Supreme Court of India
V. S. Kuttan Pillai vs Ramakrishnan & Anr on 18 September, 1979
Equivalent citations: 1980 AIR 185, 1980 SCR (1) 673
Author: D Desai
Bench: Desai, D.A.

PETITIONER:
V. S. KUTTAN PILLAI

Vs.

RESPONDENT:
RAMAKRISHNAN & ANR.

DATE OF JUDGMENT18/09/1979

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
REDDY, O. CHINNAPPA (J)

CITATION:
1980 AIR 185 1980 SCR (1) 673
1980 SCC (1) 264

ACT:
Code of Criminal Procedure, 1973 Sections 91 and 93(1)(c)-Scope of -Appellants office bearers of a Sabha-Warrant under s. 93(1)(c) issued for search and seizure of documents-Search warrant if violates fundamental right under Article 20(3) of Constitution.
Constitution of India-Article 20(3)-Right if violated by issue of search warrant under s. 93(1)(c) of Cr.P.C.. 1973.

HEADNOTE:
Section 91 of the Code of Criminal Procedure, 1973 confers power on the court or an officer in charge of a police station to issue a summons or written order to any person in whose possession or power a document the production of which the court or the officer considers necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under D. the Code calling upon him to produce the document.
Section 93 of the Code contemplates three situations in which the court may issue a search warrant: (a) where the Court has reason to believe that a person to whom the summons or order under s. 91 has been or might be addressed will not or would not produce the document or thing as

required by such summons or requisition or (b) where such document or thing is not known to the court to be in the possession of any person or (c) where the court considers that the purposes of any enquiry, trial or other proceeding under this code will not be served by a general search or inspection, then it may issue a search warrant; and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions contained in the code.

The complainant (respondent no. 1) made an application before a magistrate for the issue of a warrant for the search and seizure of certain books and documents of a Sabha of which the accused were office-bearers. After the seizure of the books and documents, on the application of one of the accused persons, the magistrate directed their return to the persons from whom they were recovered. In the respondent revision petition the High Court held that the provisions contained in s. 93(1) of the Cr.P.C. were not hit by Art. 20(3) of the Constitution.

Dismissing the appeal,

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HELD: The High Court was right in sustaining the general search warrant under s. 93(1)(c) of the Code. [682 H]

1. The immunity against self incrimination extends to any incriminating evidence which the accused may be compelled to give but does not extend to cover a situation where evidence which may have tendency to incrinate

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the accused is being collected without compelling him to be a party to the collection of the evidence. The search of the premises occupied by the accused, without compelling the accused to be party to such search, would not be violative of Art. 20(3) of the Constitution. [682C]

2. A search and seizure pursuant to a search warrant under s. 93 (1) (c) 8 of the Code would not have the remotest tendency to compel an accused to incriminate himself. He is not required to participate in the search. He may remain a passive spectator or may even be absent. Merely because the accused is occupying the premises to be searched it cannot be said that by such search and consequent seizure of documents, including the document which may contain statements attributable to the personal Knowledge of the accused and which may have a tendency to incriminate him, would violate the constitutional guarantee against self-incrimination because he is not compelled to do anything. A passive submission to search cannot be styled as compulsion on the accused to submit to search. If anything is recovered during the search which may provide incriminating evidence against the accused it cannot be called a compelled testimony. [681 G-H]

3. Section 93(1)(c) comprehends a situation where a search warrant can be issued as the court is unaware of not

only the person but even the place where the documents may be found and that a general search is necessary. Therefore, power of the court under this clause cannot be cut down by importing some of the requirements of cl. (b) of the s. 93(1). [682 F-G]

In the instant case although the order of the magistrate was laconic certain important aspects could not be over-looked. The objects of the Sabha were of a general charitable nature. An earlier search warrant was quashed by the High Court. When the complainant made more serious allegation a search warrant was issued to conduct a search of the institution. The office premises, the books and other documents of the Sabha could not be said to be in possession of any individual accused. They were in the possession of the institution. A search of such a public place under the authority of a general search warrant can easily be sustained under s. 93(1)(c). Viewed this way there was no illegality in the Magistrate's order.

Shyamlal Mohanlal v. State of Gujarat , [1965] 2 SCR 457, M. P. Sharma & others v. Satish Chandra District Magistrate, Delhi & ors., [19541 SCR 1077, The State of Bombay v. Kathi Kalu Gohad & Ors. [1962] 3 SCR 10. explained.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 17 of 1979.

Appeal by Special Leave from the judgement and order dated 16-3-1978 of the Kerala High Court in Crl. M.P. No. 124/77.

T. C. Raghavan and N. Sudhakaran for the Appellant. Nemo for the Respondent.

The Judgment of the Court was delivered by A DESAI, J.-Nemo tenetu prodere-no man is bound to 'accuse himself-which finds constitutional recognition in Article 20(3) of he Constitution, conferring immunity from compelling an accused person to be a witness against himself by giving self-incriminating evidence, has been put into forefront to support a prayer for quashing he search warrant issued by the Sub-Divisional Magistrate, Always, on 4th January]977 directing The Deputy Superintendent of Police, Always, to search the premises styled as the office of H.M.D.P. Sabha ('Sabha' for short), Moothakunam, and to seize the books, documents and papers as set out in the application for issuance of search warmly. The Magistrate had before him a complaint filed by the first respondent Ramakrishnan against the petitioner and S others for having committed offences under sections 403, 409, 420 and 477A read with s. 34, Indian Penal Code. Original accused 1, and accused 2 the present petitioner, were respectively President and Secretary of the Sabha and original accused 3 to 6 were described as Managers of the Institution. The complainant made an application on 4th January 1977 requesting the learned Magistrate to issue a search warrant to search the office premises of the Sabha and seize the books, documents, etc. described in the application, if found

therein. On the very day the Magistrate issued a search warrant and in fact it was executed and certain books, vouchers and papers were produced before the Court. The present petitioner (original accused 2) requested the learned Magistrate to recall the warrant and to return the books and documents seized under the authority of the search warrant. The learned Magistrate was of the opinion that in view of the decision of this Court in Shyamlal Mohanlal v. State of Gujarat(l), and an earlier decision of V. Khalid, J. Of Kerala High Court, no search warrant could be issued under s. 91 of the Code of Criminal Procedure, 1973 ('new Code' for short), and accordingly directed that anything recovered pursuant to the search warrant Issued by him be returned to the person from whom the same were recovered. The order was, however, to take effect after the decision on the requisition which was by then received from the Income- Tax officer under s. 132A of the Income Tax Act. First respondent (original complainant) preferred a revision application to the High Court of Kerala questioning the correctness of the decision of the learned Magistrate and the claim to constitutional immunity of the accused from search and seizure of books, documents, etc. directed with a view to collecting evidence against him, being violative of Art. 20(3) of the Cons-

titution was canvassed before the Court. The High Court after an exhaustive review of the decisions of this Court as well as those bearing on the Fifth Amendment to the American constitution held that the provisions relating to search contained in s. 93(1) of the Criminal Procedure Code, 1973, are not hit by Article 20(3) of the Constitution.

Section 91 confers power on the Court or an officer in charge of a J police station to issue a summons or written order as the case may be, to any person in whose possession or power a document, the production of which the Court or the officer considers necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under the Code. Section 93 confers power on the Court to issue search warrant under three different situations.

Sections 91 and 93, so far as they are relevant, read as under:

> "91. (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person m whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stat ed in the summons or order."
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> "93. (l)(a) Where any Court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub-section (1) of section 92 has been, or might, be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or
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> (b) where such document or thing is not known to the Court to be in the possession of any person, or

> (c) where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection, it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained".

In exercise of the power conferred by s. 91 a summons can be issued by the Court to a person in whose possession or power any document or other thing considered necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under the Code calling upon him to produce the document or thing at the time and place to be mentioned in the summons. On the advent of the Constitution, and especially in view of the provision contained in Art. 20(3), Courts were faced with a problem whether the person referred to in s. 91(1) of the Code (s 94 of old Code) would include an accused. In other words, the question was whether a summons can be addressed to the accused calling upon him to produce any document which may be in his possession or power and which is necessary or desirable for the purpose of an investigation, inquiry, trial, etc. in which such person was an accused person. The wider question that was raised soon after the enforcement of the Constitution was whether search of the premises occupied or in possession of a person accused of an offence or seizure of anything therefrom would violate the immunity from self-incrimination enacted in Article 20(3). In M. P. Sharma & others v. Satish Chandra, District Magistrate, Delhi & ors.,(ll) the contention put forth was that a search to obtain document for investigation into an offence is- a compulsory procuring of incriminatory evidence from the accused himself and is, therefore, hit by Art. 20(3) as unconstitutional and illegal. A specific reference was made to ss. 94 and 96 of the Criminal Procedure Code, 1898 ('old Code' for short), both of which are re-enacted in almost identical language as ss. 91 and 93 in the new Code, in support of the submission that a seizure of documents on search is in the contemplation or law a compelled production of documents. A Constitution Bench of 8 judges of this Court unanimously negatived this contention observing:

> "A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under Article 20(3) would be defeated by the statutory provisions for searches".

It was concluded that a search under the enabling provisions of the Criminal Procedure Code cannot be challenged as illegal on the ground of violation of Article 20(3). It must be made clear that the question whether there is any element of compulsion in issuing a summons to a person accused of an offence under s. 94 (old) s. 91 (new) to produce a document or thing in his possession or power considered n necessary or desirable for any inquiry, investigation or, trial under the Code of Criminal Procedure was kept open. In other words, the question whether the expression 'person' in s. 94 (old) s. 91 (new) would comprehend a person accused of an offence was left open.

Following the decision in M. P. Sharma's case, a Division Bench of the Madras High Court in Swarnalingam Chettiar v. Assistant Labour Inspector, Karaikudi(l) held that a summons could not be issued under s. 94 of the old Code to the accused for production of certain documents in his possession irrespective of the fact whether those documents contained some statement of the accused made of his personal knowledge and accordingly the summons issued to the accused to produce certain documents was quashed. After the matter went back to the trial court, on an application of the Sub-Inspector investigating the case, for a search warrant to be issued to obtain documents mentioned in the list attached to the petition and likely to be found upon a search of the premises of Karaikudi Railway out Agency, the Magistrate issued a notice to the accused to show cause E, why a general search warrant as asked for should not be issued. Again the accused moved the High Court in revision and in Swarnalingam Chettiar v. Assistant Inspector of Labour Karaikudi(2) the High Court quashed the notice holding that such notice practically amounts to stating that either he produces the document or else the premises will be searched and this will amount to testimonial compulsion held impermissible by the decision of the Supreme Court in M. P. Sharma's case (supra). This view of the Madras High Court is no more good law in view of the later decisions of this Court.

In The Slate of Bombay v. Kathi Kalu Oghad & Ors.,(3) a question arose whether obtaining specimen hand writing or thumb impression of the accused would contravene the constitutional guarantee in Art. 20(3). In this case there was some controversy about certain observations in M. P. Sharma's case (supra) and, therefore, the matter was heard by a Bench of 11 Judges. Two opinions were handed down, one by Chief Justice Sinha for himself and 7 brother judges, and another by Das Gupta, J. for himself and 2 other colleagues. In Sinha, CJ's opinion, the observation in M. P.

Sharma's case (supra) that s. 139 of the Evidence Act has no bearing on the connotation of the word 'witness' is not entirely well-founded in law. Immunity from self- incrimination as re-enacted in Art. 20(3) was held to mean conveying information based upon the personal knowledge of the person giving the information and could not include merely the mechanical process of producing documents in court which may throw a light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge. It was concluded that to be a witness is not equivalent to furnishing evidence in its widest significance; that is to say, as including not merely making of oral or written statement but also production of document or giving materials which may be relevant at trial to determine the innocence or guilt of the' accused.

What was kept open in Sharma's case (supra) whether a person accused of an offence could be served with a summons to produce documents was decided when it was observed that immunity from self-incrimination would not comprehend the mechanical process of producing documents in court which may throw a light on any of the points in controversy but which do not contain a statement of the accused based on his personal knowledge.

The matter again came up before a Constitution Bench of this Court in Shyamlal Mohanlal v. State of Gujarat(l). In that case appellant Shyamlal Mohanlal was a licensed money- lender and according to the provisions of the relevant Money Lending Act and Rules he was under an obligation to maintain books. He was prosecuted for failing to maintain books in accordance with the provisions

of the Act and the Rules. The police prosecutor incharge of the case on behalf of the prosecution presented an application requesting the Court to order the appellant Shyamlal Mohanlal to produce daily book and ledger for a certain year. Presumably it was a request to issue summons as contemplated by s. 94 of the old Code. The Learned Magistrate rejected the request on the ground that in so doing the guarantee of immunity from self- incrimination would be violated. The matter ultimately came to this Court and the question that was put in forefront before the Court was whether the expression 'person' in s. 94(1) which is the sale as s. 91(1) of the new Code, comprehends within its sweep a person accused of an offence and if it does, whether an issue of summons to produce a document in his possession or power would violate the immunity against self-incrimination guaranteed by Article 20(3). The majority opinion handed down by Sikri, J. ruled that s. 94(1) upon its true construction does not apply to an accused person. While recording this opinion there is no reference to the decision of the larger Bench in Kathi Kalu oghad's case (supra). Shah, J. in his dissenting judgment referred to the observation that the accused may have documentary evidence in his possession which may throw some light on the controversy and if it is a document which is not his statement conveying his personal Knowledge relating to the charge against him, he may be called upon to produce it. Proceeding further it was observed that Art. 20(3) would be no bar to the summons being issued to a person accused of an offence to produce a thing or document except in the circumstances herein above mentioned. Whatever that may be, it is indisputable that according to the majority opinion the expression 'person' in s. 91(1) (new Code) does not take within its sweep a person accused of an offence which would mean that a summons issued to an accused person to produce a thing or document considered necessary or desirable for the purpose of an investigation, inquiry or trial would imply compulsion and the document or thing so produced would be compelled testimony and would be violative of the constitutional immunity against self-incrimination.

There appears to be some conflict between the observations in M. P. Sharma's case (supra) as reconsidered in Kothi Kala oghad's case (supra) and the one in the case of Shyamlal Mohanlal (supra). However, as this case is not directly relatable to a summons issued under s. 91(1), we do not consider it necessary to refer the matter to a larger Bench to resolve the conflict.

In view of the decision in Shyamlal Mohanlal's case (supra) one must proceed on the basis that a summons to produce a thing or document as contemplated by s. 91(1) cannot be issued to a person accused of an offence calling upon him to produce document or thing considered necessary or desirable for the purpose of an investigation, inquiry, trial or other proceeding under the Code of Criminal Procedure.

If summons as hereinbefore discussed cannot be issued to an accused person under s. 91(1), ipso facto a search warrant contemplated by s. 93(1) (a) cannot be issued by the Court for the obvious reason that it can only be issued where the Court could have issued a summons but would not issue the same under the apprehension that the person to whom such summons is issued will not or would not produce the thing as required by such summons or requisition. A search warrant under s. 93(1)(a) could only be issued where a summons could have been issued under s. 91(1) but the same would not be issued on an apprehension that the person, to whom the summons is directed would not comply with the same and, there- A fore, in order to obtain the document or thing to produce

which the summons was to be. issued, a search warrant may be issued under s. 93 (1) (a) .

Section 93, however, also envisages situations other than one contemplated by s. 93(1)(a) for issuance of a search warrant. It must be made distinctly clear that the present search warrant is not issued under s. 93 (1) (a) .

Section 93(1) (b) comprehends a situation where a search warrant may be issued to procure a document or thing not known to the Court to be in the possession of any person. In other words, a general search warrant may be issued to procure the document or thing and it can be recovered from any person who may be ultimately found in possession of it and it was not known to the Court that the person from whose possession it was found was in possession of it. In the present case the search warrant was to be executed at the office of the Sabha and it can be said that office bearers of the Sabha were the persons who were in possession of the documents in respect of which the search warrant was issued. Therefore, clause (b) of s. 93(1) would not be attracted.

Section 93(1) (c) of the new Code comprehends a situation where the Court may issue a search warrant when it considers that the purpose of an inquiry, trial or other proceeding under the Code will be served by a general search or inspection to search, seize and produce the documents mentioned in the list. When such a general search warrant is issued, in execution of it the premises even in possession of the accused can be searched and documents found therein can be seized irrespective of the fact that the documents may contain some statement made by the accused upon his personal knowledge and which when proved may have the tendency to incriminate the accused. However, such a search and seizure pursuant to a search warrant issued under s. 93(1) (c) will not have even the remotest tendency to compel the accused to incriminate himself. He is expected to do nothing. He is not required to participate in the search. He may remain a passive spectator. He may even remain absent. Search can be conducted under the authority of such warrant in the presence of the accused. Merely because he is occupying the premises which is to be searched under the authority of the search warrant it cannot even remotely be said that by such search and consequent seizure of documents including the documents which may contain statements attributable to the personal knowledge of the accused and which may have tendency to incriminate him, would violate the constitutional guarantee against self- incrimination because he is not compelled to do anything. A passive submission to search cannot be styled as a compulsion on the accused to submit to search and if anything is recovered during search which may provide incriminating evidence against the accused it cannot be styled as compelled testimony. This is too obvious to need any precedent in support. The immunity against self- crimination extends to any incriminating evidence which the accused may be compelled to give. It does not extend to cover such situation as where evidence which may have tendency to incriminate the accused is being collected without in any manner compelling him or asking him to be a party to the collection of the evidence. Search of the premises occupied by the accused without the accused being compelled to be a party to such search would not be violative of the constitutional guarantee enshrined in Article 20(3). .

It was, however, urged that s. 93(1) (c) must be read in the context of s. 93(1) (b) and it would mean that where documents are known to be at a certain place and in possession of a certain person any general search warrant as contemplated by s. 93(1) (c) will have to be ruled out because in such a

situation s. 93(1)(a) alone would be attracted. Section 93(1)(b) comprehends a situation where the Court issues a search warrant in respect of a document or a thing to be recovered from a certain place but it is not known to the Court whether that document or thing is in possession of any particular person. Under clause (b) there is a definite allegation to recover certain document or thing from a certain specific place but the Court is unaware of the fact whether that document or thing or the place is in possession of a particular person. Section 93(1)(c) comprehends a situation where a search warrant can be issued as the Court is unaware of not only the person but even the place where the documents may be found and that a general search is necessary. One cannot, therefore, cut down the power of the Court under s. 93(1) (c) by importing into it some of the requirements of s. 93(1)(b). No canon of construction would permit such an erosion of power of the Court to issue a general search warrant. It also comprehends not merely a general search but even an inspection meaning thereby inspection of a place and a general search thereof and seizure of documents or things which the Court considers necessary or desirable for the purpose of an investigation, inquiry, trial or other proceeding under the Code. The High Court accordingly sustained the general search warrant in this case under s. 93(1)(c).

Turning to the facts of this case it was contended that the order of the Magistrate clearly disclosed an utter non- application of mind and a mere mechanical disposal of the application before the Court. Undoubtedly the order is of a laconic nature. But then there are certain aspects of the case which cannot be overlooked before this Court would interfere in such an interlocutory order.

The appellant and his co-accused are office bearers of a public institution styled as H.M.D.P. Sabha. We were informed at the hearing of this petition that this Sabha is a public institution engaged in the. activity of running educational institutions and supporting objects or activities of a general charitable nature. When the first complaint was filed, the allegation therein was that criminal breach of trust in respect of funds of the public institution has been committed by the office bearers thereof. A search warrant was issued but it was quashed by the Kerala High Court. Thereafter an other complaint was filed making some more serious allegations and a search warrant was sought. Now, this search warrant was being issued to conduct search of the premises used as office of an institution. The place will be in possession of the institution. The office bearers of the Sabha are accused of an offence. Documents and books of accounts of the institution are required for the purpose of the trial against the office bearers of the institution. The office premises could not be said to be in possession of any individual accused but stricto sensu it would be in possession of the institution. Books of accounts and other documents of the institution could not be said to be in personal custody or possession of the office bearers of the institution but they are in possession of the institution and are lying in the office of the institution. A search of such a public place under the authority of a general search warrant can easily be sustained under s. 93(1)(c). If the order of the learned Magistrate is construed to mean this, there is no, illegality committed in issuing a search warrant. Of course, issuance of a search warrant is a serious matter and it would be advisable not to dispose of an application for search warrant in a mechanical way by a laconic order. Issue of search warrant being in the discretion of the Magistrate it would be reasonable to expect of the Magistrate to give reasons which swayed his discretion in favour of granting the request. A clear application of mind by the learned Magistrate must be discernible in the order granting the search warrant. Having said this, we see no justification for interfering with the order of the High Court in this case.

P.B.R. Appeal dismissed.