
(2004) 07 P&H CK 0103

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition No. 6896-M of 2004

Wimpy International Limited and Others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 21-07-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451, 457, 482

Penal Code, 1860 (IPC) — Section 120B

Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2004) 138 PLR 202

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : H.S. Mattewal and Vikram Chaudhri, for the Appellant; Ashish Verma, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—The petitioners have filed this petition u/s 482 of the Code of Criminal Procedure for quashing the order dated January 7, 2004 (Annexure P-10) whereby their application for releasing the various documents/articles taken into custody by the police from them during investigation of the case has been dismissed.

2. As FIR bearing No. 22 dated 29.8.2002 was registered by the Police Station, Vigilance Bureau, Flying Squad-1, Punjab, Mohali u/s 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act and Section 120-B IPC against one Hardeep Singh OSD to Shri Parkash Singh Badal, on the allegations that he has collected wealth disproportionate to his known sources of income by employing illegal methods. During investigation of the said FIR a raid was conducted by the Vigilance Bureau, Punjab in the office of the petitioners company M/s Wimpy International Limited at New Delhi, in the said raid, the Vigilance Bureau seized large number of valuable documents pertaining to the petitioners company, including files, log books, original registration certificates of all the vehicles of the

company, computers and other office equipments. In the said raid, the police party had also taken in possession number of documents, files, computers and personal belongings from the residence of petitioners No. 2 to 5, who were the employees and Director of the petitioners company. The list of the documents files and computers etc. seized from the petitioners on 14.6.2003 and 17.6.2003 has been given in the petition.

3. After completion of the investigation the petitioners filed Criminal Misc, Application 35 dated 3.9,2003 before the Special Judge Ropar for releasing the seized articles/properties on supadari, as in absence of the documents the petitioners company was not even in a position to run its day to day business and to file the income tax return, sales tax return and hold its Annual General Meeting.

4. After notice, the police did not file proper reply to the said application. Even it was not mentioned in the reply which of the items were taken in Jama Talashi or which of the items were taken into possession during search of the house/ premises. Therefore, the prosecution was directed by the Special Judge to file a detailed reply. Ultimately, the said application was dismissed by the Special Judge vide order dated 7.1.2004 while observing as under;-

"3. In reply to the said application, the Vigilance Bureau, Punjab Chandigarh stated that the documents which are taken into possession are being looked into for investigation purpose like accounts, computer, account files, diaries etc. and these can lead important information in the investigation. It was further pleaded that investigation is still going on and at this stage the articles taken into custody even jamatalashi cannot be returned.

4. 1 have heard the learned counsel for the parties and gone through the record.

5. Admittedly the challan has yet to be presented in the Court. It is also stated by the learned Addl. P.P. for the State that the investigation is going on and the articles recovered from the houses and from the offices of the accused-applicants are required and these could lead to provide valuable information regarding this case. Keeping in view that the investigation is yet to be complete, it will not be in the interest of justice to release the articles taken into custody by the police from the accused-applicants. Therefore, the application is premature. As such the application is dismissed at this stage."

5. Hence, the petitioners have filed the instant petition.

6. Notice of this petition was given to the respondent. Pursuant thereto a reply has been filed in which it has been stated that the documents taken into possession by the police at the time of raid are taken into consideration and still the investigation is going on, therefore, the seized documents cannot be released to the petitioners on supadari.

7. The learned senior counsel for the petitioners submits that even after completion of more than one year still the investigation is not complete. He

submits that in absence of the documents, the petitioners company is not able to run its day to day business. Even the petitioners company is not able to compile and file its periodic statutory returns under the Income Tax and other Acts. It is also unable to hold its Annual General Meeting because of its inability to finalise the accounts in absence of the computers and incidental records taken into possession by the poliee at the time of raid. The learned senior counsel further submits that even the prosecution itself had written a letter dated 20.6.2003 to the petitioners company stating therein that in case the petitioners require any articles/documents, they may prepare a list of the same and send it through some responsible person authorised to collect them from the office of the Supdt. of Police (Vigilance). Vigilance Bureau, Punjab Chandigarh. But, in spite of the approach made by the petitioners company to the office of the Vigilance Bureau no articles were given to it. It is further contended that under Sections 451 and 457 of the Code of Criminal Procedure ample power has been given to the Court pertaining to releasing the property on supardari which has been seized in a case. He submits that in the instant case, the articles/properties taken into possession by police are being retained unnecessarily by the investigating agency with an oblique motive so that the petitioners may not be able do their day-to-day business,

8. On the other hand, learned counsel for the respondent states that still the investigation is going on and the seized articles are still required for the purpose of investigation, therefore, the same cannot be released.

9. I have heard the arguments of the learned counsel for both the parties. A glance of the list of articles which were taken into possession by the police at the time of raid, detail of which has been given in the order dated 7.1.2004 passed by the Special Judge, Ropar shows that each and every articles which were found in possession of the petitioners at the time of raid were taken into possession whether it was necessary for the investigation or not. For example even the Key Board, Mouse, Computers, cash amount mobile phone, telephone diaries, driving licence, passport wrist watch, various photographs, office diary, calculator etc. were also taken into possession by the police party.

10. In my opinion, the police cannot be permitted to retain all the documents and equipments without any justification merely because these items were taken into possession during the course of investigation whether the same are required to prove the offence or not. In this manner, the petitioners will not be able to run their day to day business in absence of their office equipments files and computers etc. Even for the last one year the police is not able to complete the investigation. It has not been disclosed in the reply what purpose the seized articles and documents are required. Merely, it has been stated that these articles and documents cannot be released because investigation is still going on. As such, they cannot be permitted to stall the day to day business of the petitioners company. The respondent in his reply has not disclosed any valid reason for keeping possession of the belongings of the petitioners which were

taken into possession by the police party. They cannot be allowed to retain the properties unnecessarily merely on the pretext that the investigation is going on. In spite of long time the investigation has not been completed. Thus, there is no justification with the police to keep those documents and articles/property of the petitioners. It is well settled as held by the Apex Court in *B. K. Patil v. State of Mysore*, 1977 CriLJ 1141 that "where the property which has been the subject matter of an offence is seized by the police, it ought not to be retained in the custody of the court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant the idea is that the property should be restored to the original owner after the necessity to retain it ceases."

11. For the following reasons, I allow this petition and quash the impugned order dated 7.1.2004 passed by the Special Judge, Ropar and direct the trial Court to release the seized articles/properties to the petitioners company on supardari which were taken in possession by the police, on such terms and conditions which it deems necessary. If the prosecution pray for retention of the particular article/documents by disclosing special reasons, the Special Judge is directed to consider and decide the same by passing a speaking order.