

(1997) 10 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 4926 and 17700 of 1996

Sadrudin Javeri

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision : 17-10-1997

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 100, 102, 165, 173, 173(2)
Income Tax Act, 1961 — Section 132
Penal Code, 1860 (IPC) — Section 182, 211, 381, 403, 406
Wealth Tax Act, 1957 — Section 37

Citation : (1998) 4 ALD 113 : (1998) 1 ALD(Cri) 943 : (1998) 1 ALT 529 :
(1998) 2 RCR(Criminal) 535

Hon'ble Judges : P.S. Mishra, C.J.;V. Raja Gopala Reddy, J

Bench : Division Bench

Advocate : Mr. S. Satyanarayana Prasad, for the Appellant; Adv.-General, for the Respondent

Judgement

P.S. Mishra, CJ

1. Petitioner Sadrudin Javeri and another have moved this Court under Article 226 of the Constitution alleging inter alia that the respondent Police Officials have violated their right under Article 21 of the Constitution of India by entering into his residential house in Plot No.330, Road No.25, Jubilee Hills, Hyderabad, seized various articles, falsely registered a case in Cr.No.26/96 on the file of P.S., CCS, Hyderabad and committed various atrocities for which he has sought adequate compensation. The petition, though in a haphazard manner, discloses the following facts :

Petitioner was appointed as the Principal Advisor and Head of the Managing Committee called Sharfe-Khas of the properties by the ex-Nizam of Hyderabad in August, 1990. Certain events, however, brought in some disenchantment. Nizam severed his relations with him (the petitioner) and issued a letter dated 27-5-1995 withdrawing the powers which he had given to him (the petitioner).

There has been some dispute, however, with the Taj Group of Hotels about which some details are stated in the petition and which appear to have given occasions for some communications with the police including one by Nizam and it is alleged on the 4th of February, 1996 while the petitioner and his wife were at Delhi the respondent police officials along with about 60 police men, all subordinates to the third respondent, according to the petitioner, "raided my residential house at Jubilee Hills bearing Plot No.330, Road No.25". According to the petitioner there was no formal search warrant. No authority were shown to his staff at his house and entire premises were ransacked from 10 a.m. for about 13 hours. According to the petitioner not only that, staff were manhandled, intimidated and threatened, the officials and men accompanying them locked his three years' old son in a room for over 6 hours alongwith a neighbour's child. Following the above mentioned raid at the premises of the petitioner the respondents registered the above mentioned Cr. No.26/96. The petitioner moved for anticipatory bail before the Metropolitan Sessions Judge and has since been enlarged on bail. Petitioner has further stated that on verification and enquiry and after obtaining the records pertaining to the above crime it has transpired that the 6th respondent herein is shown as the complainant. He has added,

"The Deputy Commissioner of Police, DD, Hyderabad, registered the case and the Inspector of Police (Administration), CCS, DD handed over the file to the 6th respondent who is also the complainant for investigation. The 6th respondent himself is also appointed the Investigating Officer, and prepared some search warrant on 5th February, 1996 and showed as having raided the houses of Mr. Ram Bharaos Gupta and my house at 8 a.m. and 12.00 noon on 5-2-1996 respectively. All this is concocted. In fact, the press reports and my press release amply show that the actual raid was conducted illegally by respondents 5 and 6 under the leadership of respondent No.4 alongwith the active connivance of the other police officials, who are impleaded herein, on Sunday the 4th February, 1996 itself. The 4th respondent has been indulging in this sort of activities against me in the affairs of the Nizam of Hyderabad since a long time. He seemed to be having vested interests and he seems to be acting in conspiracy and collusion with people having vested interests. The 4th respondent herein was actively involved in the entire raid of my house. From the record manipulated by the respondent police officials, in the said crime they have purposely screened his name, as he has neither jurisdiction nor power. Similarly earlier also the 4th respondent had interfered with the affairs of the private estate of the Nizam. At the instance of some rival jewellers who must have paid large sums of moneys for him to undertake and supervise at the initial stages the criminal act described here below. On behalf of the Nizam the petitioner had negotiated for sale a pair of Satsuma Vases belonging to him with the Piramal family of Bombay. However, when the representative of the said Mr. Peeramal, Mr. Barkat Ali, being given the custody of the se vases with proper documents, i.e., Gate Pass duly signed by the Palace Officer and the vases were being packed at the godown of P.N. Writer & Co., the 4th respondent alongwith his cronies raided the said premises. At that

time he was the Deputy Commissioner of Police, SIT (Communal). Even at that time, he had no jurisdiction to interfere in this matter. In spite of showing the proper documentation, the 4th respondent and his subordinates beat them mercilessly and took them to the Police Control Room and they were held there for some time. My wife who had delivered a baby boy 40 days prior to this incident, was made to suffer for nearly ten days of terror in the hands of the 4th respondent and his coterie. I being absent from India was forced to take an Anticipatory Bail. False and baseless FIR were issued with my wife, Barkatali, Pirali and myself as the accused. My wife and others were arrested and released on bail. The torture, inhuman act of Goondaism, the sadistic beating of Barkat Ali and Pir Ali who are both respected businessmen, without any rhyme or reason shows the callous and corrupt character of the 4th respondent. If this act had been performed by any other person not hiding under the guise of a Police uniform, he could have been charged for criminal offences."

The petitioner has alleged that it was a reign of terror, a reckless act wanton and deliberate which was further aggravated by wide publicity of the alleged search and seizure of several valuables worth crores of rupees from the premises of the petitioner. The Commissioner of Police personally gave statements as though antiques which were recovered from the house were of the estimated value worth ten crores of rupees and in the items seized they introduced a gun and a liquor bottle which never belonged to him and although cash amount of Rs.3,50,000/- kept in a small brown bag in the walk-in-wardrobe was removed, the same was not shown to have been found in the house of the petitioner.

2. The petitioner has also moved an application u/s 482 of the Code of Criminal Procedure being MP No.649/96 to quash the said crime. It has however, been dismissed as not maintainable.

3. The third respondent has filed counter-affidavit stating that the 5th respondent has investigated the case and he is not involved personally in the raid conducted on the petitioner's house and the seizure of the articles. He has, however, stated in the particular that petitioner's version about undue publicity of the seizure of the antiques from his house is inaccurate and incorrect. He has stated that he did not give any press note for publication and "the publicity in the press was given by press itself in view of the importance of the case of seizure of antiques of high value. I have not made any allegations against the petitioner in the press conference. The press conference was actually called in connection with the seizure of black money of about Rs.53 lakhs as a result of joint operation of police and Income Tax Department. In that connection a press note was issued. While the pressmen were present at my office in that connection, the articles seized in the search conducted on the date at the premises of the 7th respondent were brought to the Deputy Commissioner of Police, Detective Department Office. The press people who had noticed the available articles were curious and pressed for information about them. Then I came down to see the seized articles and the press people followed me." The 3rd respondent has further added :

"....Whatever the press has published in different Newspapers is their own version and it is not the version given by me to the press. When I received the information about seizure of antiques from the house of the 7th respondent and that the Investigating Team had proceeded to the petitioner's house, I suggested to the 4th respondent that it is better that he should go and supervise the search and seizure operations at the petitioner's house as it may not be desirable to leave the whole matter of seizure of very valuable articles and bringing them with care and caution to the officials of lower rank. Accordingly the 4th respondent went to the place of the petitioner where search and seizure of the antiques was taking place. I further submit that after some more time after the seizure of the antiques from the petitioner's house, they too were brought to the office of the Deputy Commissioner of Police, Detective Department. Some press men were still there when I saw those articles in the Deputy Commissioner of Police, DD's room. Except mentioning the fact of seizure to the press men who happened to be present there, I did not issue any press note and the press clipping submitted to the Court by the petitioner also does not say that I issued any official press note. Except one or two newspapers who wrongly mentioned about a press conference relating to the seizure of the antiques, the other local newspapers did not mention that I held any press conference relating to the seizure of the antiques from the petitioner's house. I also submit that the allegation made in paragraph 3 of the affidavit that I issued a threat at the press conference as seen from the press clipping of "The Pioneer" is incorrect. The petitioner appears to have given such information to The Pioneer".

The 4th respondent has stated that allegations of the petitioner against him are untrue and are concocted for the purpose of the writ petition and added :

"I have never met the petitioner, his wife or other members of his family. ...The petitioner's premises were not searched on 4-2-1996. On 5-2-1996 I and Deputy Commissioner of Police, Detective Department visited the premises on the instructions of the Commissioner of Police. By that time, the search and seizure procedures were concluded. After generally satisfying myself that the seizure operation had been conducted properly, I gave instructions for careful handling and safe of the Deputy Commissioner of Police, Detective Department and left after a short time. We did not even see the child, if indeed it was there on the premises.""

The 5th respondent who is the Inspector of Police, Team-III, CCS, Detective Department, Hyderabad has filed the main counter-affidavit and stated that the Nizam had addressed a letter through his General Power of Attorney on 9-9-1995 to the Inspector-General of Police (Criminal Investigation Department) complaining that the writ petitioner and his associates had unauthorisedly removed with dishonest intention valuable items of property from the palaces of the Nizam and committed the offences of cheating, criminal misappropriation and criminal breach of trust. A request was made that action be taken against the writ petitioner and his accomplices under Sections 403, 406 and 420 IPC. Since

no action was taken by the then Inspector General of Police (CID), the Nizam addressed a letter to the Hon"ble Chief Minister on 7-11-1995 complaining about the failure to take action on his complaint and mentioning that 63 invaluable properties worth about Rs.2.3 crores had been clandestinely removed from his palaces. He has reiterated his complaint and sought necessary action under Sections 403, 406 and 420 IPC, and said that the Hon"ble Chief Minister directed the Director-General of Police to take prompt action in the matter. The Director-General of Police in turn communicated the Government later through his memorandum dated 26-12-95 requiring that action should be taken within 15 days. The matter was thus entrusted to the Deputy Commissioner of Police, Detective Department and is under investigation." The respondent has stated that he has come to know of the above facts after the filing of the writ petition and however, the search of the petitioner's premise's and seizure of certain articles was not consequential to the complaint of the Nizam or any intervention of the so-called Taj Group. He has however, stated about the cases involving the Taj Group of Hotels and events leading to those cases in some details. Relevant facts therein are as under :

"On 4-2-1996, I received confidential credible information that some persons connected with the Bombay blast case were put up in room No. 210, Sai Prakash Hotel, Nampally and also that attempts were being made to sell very valuable stolen articles of antique value and smuggle them out of the country. It is a well-known fact that many articles of great value have been smuggled from Hyderabad to other countries for over several decades. In some cases, the accused were apprehended. A team of 10 police personnel, including one Inspector (this respondent) and two Sub-Inspectors and 7 policemen proceeded to the Hotel.

After arriving at the hotel, we verified from the reception and were informed that rooms Nos.209 & 210 were occupied by two persons who had arrived from Bombay. We noted their names and proceeded to the rooms. We entered room No.210, and found five persons, two persons belonging to Bombay and the rest belonging to Hyderabad, engaged in a discussion. One golden cot leg studded with precious stones was found on the table and was being examined by the Bombay persons. The identity of the persons was ascertained as follows : (1) Mohammed Khaleel s/o Moinuddin Ahmed, aged 30 years, occupation : Real Estate business, r/o H.NO.19-2-137/D/22, Ramnaspura, Kalapather, Hyderabad; (2) Mohameed Afsar, s/o Mohammed Pasha Miyan, aged 27 years, Occ : Real Estate business, r/o Tadbun, Kalapather, Hyderabad; (3) Sultan Ahmed Ayubi s/o Mohd Ghousuddin, age 50 years, Cine Artist in Hindi movies, r/o opposite Hyderabad Race Course Members gate, registration office room No.3, Old Malakpet, Hyderabad; (4) Khan Abdul Rub s/o Abdul Khader, aged 49 years, occ : Diamond and jewellery business, r/o H.No.5-17, Nafeez Chambers, LT Marg, Crawford Market, Bombay-1; and (5) Hatim Taher Jamnagarwala s/o Taher, aged 31 years, Occ: business of handicraft and furniture and glass r/o flat No.905, Sarkar Towers, Mazgoan, Bombay-10.

These five" persons were questioned. After some initial resistance, the story that emerged from their answers was as follows :

One advocate A. Shireesh had contacted Mohd. Khaleel informing him that Ram Bharose Gupta, a jeweller carrying on business under the name and style of M/s. Tibarumal and Sons had four diamond studded gold cot legs worth Rs.68 lakhs each for sale. Mr. A. Shireesh asked him to secure a purchaser and offered 10% commission. Mr. Mohd. Khaleel then contacted his friend Mr. Mohd. Afsar, a person having contacts in Bombay. He, in turn, introduced him to Mr. Sultan Ahmed Ayubi, who had worked as a cine artiste and resided in Bombay for nearly 30 years. Mr. Ayubi got in touch with Khan Abdul Rub, a jewellery merchant of Bombay. Then Khan Mohammed Rub accompanied by his friend Hatim Taher Jatnnaganvaia, another businessman, arrived from Bombay and were received at the Airport by Mohd Khaleel, Mohd. Afsar and Sultan Ahmed Ayubi and put up in rooms Nos.209 and 210 in Sai Prakash Hotel, Nampally, Advocate A. Shireesh had come at 2 p.m. on 4-2-96 and handed over one gold cot leg studded with precious stones and left. The Bombay businessmen were examining the articles. At that time police entered.

I then sent my Sub-Inspector to bring the advocated. Shireesh. The S.I. telephoned after some time that Shireesh had stated that the gold cot leg was given to him by Ram Bharose Gupta and he was informed by Gupta that this and several other articles had been given to him by S.H. Javeri and he further inferred that he was bringing Shireesh along. I immediately contacted my superior officer Deputy Commissioner of Police, Detective Department and suggested that as the proceedings at the hotel were likely to consume some time, a suitable force should be urgently deputed to guard the houses of Raw Bharose Gupta and S.H. Javeri. Deputy Commissioner of Police, Detective Department gave instructions and five policemen each were posted at the two premises on guard duty with strict instructions to ensure that no valuable articles were taken out of the premises. They were however, instructed not to interfere with the free ingress and outgress of people into the house.

Thereafter I recorded the statements of (1) Mohd. Khaleel, s/o Moinuddin Ahmed, aged 30 years, Occ : Real Estate business r/o H.No.19-2-137/D/22, Ramnaspura, Kalapather, Hyderabad; (2) Mohd. Afsar, s/o Mohd. Pasha Miyan, age 27 years; Occ : Real Estate business r/o Tadbun, Kalapather, Hyderabad; (3) Sultan Ahmed Ayubi s/o Mohd. Ghousuddin, aged 50 years Occ ; Cine Artiste in Hindi movies, r/o opposite Hyderabad Race Course Members gate, registration office room No.3, Old Malakpet, Hyderabad; (4) Khan Abdul Rub, s/o Abdul Khader, aged 49 years, Occ : Diamond and jewellery business, r/o H.No.5-17, Nafeez Chambers, L.T. Marg, Crawford Market, Bombay-1 and (5) Hatim Taher Jatnnaganvaia s/o Taher, aged 31 years, Occ : business of handicraft and furniture and glass r/o Flat No.905, Srakar Towers, Mazgaon, Bombay-10, in the presence of the Panchas (1) Sri Syed Ali Saber and (2) Sri Mohd. Ghose and arrested (1) Mohd. Khaleel (2) Mohd. Afsar, (3) Sultan Ahmed Ayubi, (4) Khan

Abdul Rub and (5) Hatim Taher Jamnagarwala and seized the golden cot leg. Mr. Shireesh was brought to the hotel by then and his statement was also recorded.

Thereafter I took the accused and the seized property of the Central Crime Station, issued arrest reports and made entries in the relevant records. The arrested persons were lodged in lock-up and later remanded to judicial custody next day. It was late in the evening by then and according to the police manual, the search operation to be conducted in the houses of Ram Bharose Gupta and S. H. Javeri had to be postponed to the next day. However, I thought it necessary to examine Mr. Ram Bharose Gupta. I, accordingly, examined him and recorded his statement. He admitted that he had one more gold cot leg and several other valuable articles, which were all entrusted to him by S.H. Javeri for sale. He further stated that several other articles of great value, which had been removed from the palaces were available in S.H. Javeri's house. I informed him that regular search and seizure operations would be conducted next morning and cautioned him that no valuable articles should be removed from his house.

I, as the investigation officer, continued my investigation and the residence of Sri Ram Bharose Gupta at Banjara Hills, Hyderabad was searched on 5-2-96 at 8 a.m., in the presence of panchas as per the procedure u/s 165 Cr.P.C. I seized (44) items of property of a value of about Rs.4 crores 21 lakhs which are suspected to be stolen property. The search party consisted of 13 persons. After concluding the search at Ram Bharose's residence, the same search party went to the house of S.H. Javeri at plot No.330, Road No.25, Jubilee Hills along with panchas and started the "search at 12 noon on 5-2-96. The search was conducted as per the procedure laid down by law in the presence of panchas and the staff member of S.H. Javeri by name Sri Mohd Abdul Quddus, I seized (42) items of property of the value of Rs.3 crores 45 lakhs including one unlicensed Colt gun of U.S.A. make and a Champagne liquor bottle (full) and some loose liquor in an antique bottle. The petitioner S.H. Javeri is also punishable under Arms Act and Excise Act. These were the circumstances in which the petitioner figured as accused 6 in the above crime. No case was registered directly against Sri S.H. Javeri on the basis of any specific complaint by any person. The allegation of interference by police in a private civil dispute existing between Sri S.H. Javeri and Nizam's Aides is baseless. The action of the police was strictly according to law and procedure.""

The counter affidavit of the 5th respondent gives details also of some of the earlier incidents about which petitioner has made serious grievances and made allegations against the police, particularly the 4th respondent.

4. What is, however, relevant according to us is the controversy which in course of the hearing of the petition has crystalised to the following specific questions :-

1. Whether as alleged by the petitioner the First Information Report has been fabricated to show that the search and seizure were effected on 5-2-96 although that had been done on 4-2-96 and the fabrication in the records, the

respondents have done only to create a link with some information allegedly received leading to the search in a hotel and arrest of (1) Mohd Khaleel (2) Mohd Afsar (3) Sultan Ahmed Ayubi (4) Khan Abdul Rub and (5) Hatem Teher; and

2. Whether the real cause of the alleged action of the respondents of the search and seizure of the house and the properties in the house of the petitioner were caused on account of the alleged complaint by the General Power of Attorney Holder of ex-Nizam - Mir Barkat Ali Khan against the petitioner.

On 19-9-1996 the Court directed as follows :

"Having considered the matter in all relevant aspects and also being advised at the Bar by the learned Counsel for the Respondents 4 and 5, we avoid any mention of even the facts in the instant order which would reveal our prima facie satisfaction about the correctness or otherwise of the allegations in the writ petition, but indicate at this stage that answer to the above two questions may either wholly discredit the case of the respondents or establish that they have acted within the bounds of law and bona fide and the petitioner has wrongly alleged that he has been subjected to harassment and humiliation by the respondents for which he is entitled to compensation. It is agreed at the Bar that the Court can seek investigation into the above by an independent agency for its satisfaction before any order is made in the writ petition and the name of Sri H.J. Dora, Additional director General of Police, CID, Hyderabad is suggested as the person who should be entrusted with the work. We accordingly appoint Sri H. J. Dora, Additional Director General of Police, CID, Hyderabad to investigate and report with all relevant materials on the two questions, as above, and in course of the investigation, verify the truth or otherwise of the statements in the writ petition, counter affidavits and other materials including affidavits of certain persons/witnesses filed on behalf of the respondents as well as petitioner. Sri Dora shall also verify and investigate into the genuineness of the document which is kept in the sealed cover and photo copies of which have been made available to the learned Counsel for the parties. The Registrar (Judl.) is directed to hand over the cover with the document to Sri Dora along with the copies of the relevant records. Sri Dora shall report to the Court, as directed above, within six weeks.

We are informed that an application for relaxation of bail conditions has been filed on behalf of the petitioner. Let said petition be posted for necessary orders before the appropriate Bench."

The Additional Director General of Police (CID) (now Director General of Police) submitted his report to the Court upon which on 18-11-96 the Court passed the following order.

"The Additional Director General of Police, CID, Sri H. J. Dora has submitted the report concluding, inter alia,

(1) From the facts and circumstances and documentary evidence collected, it is

evident that the City Police Officers raided the house of Shri S. Javeri on 4-2-1996 and collected some articles but not on 5-2-1996 as indicated in the Case Diary.

(2)(a) The complaint given by the G.P.A. of ex-Nizam in September, 1995 coupled with the activity of the servant of Sri S. Javeri in packing the material seems to be the probable provocation for the raid on 4-2-1996.

(b) The sequence of events and raid of Shri Ram Bharose Gupta's house dilutes the plea of mala fides of Shri S. Javeri.

(3) The circumstances and expert evidence clearly establishes that the letter produced by Shri S. Javeri before the Hon'ble Court is signed by Shri Jaya, Rao, Inspector probably when he visited the Sri S. Javeri's house on 4-2-1996."

The Additional Director General of Police, CID, has indicated that he has examined witnesses, that he has collected documentary evidence and that in course of the same he has found -

1. A case in Cr.No.26 of 1996 was registered on 4-2-1996 at about 6 p.m. However, the dated was put on 5-2-1996 and again rubbed off as 4-2-1996 in the original C.D. file given to us. However, in the Court copy it was shown as 5-2-1996 only;

2. In the F.I.R., the Inspector mentioned that on credible information that a deal is going on for the purchase of antiques in a room in Sai Prakash Hotel, he proceeded immediately at 3.15 p.m. on 4-2-1996. But in the final report, it is mentioned that about 1400 hrs. on information that some accused involved in Bombay blast case were staying in a room of Sai Prakash Lodge, Shri Jaya Rao visited the lodge and arrested them;

3. As per the seizure list apart from the recovery of the alleged antiques from the house of Shri S. Javeri, it is noticed that the police party also recovered one old fire arm of 1883 vintage and also a full bottle of Champagne. It is interesting to note that in the seizure Memo on page 2, the weapon is put as item No.4 at the bottom of the page. Item No.5 a full bottle of champagne is indicated above the weapon. In page No.3, the end page, again item No.5 continued upto item No.23 indicating all the articles seized in the house. It is very clear that these two items viz., the long fire arm and the liquor bottle are interpolated and not part of the original seizure report. A change in the sequence of numbers clearly indicates that they seized only 42 whereas if we include these two, it becomes 44 items;

4.-----the letter written by Sri Jaya Rao, Inspector duly signed by him, addressed to the Director, Archaeology Department, Government of A.P. in this letter, the Inspector mentioned that they have raided the premises of Shri S. Javeri on 4-2-1996 and they found some antiques.... This letter was sent to the Forensic Science Laboratory along with the admitted and sample handwritings of the Inspector Sri Jaya Rao and the report from the F.S".L. indicates that the letter was signed by Shri Jaya Rao;

5.-----the Commissioner of Police had sent a letter to the C.M's peshi on 15-3-1996 stating that enquiries on the complaint of Shri Mohd Asadullah revealed that the special investigation team of City Police, Hyderabad raided Shri S. Javeri's house at Jubilee Hills and also his associate-cum-receiver residence M/s Ratna Gupta, Ram Bharose Gupta and Vinay Gupta on 4-2-1996 at Road No.10, Banjara Hills.

There are other specific informations based on materials collected by the Additional Director-General of Police, CID which are detailed in the report from which the Court can reasonably think that respondents have not responded honestly and correctly to the allegations in the writ petition in their respective counter affidavits and prima facie, allegations in the petition stand corroborated by the report of the Additional Director General of Police, C.I.D.

Before, however, any specific order in this behalf is issued, only to afford opportunity to the respondents to look into such materials which are mentioned in the report of the Additional Director General of Police, CID, as prayed for, we direct that parties can inspect the materials and the records in this behalf as produced before us by the Additional Director General of Police, CID, and obtain copies of the report and/or any other document or material, if so advised, within one week.

The Registry is directed to issue copies in course of the day, if any such application is made.

Before we part with this order, we must record that Additional Director General of Police, CID, has stated in the report that he tried to examine Sri V. Appa Rao, Commissioner of Police, Hyderabad to clarify certain points pertaining to the investigation of the case, but he could not give him (the Additional Director General of Police, CID) time in view of his busy schedule with the visit of President and other V.I.Ps. He has separately informed the Court that he has asked the Commissioner of Police to send the clarifications, if any, directly to the Court. The Commissioner of Police shall be well advised to carry out the request of the Additional Director General of Police, CID.

Put up after one week."

5. W.P.17700/1996 is an off set of the above. The same has, however, assumed importance because it was only on the information that properties worth Rs. 1.2 crores were seized from the premises of the petitioner that the Taxing Authority served notice upon the Investigating Officer who allegedly had the custody of the seized valuables u/s 132A Of the Income Tax Act and obtained possession and custody of the allegedly seized valuables from the house of the petitioners. Before, however, we would deal with the case whether the seizure u/s 132A of the Income Tax Act by the respondents in W.P. No. 17700/96-of the properties from the alleged custody of the police is legal and valid, we may state that the so called investigation has ended in submission of a final report u/s 173(2) of the Code of Criminal Procedure, 1973 by the 4th respondent herein before the XXI

Metropolitan Magistrate stating that no offence either u/s 381 IPC or under Arms Act or under Antiques and Art and Treasures Act are made out and in view of the above a memo has been filed on behalf of the petitioners restricting the relief in the writ petition to directions to the respondents to return to them the articles and cash which were seized in connection with Cr.No.26/96. The petitioners, however, have pressed for compensation and a direction to return Rs.2 lakhs 50 thousand allegedly seized from their premises as well as the articles excluding such articles which, according to them, were illegally introduced in the list of the seized articles from the premises of the petitioners.

6. It is relevant also to extract the seizure list which includes articles described as antique, precious items, which are as follows:

"1. Candelinder white 8 lamps

2. Flower vases - 2

3. Chainwala Handles - 2

4. Designed white plate in from 2 lamps

5. Champagne liquor bottle full

6. Colts PTFA MFg. Co. Hartford CT USA painted on May 28 Sep 1883 May 26, 85, June 1586 Feb 22, 86 Butt No.58376

7. Broken bidri old catora

8. One Holy Quaraana in gold writings

9. 2 alam panjars

10. Copper bowles 2 incirbed in Arebi

11. used up one whisky bottle with little whisky

12. wall braket green colour 1

13. 4 round shaped pot tyed flower vases

14. one flower vase

15. one dog

16. 3 lamp covers

17. 12 lamp shades

18. 10 table lamp stands

19. 3 kerosene lamps

20. loose parts of shadloer

21. one decorated flower basket

22. one glass fitted trolley
23. porcelene dish 3
24. 2 plates of dish
25. one cigar pipe
26. 3 glass stappers
27. cup with holders - 5 German silver
28. Table decorate item
29. Brown cup with cover of porcelene
30. One small lamp
31. Two lampshirts
32. various types of porcelene toys
33. candle stand
34. flower dish - 2
35. 2 scent bottles
36. sadlier loose pots
37. Bidiri hooka
38. One spoon, fork, peacock box, one shank type box
39. kerosene lamp big
40. Brass statute of male and female
41. lamp of baggi
42. lighter
43. small spones of german silver -4
44. 3 empty wine bottles."

7. We have avoided entering into issues how the first petitioner S.H. Javeri and Nizam fell out, whether there has been any role of any person belonging to Taj Group of Hotels, whether there has been any previous occasion when the 4th respondent acted beyond his powers and authority as a Police Officer and/ or an other person acted in violation of law and decided to confine to the question whether there is any violation of the petitioners" right under Article 21 of the Constitution by the alleged search of the premises belonging to them by Respondents 3 to 5 and others, whether as alleged by the petitioners a false case has been registered which has since been reported to be "not true" in the final report u/s 173 of the Code of Criminal Procedure, 1973 and whether the

respondents have made themselves liable for compensation or at least return of all the articles/properties seized from the house of the petitioners and allegedly handed over by them to the Income Tax Authorities.

8. There are some additional affidavits, some counter affidavits, reply affidavits, additional counter affidavits, newspaper cuttings and materials on the one hand to show that the search and seizure were effected as alleged by the petitioners on the 4th of February, 1996 and on the other hand as alleged by the 5th respondent following the trial after the search of room Nos.209 and 210 in Hotel Sai Prakash at Nampally and the seizure of a gold cot leg studded with precious stones which occurred on the 4th of February, 1996, and on the other hand as alleged by the 5th respondent following the trial after the search of room Nos.209 and 210 in Hotel Sai Prakash at Nampally and the seizure of a gold cot leg studded with precious stones which occurred on the 4th February, 1996, search and seizure of the residence of Sri Ram Bharose Gupta and Sri S.H. Javeri were effected on 5th February, 1996 including that of one Mr. Akbaruiddin Owaisi s/o Sultan Salauddin Owaisi, M.P., in support of the letter statement of facts, which have ceased to be relevant in our view for the simple reason that we find no reason to discredit the report of the Additional Director General of Police from which there is no other inference possible except to hold that petitioners' allegations that search and seizure were effected in their house on 4th February, 1996.

9. Learned Counsel for the 4th respondent in particular has made serious endeavours before us to persuade us to test the veracity of the said report in the light of the materials on the record but when we see the materials we have good reasons to concur, of course without holding conclusively, that the petitioners' case that police officials' actions in their house commenced on the 4th of February, 1996 has overwhelming support from the newspaper reports about the police action and if there is not much evidence of harassment and intimidation to the staff in the house of the petitioner and locking of the child in the room that would not in any manner suffice to hold that the police party entered the petitioners' house only on the 5th of February, 1996 and not as alleged by the petitioner on the 4th of February, 1996 and whether the third respondent, the Commissioner of Police, publicised the police action and alleged seizure as alleged by the petitioner or not, the police action did receive sufficient and wide publicity and the petitioners were projected as thieves and violators of law in the newspapers. The first petitioner in the meanwhile on 13-2-96 received notice sent to him by the 6th respondent in WP 17700/96 purported to be u/s 37(b) of the Wealth Tax Act. He replied to the Director of Income Tax on 26-3-96 about the perency of WP No.4926/96 and WP 17700/96 before this Court. He, however, received another notice dated 10th May, 1996 from the Director of Income Tax (Investigation) (5th respondent in WP 17700/ 96) followed by yet another notice dated 26-7-96 to present himself on 13-8-96 and the notices aforementioned were all based on the alleged seizure by the police of valuables which were liable to wealth tax and/or alleged evasion of income tax. He filed the

said petition seeking declaration that entrustment of goods allegedly seized by the 2nd and 3rd respondents in WP 17700/96 to the 5th and 6th respondents therein was illegal and without jurisdiction. When called upon to show-cause in the said writ petition respondents 5 and 6 have come forward with the plea that they have acted u/s 132A(1)(c) of the Income Tax Act and obtained possession of the seized assets from the police as contemplated under subsection (2) thereof.

10. Before we deal with the question before us, we are tempted to remind ourselves of the observations of Justice Brandeis in *Olmstead v. United States* 217 US 438 (1928), about the Government of the United States,

"Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example...If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

Yet another Judge in *Mapp v. Ohio* 367 US 643 (1961), has expressed in a case where the State tried to use in evidence the materials gathered as a result of unlawful search,

"Our decision founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the Courts, that judicial integrity so necessary in true administration of justice."

It is indeed of essence to note that Government cannot be allowed to say that it has broken the law. No officer of a Government in a democracy can be heard to say that he has the freedom to go beyond the law when he has the duty to enforce the law and therefore he has the obligation to act within the bounds of law. It has been repeatedly asserted by the Supreme Court of India that it is the duty of the Courts to be watchful for the constitutional rights of the citizens and that is the main function of the Court. There is no reason for us to complicate the issues by entering into the evidence and ignore the fact that an independent enquiry for the purpose of enabling the Court about the actual happenings in the house of the petitioners has revealed that a search was conducted in the house of the petitioners on the 4th of February, 1996 and the properties as disclosed in the seizure list were seized from his house (except two items which according to the report have been interpolated) and in any case after investigation and after collecting all materials and evidence the police has found that the case is not true and submitted accordingly a final report u/s 173 of the Code of Criminal Procedure, 1973. The question that has, however, caused us concern is whether the Income Tax authorities justly and legally as claimed by them invoked Section 132A of the Income Tax Act, 1961 and took delivery of the alleged assets from the police when the seizure was in connection with the alleged offence and according to the respondents held u/s 102 of the Code of Criminal Procedure, 1973. While it can be conceded in favour of the police that they may 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 law clearly enjoins that every police officer seizing any such property shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same. Assuming, although it is not correct, that the 5th respondent (in WP 4926/96) had information about the properties with the petitioners which created suspicion of the commission of the offence and he accordingly seized them he was duty bound to report the seizure to the Magistrate having jurisdiction and to transport the same to the Court or to give custody thereof to any person on his executing a bond and undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same. Section 457 of the Code of Criminal Procedure is a provision under which whenever the seizure of property by any police is reported to Magistrate and such property is not produced before the Court during enquiry or trial the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof or if such person cannot be ascertained, respecting the custody and protection of such property. Sub-section (2) thereof provides,

"If the person so entitled is known the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit, and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim six months from the date of such proclamation."

Seen in this back ground the powers to requisition books of accounts etc. and any assets as contemplated u/s 132A of the Income Tax Act, 1961, one has necessarily to consider, whether the expression "any officer or authority under any other law for the time being in force" in clause (c) of Section 132A(1) can in cases of seizure by a police officer be held to be the officer or authority who has taken into custody the assets which represented either wholly or partly income or property which has not been or would not have been disclosed for the purpose of the Income Tax Act, 1961. Police officer who seized the property, we have already noticed, has a duty to transport the same to the Court or to give custody thereof to any person on his executing a bond and undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same. Thus, pursuant to the seizure his possession or the custody of the property with any person under the bond undertaking to produce the property before the Court is for and on behalf of the Court and is custodia legis. There can be no transfer or appropriation of any property seized by the police except under the order of the Court.

11. Learned Counsel for the Income Tax Officers has conceded before us that Section 132A of the Income Tax Act does not authorise any notice to the Court as by no stretch of imagination the Court can be identified as any officer or authority under any other law for the time being in force as contemplated under clause (c) of Section 132A(1) read with clause (a) thereof. To say the least, there has been gross violation of law by the entry of the Income Tax Officers to take delivery of the properties from the police before the seizure is reported to the Court and the Court passed any order as to its custody. As understood in course of the hearing the highly exaggerated value of the property seized from the custody of the petitioners by the police shown to be worth crores of rupees gave wrong signals to the Income Tax Officers and they thought there was a tax evador caught in the net of the police and mere was a need to enforce the penal provisions of revenue loss as in the Wealth Tax Act and the Income Tax Act for realisation of the taxes and penalties. We appreciate, however, that although late there has been realisation of the wrong done at some place to the petitioners and Income Tax Authorities have got the properties allegedly seized from the custody of the petitioners evaluated and found to their dismay that all the properties of the seizure list even if evaluated liberally would not exceed Rs. 15 lakhs and thus they are not exigible.

12. In addition thus to the report of the Additional Director General of Police, which has been submitted as directed by this Court, and the final report u/s 173(2) of the Code of Criminal Procedure, 1973 information to the Income Tax Officers that properties worth crores of rupees were seized from the possession of the petitioners when eventually are found to be worth less than Rs. 15 lakhs go a long way to support the case of the petitioners.

13. It has been a puzzle why respondents 3 to 5 in WP 4926/96 got the story of search and seizure allegedly having been effected on the 5th February, 1996. A convenient story is developed of information received from some suspected offenders when they were questioned in the rooms of a hotel followed by the recovery of the alleged stolen property from the possession of Ram Bharose Gupta as the basis for the entry into the premises of the petitioners for the alleged search and seizure on the 5th of February, 1996.

14. Learned Counsel for the 4th respondent has been insistent upon his reaching the petitioners' house on the 5th of February, 1996 for some time until under the order of the 3rd respondent and the 3rd respondent and the 5th respondent have supported his version. As the very premises and the factum of search and seizure on the premises allegedly having been effected on the 5th of February, 1996 are suspicious his claim that he visited the house of the petitioners only on the 5th of February cannot be believed. That he (the 4th respondent) visited the premises is not in dispute and he did so at a time when the search and seizure operations were going on. Since it is reasonable to accept that the search and seizure were effected on 4th of February, 1996 it will be only reasonable to hold that the 4th respondent visited the house of the petitioners on the 4th of

February, 1996. Why the 3rd respondent has chosen to stand by such incredible version when substantially the/ police case of the search and seizure being held on the 5th of February, 1996 is not correct, however, is a question we propose to leave without further comments. Conduct of the 5th respondent, however, as has emerged from the facts has to be disapproved as it is he who has chosen to create a case in which petitioners are made victims of a false charge. There are many materials which can easily be taken as evidence of the 5th respondent himself acknowledging that he had seized the properties from the petitioners" possession (from their houses) on 4th of February, 1996. The 3rd respondent has supplied necessary corroboration to such evidence by his letter to the Peshi of the Chief Minister in which he has admitted that several properties were seized from the house of the petitioners on the 4th of February, 1996. Persons who have come forward to swear affidavits of facts that the search and seizure were effected on the 5th of February, 1996 have not been subjected to any cross-examination. We have not, however; felt persuaded to convert the instant proceeding into a trial as we have good reasons to be convinced that petitioners have been subjected to serious interference in their right to life by respondents 3 to 5.

15. The primary duty of those in uniform is to uphold law and order and protect the citizen. The Supreme Court in *Inder Singh Vs. State of Punjab and others*, , has observed :

"If members of a police force resort to illegal abduction and assassination, if other members of that police force do not record and investigate complaints in this behalf for long periods of time, if those who had been abducted are found to have been unlawfully detained in police stations in the State concerned prior to their probable assassination, the case is not one of errant behaviour by a few members of that police force. It betrays scant respect for the life and liberty of innocent citizens and exposes the willingness of others in uniform to lend a helping hand to one who wreaks private vengeance on mere suspicion."

Cases of highhandedness of the police and uncivilised behaviour have been coming frequently before the Courts and the Supreme Court on many occasions have dealt with such cases to point out that the Courts have a duty to remind the Government that its law enforcing arm must always be used to create much needed balance between the rights of the citizens on the one hand and State"s enforcement of laws on the other hand. Observations by Thomas Jefferson as far back as in 1816 are often quoted in the judgments of the High Courts and the Supreme Court that,

"Laws and institutions must go hand in hand with the progress of the human mind.--as new discoveries are made new truths are discovered and manners and opinions change with the change of circumstances, institutions must advance also and keep pace with the time."

In *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, ,

the Supreme Court has spoken about our constitutional philosophy and values in these words :

"Constitutional problems cannot be studied in a socio-economic vacuum, since socio-cultural changes are the source of the new values, and sloughing off old legal thought is part of the process of the new equity-loaded legality... It is right that the rule of law enshrined in our Constitution must and does reckon with the roaring current of change which shifts our social values and shrivels of feudal roots, invades our lives and fashions our destiny."

Granville Austin is quoted in the said judgment saying :

"The judiciary was to be the arm of the social revolution upholding the quality that Indians had longed for in colonial days.... the Courts were also idealised because, as guardians of the Constitution, they would be the expression of a new law created by Indians for Indians,"

Speaking on the guarantee under Article 21 of the Constitution of India it has been often repeated by the Courts that right to life extends to all aspects of living in dignity and in a civilised system as that of ours in India home or the house in which any law abiding citizen lives in privacy is his most cherished possession. He or she in the privacy of the house enjoys every freedom and any violation of privacy is intrusion into his or her right under Article 21 of the Constitution of India. Laws have for the said reason limited substantially entry into the privacy of the house of men of law only under a search warrant as contemplated under Sections 93 - 100 of the Code of Criminal Procedure, 1973 or without warrant only when any police officer having authority to arrest has reason to believe that the person to be arrested has entered into or is within any place and any person residing in or being in charge of such place on demand of the police officer would not allow him free ingress thereto and afford all reasonable facilities for a search therein as in Section 47 of the Code of Criminal Procedure and as earlier discussed to seize certain properties u/s 102 of the Code of Criminal Procedure in the circumstances enumerated therein. Although by mere lodgment of a case there is no deprivation of the liberty which is guaranteed under Article 21 or the right to life there in registration of a case creates apprehension and registration of a false case is a threat to liberty which cannot be denied to any person living in our land of India save by prescribed procedure of law. Penal laws of the land do take notice of such false accusations and make a false prosecution punishable as u/s 182 and Section 211 of the Indian Penal Code and other provisions thereof. Besides physical torture which many times follow such illegal actions mental torture is always present and in the case of the petitioners it is irresistible to conclude when persons in position as that of respondents 3 to 5 in WP 4926/96 with other police men acted as alleged by them that they suffered in more than one day. Their fortress of privacy was exposed and ransacked. Their possessions illegally taken away from them- Threatened by arrest for the offence which they never committed, they had to move for bail and move from Court to Court finally to seek the protection of the

guardians of law under Article 226 of the Constitution of India. If we are a civilised society and we have a civilised system of law we cannot ignore the violations of the right under Article 21 of the Constitution of India. The extra legal methods that respondents 3 to 5 appear to have adopted, by which serious infractions to the petitioners right under Article 21 must be remedied in Law as well as in equity. While ordering for investigation at the highest level in 4hc case of negligence and callousness on the part of the authorities and the consequent indescribable mental torment and physical and financial hardship caused to the widow and the two minor children of an Army Officer in Smt. Charanjit Kaur Vs. Union of India and others, , the Supreme Court has observed :

"We are pained at the utterly irresponsible conduct of the authorities in the present case right from the inception.... That such an incident should have occurred in the presence of the responsible Army Officers and should go uninvestigated and in fact completely ignored is all the more baffling. There is a good deal in this case for which the authorities have to answer. This is apart from the fact that till this day, the case has been handled with culpable negligence and cynical indifference. This is a matter which requires investigation at the highest level. We, therefore, desire that this matter be personally looked into by the Chief of the Army Staff."

In Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , the Supreme Court has pointed out that a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution is an acknowledged remedy for enforcement and protection of such rights and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from and in addition to the remedy in private law for damages for the tort resulting from the contravention of the fundamental right. The Supreme Court in the said case has pointed out that the defence of sovereign immunity is not applicable in such a case and is thus alien to the concept of guarantee of fundamental rights.

16. We have no reason in the instant case to proceed to discover in the innumerable pronouncements of the Courts as there is a clear consensus and the law of the land is no longer in doubt that Article 21 "which guarantees the right to life and liberty will be deluded of significant content if the Courts would relegate petitioners to seek private law remedy of compensation when the State or its servants in the purported exercise of their powers are the wrong doers. We are satisfied in the instant case that respondents 3 to 5 in -WP 4926/96 have seriously wronged the petitioners therein and the law of the land has been completely disregarded by them when after the alleged seizure they have failed to produce the seized properties before the Court so that the Court could deal with the matter at the first instance at least to find out who is entitled to possession of the property. Involvement of Taxing Officers who are respondents 4 to 6 in WP 17700/96 in the matter has not done any credit to them. It has put

them to the embarrassing situation of being ridiculed by events of finally the properties seized, which have been seized from the petitioners, to have been found of value less than Rs. 15 lakhs on their own assessment.

17. In sum, we conclude unhesitatingly that (1) Petitioners' rights under Article 21 of the Constitution have been violated by the search and seizure of the properties as per the seizure list;

(2) Respondents 3 to 5 have acted contrary to law and in fact contravened laws in course of search and seizure, and by changing the records of investigation have committed serious violation to the system of the discipline of law under which alone they are required to act;

(3) There was no occasion for the respondents 4 to 6 in WP 17700/96 to intervene and in any case respondents 3 to 5 WP 4926/96 and respondents 4 to 6 in WP 17700/96 have bypassed the Court which alone is competent to decide about the custody of the properties allegedly seized in course of investigation of a case registered with the police u/s 102 of the Code of Criminal Procedure, 1973.

18. Petitioners have gracefully chosen to confine the petitions to seek the return of the properties seized from their possession. They have, however, disclaimed two items of the seizure list and Additional Director-General of Police, CBCID, in his report has found exactly the said two items to have been interpolated. They have, however, alleged that besides the properties seized as per the seizure list substantial damage was done to other properties and a cash amount of Rs.2,50,000/- have also been taken away from them. Yet since all issues as above have been seriously contested before us, we think, they deserve to be compensated.

19. Having considered the matter in all relevant aspects we are not inclined in the instant case to give any specific finding as to whether any cash as alleged by the petitioners have also been taken away the 5th respondent and others. We are, however, inclined on the facts of the instant case to order for immediate release of all the properties seized from the house of the petitioner and by way of compensation to award to them an amount in a sum of Rs.5 lakhs payable by the Government of the State on condition that the Government will be free to proceed departmentally against respondents 3 to 5 in WP 4926/96 and recover from them the said amount of compensation and/or otherwise suitably deal with them in accordance with law. The petitioners, besides the above, shall be entitled to sue the respondents for compensation, if any, in accordance with law and if so advised to make appropriate application in the Court of competent jurisdiction against the 5th respondent and others for the offences that might be found to have been committed by illegal entry into their house, illegal seizure of their properties and illegal prosecution by keeping them under the threat of the complaint in Cr.No.26/96.

20. In the result, the two writ petitions, viz., WP 4926/96 and WP 17700/96, are allowed to the extent indicated above. Respondents 1 to 5 in WP 4926/96 and

respondents 1 to 6 in WP 17700/96 are directed to hand over the properties as per the seizure list except items 4 & 5 of the seizure list, i.e., Champagne liquor bottle full, and Colts PTFE Mfg. Co. Hartford Ct USA, the petitioners forthwith. Respondent No.1 WP 4926/96 is directed to pay to the petitioners towards compensation an amount in a sum of Rs.5 lakhs within three months. The said payment of compensation, however, shall in no manner affect the right of the petitioners to seek compensation and lodge complaints for prosecution in accordance with law of respondents who have violated their rights and caused legal injuries to them. All proceedings in Cr.No.26/96 and consequent actions are accordingly quashed.

21. After the judgment is delivered, it is brought to our notice by the learned Government Pleader that security which the Court has provided to the petitioners at their residence is no longer required, and there is some controversy also whether the cost, as required by law for such security at a private residence, has been paid by them.

22. In view of the judgment delivered by us today, we do not think the Government would allow any of its Officers to interfere with the life and liberty of the petitioners any further. No need, in our view, thus should exist for continuing the arrangement of security, pursuant to the order of this Court dated 26-3-1996. The security accordingly, if any still continuing pursuant to the said order, shall be withdrawn. We however, make it clear that in case there is any threat to the petitioners from any of the respondents, they if so advised, can apply to the Commissioner of Police, Hyderabad City for providing such security, which on the facts and in the circumstances of the case at the relevant time is thought fit and proper.

23. Let order accordingly issued.