

Supreme Court of India

Dr. Partap Singh And Anr vs Director Of Enforcement Foreign ... on 26 April, 1985

Equivalent citations: 1985 AIR 989, 1985 SCR (3) 969

Author: D Desai

Bench: Desai, D.A.

PETITIONER:

DR. PARTAP SINGH AND ANR.

Vs.

RESPONDENT:

DIRECTOR OF ENFORCEMENT FOREIGN EXCHANGE REGULATION AND ORS.

DATE OF JUDGMENT 26/04/1985

BENCH:

DESAI, D.A.

BENCH:

DESAI, D.A.

ERADI, V. BALAKRISHNA (J)

CITATION:

1985 AIR 989

1985 SCR (3) 969

1985 SCC (3) 72

1985 SCALE (1) 1208

ACT:

Foreign Exchange Regulation Act 1973 section 37 and Code of Criminal Procedure. section 165-Search warrant-Issuance of-Officer whether obliged to record in writing the grounds for his belief before issuance-'Reason to believe'-What is-Whether grounds inducing 'reasonable belief' to be stated In search warrant-Whether open to judicial scrutiny.

Foreign Exchange Regulation Act section 37 38 and 41-Search and Seizure-Illegality of-Whether would render seizure pursuant to illegal search Invalid-Evidence collected during illegal search-Court to be cautious in assessment.

Income Tax Act 1961 section 132 A-Warrant of authorisation to seal documents articles seized during the search under section 37 of the Foreign Exchange Regulation Act 1973-Whether could be returned.

Words and phrases-(caning of-'Reason to believe' and 'so far as may be-Meaning of-Section 37 (1) and Section 37 (2) of FERA 1973.

HEADNOTE:

The appellants husband and wife moved the High Court under Article 226 for quashing of a search warrant issued by respondent No. 2-Assistant Director, Enforcement, as also

the warrant of authorisation issued by respondent No. 5-Commissioner of Income Tax and for a direction to return articles seized during the search of their house and for relief incidental and ancillary thereto. The appellants alleged that respondent No. 6-an Assistant Com. missioner of Income Tax, bore personal malice towards them, attributable to an incident concerning the servant of the appellants and an application for transfer of appeals pending before him was made to the Chairman Central Board of Direct Taxes by the first appellant. Actuated by this persona; malice, respondent No. 6 first instigated respondent No. 2 to issue a search warrant under the authority of which a raid was carried out at the residence of the appellants which led to the seizure of certain documents including some foreign currency. Thereafter when the appellants made various representations for return of documents, again instigated by respondent No. 6,

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respondent No. 5 issued a warrant of authorisation under section 132 A of the Income Tax Act directing respondent No. 2 to deliver such books of accounts and other documents and goods seized during the search to the requisitioning officer. The documents and material seized during the search had not been returned.

The High Court held that there was nothing illegal in the issuance of the search warrant, the consequent search, the seizure during the search and taking over of the documents by the Income Tax Department under Section 132-A and dismissed the petition.

In the appeal to this Court it was contended by the first appellant: (i) that respondent No. 2 acted in a manner contrary to law in issuing a search warrant without any material before him on which he could entertain a reasonable belief that any documents which in his opinion will be useful for, or relevant to, in investigation or proceedings under Foreign Exchange Regulation Act, 1973 are secreted in any place and (ii) that as the second respondent did not record his reasons in writing on which reasonable belief was entertained, the search warrant issued by him was illegal.

Dismissing the appeal,

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HELD 1. When an officer of the Enforcement Department proposes to act under section 37 he must have reason to believe that the documents useful for investigation or proceeding under the Act are secreted. The material on which the belief is grounded may be secret, maybe obtained through intelligence or occasionally may be conveyed orally by informants. It is not obligatory upon the officer to disclose his material on the mere allegation that there was no material before him on which his reason to believe can be grounded. Whether these grounds are adequate or not is not a matter for the Court to investigate. [079F-H: 977A-C]

S. Narayanappa v. Commissioner of Income Tax,

Bangalore, [1967] 1 SCR 590 relied upon.

2. The expression 'reason to believe' is not Synonymous with subjective satisfaction of the Officer. The belief must be held in good faith; it cannot be merely be a pretence. It is open to the Court to examine the question to the limited extent whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. [977 D-E]

3. Sub-Section (2) of section 37 provides a shield against abuse of power inasmuch as that where an officer below the rank of the Director of Enforcement carried out the search, he must send a report to the Director of Enforcement. [978C-G]

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In the instant case, the reply affidavit on behalf of the respondents I to 4 and the original papers, shown to the Court, indicate that there was material before the second respondent which furnished him grounds for entertaining a reasonable belief that some documents which would be useful in the investigation or proceeding under the Act were secreted in the house of the appellants and he was, therefore, fully justified in issuing the search warrant.

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[975E-H 976A-

Calcutta Discount Co Ltd. v. Income Tax Officer Companies District 1, Calcutta & Anr. 41 ITR 191 and R.S. Seth Gopikrishan Agarwal v. R.N. Sen, Assistant Collector of Customs & Ors., [1967] 2 SCR 340 relied upon.

4. Section 37(2) provides that the provisions of the Code of Criminal Procedure relating to searches, shall so far as may be, apply to searches directed under section 37(1). Reading the two sections together, means that the methodology prescribed for carrying out the search provided in section 165 has to be generally followed. The expression 'so far as may be' has always been construed to mean that those provisions may be generally followed to the extent possible. If section 165(1) was to be incorporated by pen and ink as sub-section (2) of section 37, the legislature would have provided that the provisions of the Code relating to searches shall apply to the searches directed or ordered under section 37(1) except that the power will be exercised by the Director of Enforcement or other officer exercising his power and he will be substituted in place of the Magistrate- The provisions of sub-section (2) of section 37 has not been cast in any such language. It merely provides that the search may be carried out according to the method prescribed in section 165 (1). [979E-H;980A-B]

5. If it was the intention that reasons which furnish grounds for entertaining a reasonable belief were to be recorded in advance, appropriate words could have been incorporated in section 37(1), otherwise a simple one line section would have been sufficient that all searches as required for the purpose of this Act shall be carried out in

the manner prescribed in section 165 of the Code by the Officer to be set out in the section. [980C]

6. In order to give full meaning to the expression 'so far as may be' sub-section (2) of section 37 should be interpreted to mean that broadly the procedure relating to search as enacted in section 165 shall be followed. But if a deviation becomes necessary to carry out the purposes of the Act in which section 37(1) is incorporated, it would be permissible except that when challenged before a court of law, justification will have to be offered for the deviation. [980]

R.S. Seth Gopikrishan v. R.N. Sen, Assistant Collector of Customs & Ors., [1967] 2 SCR 340 and Pooran Mal etc. v. Director of Inspection (Investigation) of Income Tax Mayur Bhavan, New Delhi & Ors., [1974] 2 SCR 705 followed, 972

H.L. Sibal v Commissioner of Income, Tax, Punjab and Ors., [1975] 101 ITR 112; Commissioner of Commercial Taxes v. Ramkishan Shrikishan Jhaver 1966 ITR 664 referred to, New Central Jute Mills Co. Ltd. v. T.N. Kaul & Ors. AIR 1976 Cal. 178 held over-ruled.

7. The grounds which induced reasonable belief need not be stated in the search warrant. In the instant case, the file submitted to the court unmistakably shows that there was material enough before the second respondent to form a reasonable belief which prompted him to direct the search. That the documents seized during the search did not provide sufficient material to the officer for further action cannot be a ground for holding that the grounds which induced the reasonable belief were either imaginary or fictitious or mala fide conjured up. [980E-G]

8. Legality in the method, manner or initiation of a search does not necessarily mean that anything seized during the search has to be returned. After all in the course of a search, things or documents are required to be seized and such things and documents may furnish evidence. Illegality of the search does not vitiate the evidence collected during such illegal search. The only requirement is that the court or the authority before which such material or evidence seized during the search shown to be illegal, is placed has to be cautious and circumspect in dealing with such evidence or material. [981B-F]

Radhakishan v. State of U.P.-, [1963] Supp- 1 SCR 408 at 411; and State of Maharashtra v. Natwarlal Damodardas Soni, [1980] 4 SCC 669 relied upon.

9. The mere fact that during the pendency of the writ petition before the High Court - the Enforcement Directorate decided to close the proceedings against appellant in respect of the material seized during the search, would not show that the search was mala fide or for reasons irrelevant or extraneous to the exercise of power. There is no warrant for the assertion that every search must result in seizure of incriminating material- There can be

cases in which search may fail or a reasonable explanation in respect of the documents may be forthcoming. [982B-E]

In the instant case, as the documents and other materials have been sealed under the warrant of authorisation issued under section 132-A of the Income Tax Act, the Enforcement Directorate may legitimately case the proceedings. [982E-F]

Pooran Mal etc. v. Director Inspection (Investigation) of Income Tax Mayur Bhavan, New Delhi & Ors, [1974] 2 SCR 705; and Income Tax Officer, Special Investigation Circle-B, Meerut v. M/s Seth Brothers & Ors., [1970] 1 SCR 601 relied on.

10. If the officer who issued the search warrant had material for forming a reasonable belief for the exercise of the power, the search cannot be styled as illegal and, therefore, no case is made out for directing return of documents on the supposition that the search and seizure were illegal. [982G: 983A]

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11. The allegations of mala fides in the instant case were scanty and vague and completely misleading averments were made to support such a serious allegations against a responsible officer discharging his duties. A nefarious attempt had been made to cook-up a wholly imaginary allegation for attributing personal mala fides to the sixth respondent. In the circumstances the allegation cannot stand.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No.1138 of 1981.

From the Judgment and Order dated 22.9. 1980 of the Punjab and Haryana High Court in W. P. No. 2163 of 1980.

Appellant-in-person.

M. M. Abdul Khader, V. S. Desai, Ms. A. Subhashini, and R. N. Poddar for the Respondents.

The judgment of the Court was delivered by DESAI, J. Appellants who are husband and wife respectively moved Civil Writ Petition No. 2163 of 1980 in the High Court of Punjab and Haryana praying for quashing of a search warrant issued by respondent No. 2- Assistant Director, Enforcement on August 24, 1979 as also the warrant of authorisation issued by respondent No, 5 - Commissioner of Income Tax, Jullundur on April 9, 1980 and for a direction to return articles seized during the search of his house on August 24, 1979 and for relief incidental and ancillary thereto.

Briefly stated, the allegations were that respondent No. 6- Shri J. S. Ahluwalia, Assistant

Commissioner of Income-tax at Jullundur bore personal malice towards the appellants, amongst others, attributable to an incident concerning the servant of the appellants and an application for transfer of appeals pending before him made to the Chairman, Central Board of Direct Taxes by the first appellant. Actuated by this personal malice, respondent No. 6 first instigated respondent No. 2 to issue a search warrant under the authority of which a raid was carried out at the residence of the appellants on August 24, 1979 which led to the seizure of certain documents including some foreign currency. Thereafter, when the appellants made various representations for return of documents, again instigated by respondent No. 6, respondent No. 2 issued a warrant of authorisation under sec. 132A of the Income Tax Act on April 9, 1984 by which respondent No. 2 was directed to deliver such books of accounts and other documents and goods seized during the search to the requisitioning officer. As the documents and material seized during the search had not been returned, the writ petition as aforementioned was filed for the reliefs hereinabove set out.

When the writ petition came up before a Divisional Bench of the Punjab and Haryana High Court, Mr. Kuldeep Singh, learned counsel who appeared on behalf of the Directorate of Enforcement Department made a statement that the Directorate has closed the proceedings and does not want to take any action against the appellants on account of the search. The High Court observed that in view of this statement, the Directorate of Enforcement would normally be required to return the seized material to the appellants but it was noticed that as the same was sealed under a warrant of authorisation issued under Sec. 132A of the Income Tax Act, an order for return of the same cannot be made. The High Court also took note of the statement made by Mr. D.N. Avathy that the Income Tax Department was still scrutinising the seized documents. The High Court was of the opinion that there was nothing illegal in the issuance of search warrant, the consequent search, the seizure during the search and taking over of the documents by the Income Tax Department under sec. 132A. The High Court accordingly dismissed the petition. Hence this appeal by special leave.

Dr. Partap Singh, the first appellant who appeared in person submitted that respondent No. 2 acted in a manner contrary to law in issuing a search warrant when there was no material before him on which he could entertain a reasonable belief that any documents which in his opinion will be useful for, or relevant to, in investigation or proceedings under Foreign Exchange Regulation Act, 1973 (Act for short) are secreted in any place, whereupon alone he may authorise any officer of Enforcement to search for and seize or may himself search for and seize such documents. It was also contended that as the second respondent did not record his reasons in writing on which reasonable belief was entertained, the search warrant issued by him was illegal.

Sec. 37 of the Act confers power on any officer of Enforcement not below the rank of Assistant Director of Enforcement to search premises. This power can be exercised if the officer has reason to believe that any documents which in his opinion will be useful for, or relevant to, any investigation or proceedings under the Act, are secreted in any place. The appellant contended that no material was placed on record which may permit an inference that the second respondent had reason to believe that any documents which in his opinion would be useful for or relevant to any investigation or proceeding under the Act were secreted in the house of the appellants. It was urged that respondent No. 6 who was actuated by personal malice towards the appellants and who being a friend of respondent No. 2 instigated and provoked him to exercise this power of search and seizure

not to effectuate any purpose for which power is conferred but with a view to humiliating and harassing the appellants.

A little while after, we will examine the allegation of personal malice. Suffice it to say that there is no substance in the allegation.

Respondent No. 2 is a responsible officer being the Assistant Director, Enforcement, Foreign Exchange Regulation Act stationed at Jullundur. He issued the impugned search warrant which led to the seizure. In the affidavit in reply on behalf of the respondents Nos. 1 to 4, it was clearly stated that search was authorised by the second respondent after he was fully satisfied on the basis of the information available in the official record and also on the basis of the information collected by the officers of the Enforcement Directorate after making enquiries. It was repeated in para 14 of the affidavit-in-reply, 'that on the basis of the official record and reliable information in possession of respondent No 2, he entertained a reasonable belief for issuing the search warrant against the appellants. Respondent No. 2, it was said, on the basis of the information available on the file had reasons to believe that incriminating documents were secreted in the residential premises of the first appellant and the documents which were seized by Enforcement Directorate were useful for the investigation undertaken by the office. He undertook to produce the relevant records for the inspection of the court at the time of the hearing of the petition. Relying on this statement in the affidavit in reply, the appellant contended that no record was shown to the court as promised therein. We therefore, adjourned the matter to a later date and directed the learned counsel for respondents Nos. 1 to 4 to produce the file. Original papers were shown to us and typed copies were furnished to the court. We have minutely gone through the file and we are fully satisfied that there was material before the second respondent which would furnish him grounds for entertaining a reasonable belief that some documents which could be useful in the investigation or proceeding under the Act were secreted in the house of the appellants. He was therefore, fully justified in issuing the search warrant.

The appellant contended that in order to justify that the power of search was exercised in a fair and just manner and to effectuate the purpose for which it is conferred as is evident from the language employed in sec. 37, the officer issuing the search warrant must disclose what material was before him on which he entertained a reasonable belief to move into the matter. Proceeding along it was submitted that neither in the search warrant nor in the affidavit in opposition in the High Court, the material on which reasonable belief was entertained was disclosed. It was submitted that the affidavit merely recites in a mechanical manner the language of the section which cannot be held sufficient for discharging the burden on the party which has exercised this power of search and seizure. In this connection, lastly it was submitted that if the court is going to look into the file, produced on behalf of the second respondent, the same must be disclosed to the appellants so that they can controvert any false or wholly unsustainable material set out in the file.

When an officer of the Enforcement Department proposes to act under Sec. 37 undoubtedly, he must have reason to believe that the documents useful for investigation or proceeding under the Act are secreted. The material on which the belief is grounded may be secret, may be obtained through Intelligence or occasionally may be conveyed orally by informants. It is not obligatory upon the

officer to disclose his material on the mere allegation that there was no material before him on which his reason to believe can be grounded. The expression 'reason to believe' is to be found in various statutes. We may take note of one such. Sec. 34 of the Income Tax Act, 1922. inter alia provides that the Income Tax officer must have 'reason to believe' that the incomes, profits or gains chargeable to income-tax have been under-assessed, then alone he can take action under sec.

34. In *S. Narayanappa V. Commissioner of Income Tax, Bangalore*(1) the assessee challenged the action taken under sec. 34 A and amongst others it was contended on his behalf that the reasons which induced the Income-tax Officer to initiate proceedings under sec. 34 were justiciable, and therefore, these reasons should have been communicated by the Income Tax Officer to the assessee before the assessment can be reopened. It was also submitted that the reasons must be sufficient for a prudent man to come to the conclusion that the income escaped assessment and that the court can examine the sufficiency or adequacy of the reasons on which the Income Tax Officer has acted. Negating all the limbs of the contention, this Court held that 'if there are in fact some reasonable grounds for the Income Tax Officer to believe that there had been any non-disclosure as regards any fact, which could have a material bearing on the question of under-assessment, that would be sufficient to give jurisdiction to the Income Tax Officer to issue notice under sec. 34. The Court in terms held that whether these grounds are adequate or not is not a matter for the court to investigate.' The expression 'reason to believe' is not synonymous with subjective satisfaction of the Officer. The belief must be held in good faith; it cannot be merely be a pretence. In the same case, it was held that it is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent the action of the Income Tax Officer in starting proceedings under Sec. 34 is open to challenge in a court of law. (See *Calcutta Discount Co. Ltd. v. Income Tax Officer Companies District 1, Calcutta & Anr.*)(2) In *R. S. Seth Gopikrishan Agarwal v. R. N. Sen, Assistant Collector of Customs & Ors.*,(3) this Court repelled the challenge to the validity of the search of the premises of the appellant and the seizure of the documents found there in. The search was carried out under the authority of an authorisation issued under Sec. 126 (L) (2) of the Defence of India (Amendment) Rules, 1963 (Gold Control Rules) for search of the premises of the appellant. The validity of the authorisation was challenged on the ground of mala fides as also on the ground that the authorisation did not expressly employ the (1) [1967] 1 SCR 590.

(2) 41 ITR 191.

(3) [1967] 2 SCR 340 phrase 'reason to believe' occurring in Sec. 105 of the Customs Act. Negating both the contentions, Subba Rao, C. J. speaking for the court observed that the subject underlying Sec. 105 of the Customs Act which confers power for issuing authorisation for search of the premises and seizure of incriminating articles was to search for goods liable to be confiscated or documents secreted in any place, which are relevant to any proceeding under the Act. The legislative policy reflected in the section is that the search must be in regard to the two categories mentioned in the section. The court further observed that though under the section, the officer concerned need not give reasons if the existence of belief is questioned in any collateral proceedings he has to produce relevant evidence to sustain his belief. A shield against the abuse of power was found in the provision that the officer authorised to search has to send forthwith to the Collector of customs a copy of any



record made by him. Sub-sec. (2) of Sec. 37 of the Act takes care for this position inasmuch as that where an officer below the rank of the Director of Enforcement carried out the search, he must send a report to the Director of Enforcement. The last part of the submission does not commend to us because the file was produced before us and as stated earlier, the Officer issuing the search warrant had material which he rightly claimed to be adequate for forming the reasonable belief to issue the search warrant.

It was however contended that when sub-sec. (2) of Sec. 37 is read in juxtaposition with sub sec. (1), the legislative mandate clearly manifests itself that before issuing a search warrant in exercise of the power conferred by Sec. 37 (1), it is obligatory upon the officer issuing the search warrant to record in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made because Sec. 37 (2) provides that the provisions of the Code of Criminal Procedure, 1898 (now 1973) relating to searches, shall, so far as may be, apply to searches under this section subject to the modification that sub-sec. (5) of Sec. 165 of the said Code shall have effect as if for the word 'Magistrate', wherever it occurs, the words "Director of Enforcement or other officer exercising his power" is substituted. It was submitted that if the power to search premises is conferred on the officer therein mentioned, it is hedged in with a condition that in exercise of the power he is bound by the requirements of Sec. 165 of the Code. In other words, it was said that by sub-sec. (2) of Sec. 37, Sec. 165 of the Code is incorporated in pen and ink in Sec. 37. It was urged that the section should be re-read as Sec. 37 (1) as it is and Sec. 165 A (I) of the Code be read as Sec. 37 (2). Continuing along this line, it was submitted that read thus, the necessary intendment of the Legislature becomes revealed in that such drastic power of search and seizure without notice to the person affected, can be exercised, if the officer has reason to believe which must have its foundation on some material or grounds which must be stated in the search warrant itself or in a record anterior to the issuance of the search warrant so that when questioned the contemporaneous record would be available to the court to examine the contention whether there was material for taking such a drastic action or that the action was taken for extraneous and irrelevant reasons. In support of this submission, reliance was placed on a decision of the Punjab and Haryana High Court in *H.L. Sibal v. Commissioner of Income Tax, Punjab & Ors.*(1) The court was examining the expression 'in con. sequence of information in his possession, has reason to believe' in Sec. 132 of the Income Tax Act, 1961. The Court after referring to the decision of this Court in *Commissioner of Commercial Taxes v. Ramkishan Shrikishan Jhaver*(2) held that the obligation to record in writing, the grounds of the belief as enjoined by Sec. 165 (1), if not complied with would vitiate the issuance of search warrant and the seizure of the articles'. It was then submitted that if the search is illegal, anything seized during such an illegal search has to be returned as held by a learned Single Judge of the Calcutta High Court in *New Central Jute Mills Co. Ltd. v. T. N. Kaul & Ors.*(3) Sec. 37 (2) provides that 'the provisions of the Code relating to searches, shall so far as may be, apply to searches directed under Sec. 37 (1). Reading the two sections together it merely means that the methodology prescribed for carrying out the search provided in Sec. 165 has to be generally followed. The expression 'so far as may be' has always been construed to mean that those provisions may be generally followed to the extent possible. The submission that Sec. 165 (1) has been incorporated by pen and ink in Sec. 37 (2) has to be negatived in view of the positive language employed in the section that the provisions relating to searches shall so far as may be apply (1) [1975] 101 ITR 112.

(2) [1966] ITR 664.

(3) AIR 1976 Cal. 178.

to searches under Sec. 37 (1). If Sec. 165 (1) was to be incorporated by pen and ink as sub-sec. (2) of Sec. 37, the legislative draftsmanship will leave no room for doubt by providing that the provisions of the Code of Criminal Procedure relating to searches shall apply to the searches directed or ordered under Sec. 37 (1) except that the power will be exercised by the Director of Enforcement or other officer exercising his power and he will be substituted in place of the Magistrate. The provisions of sub-sec. (2) of Sec. 37 has not been cast in any such language. It merely provides that the search may be carried out according to the method prescribed in Sec. 165 (1). If the duty to record reasons which furnish grounds for entertaining a reasonable belief were to be recorded in advance, the same could have been incorporated in Sec. 37 (1), otherwise a simple one line section would have been sufficient that all searches as required for the purpose of this Act shall be carried out in the manner prescribed in Sec. 165 of the Code by the officer to be set out in the section. In order to give full meaning to the expression 'so far as may be', sub-sec. (2) of Sec. 37 should be interpreted to mean that broadly the procedure relating to search as enacted in Sec. 165 shall be followed. But if a deviation becomes necessary to carry out the purposes of the Act in which Sec. 37 (1) is incorporated, it would be permissible except that when challenged before a court of law, justification will have to be offered for the deviation. This view will give full play to the expression 'so far as may be'.

The view which we are taking is in accord with the view taken in Gopikrishan Agarwal's case. The grounds which induced reasonable belief therefore need not be stated in the search warrant.

Assuming that it was obligatory to record reasons in writing prior to directing the search, the file submitted to the court unmistakably shows that there was material enough before the officer to form a reasonable belief which prompted him to direct the search. That the documents seized during the search did not provide sufficient material to the officer for further action cannot be a ground for holding that the grounds which induced the reasonable belief were either imaginary or fictitious or mala fide conjured up.

Assuming that it is obligatory upon the officer proceeding to take search or directing a search to record in writing the grounds of his belief and also to specify in such writing, so far as possible, the thing for which the search is to be made, is mandatory and that non recording of his reasons would result in the search being condemned as illegal, what consequence it would have on the seizure of the documents during such illegal search. The view taken by a learned Single Judge of the Calcutta High Court in New Central Jute Mills Co. Ltd. case that once the authorisation for carrying out the search is found to be illegal on account of the absence of recording reasons in the formation of a reasonable belief, the officer who has seized documents during such search must return the documents seized as a result of the illegal search is against the weight of judicial opinion on the subject and does not commend to us. In fact this decision should not detain us at all because virtually for all practical purposes, it can be said to have been overruled by the decision of the Constitution Bench in Pooran Mal etc. v Director of Inspection (Investigations) of Income Tax

Mayur Bhavan, New Delhi & Ors.(1) This Court held that 'courts in India and even in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure.' If therefore, the view of the learned Single Judge of the Calcutta were to be accepted meaning thereby that if the search is shown to be illegal, anything seized during such illegal search will have to be returned to the person from whose premises the same was seized. It would tantamount to saying that evidence collected during illegal search must be excluded on that ground alone. This was in terms negated by the Constitution Bench. It has been often held that the legality in the method, manner or initiation of a search does not necessarily mean that anything seized during the search has to be returned. After all in the course of a search, things or documents are required to be seized and such things and documents when seized may furnish evidence. Illegality of the search does not vitiate the evidence collected during such illegal search. The only requirement is that the court or the authority before which such material or evidence seized during the search shown to be illegal. is placed has to be cautious and circumspect in dealing with such evidence or material. This is too well-established to necessitate its substantiation by a precedent. However, one can profitably refer to *Radhakishan v. State of U.P.*(2) wherein the court held that assuming that the search was illegal the seizure of the articles is not vitiated. It may be that because of the illegality of the search the court may be inclined to (1) [1974] 2 SCR 705.

(2) [1963] Supp 1 S.C.R. 408 at 411 examine carefully the evidence regarding seizure, but no other consequence ensues. (See *State of Maharashtra v. Natwarlal Damodardas Soni*.(1) In this behalf, the appellant further contended that if the search was genuine or bona fide for carrying out the purposes of the Act, it is surprising that when the matter was before the Court the Enforcement Directorate submitted that it does not wish to take any further action in respect of the material seized during the search. There is no warrant for the assertion that every search must result in seizure of incriminating material. Such an approach would be a sad commentary on human ingenuity. There can be cases in which search may fail or a reasonable explanation in respect of the documents may be forthcoming. In *Income Tax officer, Special Investigating Circle.B,- Meerut v. M/s Seth Brothers & Ors.*,(2) it was in terms held that 'from amongst the documents seized during the search, if some are found not to be useful for or relevant to the proceeding, that by itself will not vitiate the search. Nor can an inference be made that the power was initially exercised mala fide.' The Court in *Puran Mal's* case held that if the books of account and other documents collected during the search were after words found to be not relevant that by itself does not make the search and seizure illegal. In this case, however as the documents and other materials have been sealed under the warrant of authorisation issued under Sec. 132 A of the Income Tax Act, the Enforcement Directorate may legitimately close the proceedings. We cannot move back ward and conclude that if no further proceedings are taken, at the inception the search was mala fide or for reasons irrelevant or extraneous. the exercise of power. The contention therefore, must be rejected. Having examined all the limbs of the submission, we find no merit in the contention that the issuance of search warrant was illegal or the search was illegal and invalid.

It was next urged that if there was no justification for issuing a search warrant, the search under the authority of such a warrant would be illegal and the respondents 1 to 4 are bound to return the documents. If the officer who issued the search warrant had material for forming a reasonable belief to exercise the power the search (1) [1980] 4 S.E.C. 669 (2) [1970] 1 S.C.R. 601.

cannot be styled as illegal and therefore, no case is made out for directing return of the documents on the supposition that the search and seizure were illegal.

The next submission was that respondent No. 6 was actuated by a personal malice and with a view to harassing and humiliating the appellants instigated and provoked his friend, the second respondent to issue the search warrant and to carry out the search. In the petition filed in the High Court the allegations of mala fides are so scanty that the High Court was justified in not examining the contention on merits. In para 6 of the petition, it is stated 'that the petitioners own house No. 531 in New Jawahar Nagar, Jullundur while respondent No. 6 occupies the adjoining house. It is attitude towards the petitioners was inimical and has ever been so. Some appeals filed by the appellants against their assessments under the Wealth Tax were pending before the sixth respondent and that 'on May 29, 1979, the first appellant submitted a representations to the Chairman, (Central Board of Direct Taxes complaining about the animosity of the sixth respondent towards the first appellant and requested that those appeals pending before the sixth respondent be transferred to another appellate court'. These are all the relevant averments on the allegation of mala fides. When attention of the first appellant was drawn to this scanty material, he drew our attention to the averments in para 6 of the petition for special leave wherein it is alleged 'that when the petitioners were away from Jullundur leaving their servant Gyan Chand to look after their house, the servant of respondent No. 6 left his job whereupon respondent No. 6 nursed a feeling that his servant had left the job on being tutored by the petitioner's servant. Thereupon respondent No. 6 got Gyan Chand detained and maltreated by the police. When the petitioners learnt about it at Bombay, they requested a common friend to get Gyan Chand released and in fact Gyan Chand was released. It was then stated that the friend contacted the Police Officer who had detained Gyan Chand and before him, the Police Officer admitted that Gyan Chand was detained at the instance of the sixth, respondent.' Could there be more vague and completely misleading averments to support serious allegation of personal mala fide against the officer discharging his duties ? We are not inclined to dilate any more on this aspect save and except saying that the affidavit of Gyan Chand is not forth-coming, that the name of the friend is not mentioned and the Police Officer cannot be identified from the material disclosed in the petition. One can only say that a nefarious attempt has been made to cook up a wholly imaginary allegation for attributing personal mala fides to the sixth respondent. The contention must be negatived without further examination, It was lastly urged that there has been tampering with the documents by the officers of the Enforcement Directorate while the Income Tax Officer sealed and took possession of the documents under the authority of warrant of authorisation issued by the fifth respondent under Sec. 132A of the Income Tax Act. It was submitted that the documents with which the appellants were not concerned have been foisted upon him and some documents have been removed. Though the submission was made at some length, Mr. Desai, learned counsel appearing for some of the respondents dispelled whatever little doubt was generated in our mind by the submissions of the first appellant He referred to Pass Book Account Nos. 132269 and 159431, both issued by the Bank of India and urged that what was mentioned was not the account number but the Pass Book numbers and the Account Nos. SB 6731 and SB 7626 both tally and therefore, the submission in this behalf is misconceived. We accept the same. It was then urged that there were some erasures in some of the loose sheets. We found none. After referring to pages 148, 149 and 150 of the diary. an argument was attempted to be built up that there is some tinkering with the same. We found the submission wholly imaginary. Therefore, there is

absolutely no merit in the contention that there has been some tampering with the documents when they were sealed under the authority of the warrant of authorisation issued by the Commissioner of Income Tax.

These were all the contentions raised in this appeal and as there is no merit in any of them, the appeal fails and is dismissed but with no order as to costs.

A.P.J.

Appeal dismissed.