in his affidavit. The writ petition came up for admission before the Vacation Judge on 14-5-1980 and notice was issued to the non-petitioners to show cause why the writ petition be not admitted. In response to the show cause notice, Mr. H.M Parekh, Advocate, appeared on behalf of the non-petitioner No 1. Nobody appeared on behalf of the other non petitioners despite service. On behalf of the non-petitioner No. 1 a written reply was filed to the show cause notice wherein all the allegations made against Shri R.K. Chopra and the two Inspectors Shri Asan Das Verma Gurnani in the writ petition were denied and it was alleged that the petitioners did not co-operate with the Income Tax authorities in conducting the survey and misbehaved with and insulted them. It was further alleged that the Commissioner of Income Tax had reason to believe in consequence of information in his possession that the petitioners would not produce books of accounts or other documents, which would be useful and relevant to the proceedings under the Act if for production of which notices were issued to them or might be issued to them. He further had reasons to believe in consequence of information in his possession that the petitioners were in possession of money, ballion, jewellery and ether valuable ornaments which had not been or would not be disclosed for the purpose of the Act and which were undisclosed income or property. The Commissioner of Income Tax, therefore, authorised Shri S L. Sebarwal and Shri N Das Income Tax Officers to search the residential premises of the petitioners and lo seize books of accounts, other documents, money, bullion or jewellery or other valuable articles which had not been, or would not be, disclosed far the purposes of the Act, He further authorised Income Tax Officer Shri R P. Sharma and R G Jain to search business premises of the petitioners and to seize any books of accounts, other documents, money jewellery etc. which may be found as undisclosed income or property of the petitioners. In the written reply it was averred that these authorised officers conducted search in a legal and fair manner and seized books of accruals and other documents and jewellery in accordance with the procedure laid down by law. It was further urged that the Income Tax Officer, Special Survey Circle, Jodhpur, had taken proceedings u/s 132(5) of the Act against the petitioners which are pending enquiry before him. The proceedings are perfectly legal and within the jurisdiction of the Income Tax Officer. If the petitioners afforded satisfactory explanation for the source of acquisition of the jewellery and valuables recovered from them, the property and the books of accounts, which were seized, will be released immediately. In short, it was alleged in the written reply that the writ petition is misconceived and untenable and is liable to be dismissed summarily. In support of the reply, Mr. G.L. Murthy, Income Tax Officer (Judicial) office of the Commissioner of Income Tax, Mr. R K Chopra, Mr. Asan Das Verumal Gurnani, and Asa Ram Choudhary have put in their affidavits. On behalf of the petitioners, a rejoinder to the written reply submitted by the Commissioner of Income Tax was filed along with the affidavit of Shyambehari Chand Singhvi in support thereof.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nemi-chand-singhvi-and-others-…

5. We have perused the record and heard Mr. L.M. Lodha, learned Counsel for the petitioners and Mr. H.M, Parekh at length at the stage of admission. Upon perusal of the record and hearing the learned Counsel for the parties, we are of the view that this writ petition is not worth admission aid is liable to be dismissed summarily in the following grounds.

6. The first submission made by Mr. L M. Lodha, learned Counsel for the petitioners is that the authorization issued by the Commissioner of Income Tax in favour of (he authorised Officers to search the business as well as residential premises of the petitioners and seize the books of accounts and other documents and jewellery etc was illegal, because the Commissioner of Income Tax had no information on the basis of which he could have reason to believe that the petitioners had in their possession ornaments and jewellery which were undisclosed property and that they would not produce or cause to be produced any books of accounts or other documents which will be useful for or relevant to any proceedings under the Act if summons or notices for their production had been or might be issued.

7. We have considered the above contention and found it untenable. It is no doubt true that the Commissioner of Income Tax while acing u/s 132(1) of the Act must have in his possession some information or material before be can take recourse to the drastic measure of issuing a search warrant. The expression ''has reason to believe'' used in Sub-section (1) of Section 132 of the Act clearly means that there must be grounds for the necessary belief and there should net be a mere suspicion. The standard or belief required is to be that of reasonable men but at the same time it cannot be lest sight of that the belief must be of the Commissioner of Income Tax and not of the court, meaning thereby that the court''s opinion cannot be substituted for his belief. The power to issue warrant of authorization by the Commissioner of Income Tax, however, can be challenged on the ground that the belief of the Commissioner has not been based in a particular case on any ground whatsoever or is founded on irrelevant grounds or on such grounds on which no reliable man can come to that belief. If the reasons for belief arrived at by the Commissioner is bonafide, in a particular case, this Court would be slow to interfere. Reference in support of our view may be made to Om Parkash Jindal and Another Vs. Union of India (UOI) and Others, H.L. Sibal Vs. Commissioner of Income Tax and Others, MANJU TANDON AND ANOTHER Vs. T. N. KAPOOR, DY. SUPDT. OF POLICE, AND OTHERS., and Income Tax Officer v. Seth Brothers (1969) 74 ITR 826 Examined in the background of the law discussed above, the warrants of authorization in this case do not suffer from any infirmity. According to the averments made by the petitioners in their writ petitions, the Commissioner of Income Tax had no credible information in his possession in consequence of which he could have reason to believe that the petitioners were in possession of undisclosed ornaments etc. and that he did not record reasons after applying his mind to the case while issuing the warrants and that he issued the authorization for search merely be the instance of Mr. R. K Chopra, Income Tax Officer and others for extraneous considerations. These

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nemi-chand-singhvi-and-others-…

averments were controverted in the written reply filed on behalf of the non-petitioner No. 1. which is supported by the affidavits put in by Mr. G L Murthy, Income Tax Officer (Judicial Officer) of the Commissioner of Income Tax, M . R.K. Chopra, Mr. Asan Das Verumal Gurnani, and Asa Ram Choudhary.

8 As a pertinent question arose for consideration whether the Commissioner of Income Tax had any credible information in consequence of which he could have reason to believe that the petitioners were in possession of un disclosed jewellery, ornaments etc , we asked Mr. H.M Parekh to produce the information on the basis of which the Commissioner of Income Tax had issued the warrant of authorization. Mr. R M. Parekh readily produced the record containing the information on the basis of such authorization for search was made by the Commissioner of Income Tax in the case. We carefully perused the information and permitted Mr. L.M Lodha, learned Counsel for the petitioners to go through it Having perused the information, we are of the view that it was sufficient for believing that the petitioners were in possession of ornaments, jewellery etc which were undisclosed properties Mr. L.M Lodha, learned Counsel for the petitioners, after perusing the record, filed an application on August 4, 1980,that what was produced by Mr. H.M. Parekh, learned Counsel for the non-petitioner No. 1 in this Court was not the information but was the record containing reasons recorded by the Commissioner for his belief for taking action u/s 132 of the Act against the petitioners. Mr. L M. Lodha, however, admitted in this application that he also we at through the reasons recorded by the Commissioner but they were not reasons by any stretch of imagination. L.M. Lodha, therefore, sought permission to cross examine non-petitioners Nos. 1, 2 and 6. We do not consider it necessary to allow Mr. L.M. Lodha to cross-examine toe non-petitioners No. 1, 2 and 6, because having gone through the record made available to us by H M Parekh, learned Counsel for non petitioner No. 1, we are satisfied that the information with the Commissioner of Income Tax was such as could induce any reasonable man to believe that the petitioners would not produce or cause to be produced books of accounts and other documents which will be useful or relevant for the proceedings under the Act if susummonses or notice were issued to them for their production and that the petitioners were in possession or ornaments, jewellery or other valuable articles or things which had not been, or would not be disclosed for the purpose of the Act. There is nothing on the record to show that the Commissioner of Income Tax was influenced by extraneous considerations or by ulterior motives in issuing the warrant of authorization. The petitioners, no doubt, alleged in their writ petition that they were insulted, and manhandled by Mr. R.K. Chopra and his two associates Mr. Choudhary and Mr. Gurnani while conducting proceedings of survey at their shop and that the Commissioner of Income lax issued the warrant of authorization later on at the instance of these officers and thus was influenced by the collateral or extraneous considerations in resorting to the drastic action contemplated by Section 132 of the Act. The above contention of the petitioners is not acceptable, because Mr. R K Chopra and his two associates, namely, Mr. As an Das Verumal Gurnani and Asa Ram Choudhary

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nemi-chand-singhvi-and-others-…

stated on oath in their affidavits that the allegations of bribe and manhandling and insulting the petitioners made against them are fake and baseless. There is no reason to disbelieve the affidavits of these Income Tax Office, especially when the petitioners did not choose to take any action against them by way of filing a complaint or making a first information report to the police about the alleged incident of Marpeet and demanding bribe that took place on April 24, 1960 at their shop. The reason given by the petitioners for not lodging the first information report of this incident with the police or for not making a complaint about it to the superior officers or to the Magistrate having jurisdiction is not convincing at all. The reason is that Mr. Parekh, Inspecting Assistant Commissioner of Income Tax persuaded the petitioners to forgive and forget all that had happpened and not to initiate any proceedings against Mr. R K Chopra and his two associates. If the petitioner were abused, insulted and manhandl d by Mr. R K Chopra and his two companions and if bribe of Rs 2500/-, was actually demanded by these officers from them, it was a very serious matter and the petitioners surely would not have kept mum merely because Mr. Parekh, Inspecting Assistant Commissioner of Income Tax persuaded them to keep quiet and would have surely lodged a first information report about this incident with the police or at least would have lodged a complaint with the superior officers of the Income Tax Department or with the Magistrate having jurisdiction. The Commissioner of Income Tax recorded the reasons for issuing the warrants of authorization and we find no force in the contention of Mr. L.M, Lodha that the authorization issued by the Commissioner of Income Tax in favour of the authorised officers to search business as well as residential premises of the petitioners and seize books of ace turns and other documents or ornaments etc. was illegal on the ground that he had no information in his possession on the basis of which he could have reason to believe that the petitioners bad in their possession books of accounts or other documents which they would not produce if notice for their production were given to them and were further in possession of the jewellery and ornaments and other valuable things which were undisclosed properties.

9. Another contention put forward by Mr. L M Lodha learned Counsel for the petitioners is that notice dated May 9, 1980. issued by the non-petitioner No. 2 Mr. R K. Chopra, Income Tax Officer, Special Survey Circle. Jodhpur, to the petitioners under Rule 112A read with Sub-section (5) of Section 132 of the Act requiring the petitioners to explain the nature of possession and the source of the acquisition of the seized ornaments is bad and invalid, because it has been issued in pursuance of the proceedings dated April 24, 25 and onwards which proceedings u/s 132 of the Act were malafide. It was further urged that the authority issuing this notice was prejudiced and biased against the petitioners and, therefore, no independent inquiry contemplated u/s 132(5) of the Act could be expected from him. The above contention has no force, because under Sub-section (5) of Section 132 of the Act, a provisional summary inquiry is made in order lo determine how much of the seized jewellery, ornaments or other

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nemi-chand-singhvi-and-others-…

valuable things can be retained to meet the tax liability of the assessee. In this inquiry, the undisclosed Income including the income from undisclosed property is estimated in a summary manner to the best of the judgment of the Income Tax Officer on the basis of the materials available with him and the amount of the tax on the income so as essesed is calculated in accordance with the provision) of the Act together with the amount of of the interest payable and the amount of the penalty imposable in accordance with the provisions of the Act. If the petitioners succeed in explaining the source of acquisition of the ornaments, seized from them, and if the Income Tax Officer comes to a conclusion that ornaments seized were not undisclosed property, he shall forthwith release them to the petitioners from whose custody they were seized. As we have already held above that the petitioners could not show that the action of the Commissioner of Income Tax in authorising the Officers of the Income Tax to search and seize books of accounts and other documents and ornaments from the possession of the petitioners was not without jurisdiction and was not without there being actual reasons for believing about the existence of conditions mentioned in Clauses (b) and (c) of Sub-section (1) of Section 132 of the Act, the subsequent initiation of proceedings under Sub-section(5) of Section 132 of the Act cannot be said to be void or invalid or without jurisdiction, because the petitioners will have reasonable opportunity to being heard and of explaining the source of their acquisition of the gold ornaments which were seized from them, during the inquiry initiated against them under Sub-section (5) of Section 132 of the Act.

10. As for the contention that Mr. R.K. Chopra, Income Tax Officer will not conduct a fair and imparital inquiry, because of the alleged quarrel that ensued between him and the petitioners on April 24 1980, in the course of survey proceedings or in the course of the search, it may be observed that the proceedings cannot be quashed on this ground, especially when the apprehensions of the petitioners in this regard have no sound basis, because Mr. R.K. Chopra in his affidavit clearly denied the allegations made against him in the writ petition and stated on oath that he did not demand any Illegal gratification from Shri Shyambehari Chand or Surendra Chand, nor did he ask his Inspectors, namely, Mr. Asan Das Verumal Gurnani and Asa Ram Choudhary to demand any bribe from them. Shri Asan Das Verumal Gurnani and Shri Asa Ram Choudhary in their affidavits also have denied the allegations made against them by the petitioners in the writ petition and the petitioners admittedly did not lodge a report of the alleged incident with the police and did not make a complaint thereof to the superior officers of the Income Tax Department or the Magistrate having jurisdiction. Likewise the learned Counsel for the petitioners could not point out any irregularity or illegality in the conduct of the search made in pursuance of the authorization Warrant issued by the Commissioner of Income Tax.

11. Consequently, we find no force in the writ petition and dismiss it summarily.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/nemi-chand-singhvi-and-others-…