

Ajay Kumar Singh Vs Director General Of Investigation And Ors

Court: Patna High Court

Date of Decision: Dec. 2, 2020

Acts Referred: Income Tax Act, 1961 " Section 132, 132(1), 132(5)

Income Tax Rules, 1962 " Rule 112

Constitution Of India, 1950 " Article 21, 226

Hon'ble Judges: Sanjay Karol, CJ; S. Kumar, J

Bench: Division Bench

Advocate: Krishna Mohan Mishra, Archana Sinha

Final Decision: Disposed Of

Judgement

1. The following issues emerge for our consideration:

1) Whether the search and seizure warrant issued under Section 132 of the Income Tax Act, 1961 against the Petitioner is illegal and ultra-vires?

2) Whether the High Court under writ jurisdiction can question the sufficiency and adequacy of the reasons recorded in the satisfaction leading to the

issuance of search and seizure warrants?

2. According to satisfaction note dated 24th October, 2008 authored by the Assistant Director of Income Tax (Inv.) Jamshedpur, leading to the

issuance of the warrant of authorization by the competent authority on 27th October, 2008, premises of the persons mentioned therein, including the

present Petitioner, namely, Ajay Kumar Singh were searched on 7th November, 2008. Undisputedly, certain articles, including cash, jewellery and

papers were recovered from the bank locker jointly held by the Petitioner with his wife. Allegedly, reports and documents recovered revealed

undisclosed transactions of considerably high value, running into thousands of lakh of rupees.

3. Petitioner lays a challenge to the warrant of authorization dated 27th October, 2008 and consequential action of conduct of search and seizure

operation on 7th November, 2008, to be illegal, unauthorized and ultra vires the provisions of Section 132 of the Income Tax Act, 1961 and Rules 112

of the Income Tax Rules framed thereunder.

4. On facts, Petitioner does admit that four years before the conduct of search, he was Director in M/s Apcon Homes Private Limited. However,

since his resignation in the year 2004, Shri Kaushal Kumar Singh and Dharendra Kumar Singh took over its affairs, with the Petitioner having nothing

to do either with the said Company or any one of the persons managing the same or other group companies referred to in the satisfaction note. To

support its case, the Petitioner has placed on individual record returns filed under the Companies Act, indicating his intent of change of Directorship.

5. On facts, the Revenue has refuted and disputed the averments made in the petition. Allegedly, Petitioner and one Mr. Kaushal Singh were deeply

associated with the affairs of M/s Apcon Homes Private Limited. As on the date of issuance of search warrants, the Website maintained by the

Registrar of Companies reflected the Petitioner to be one of its Directors. Further, Kaushal Kumar Singh was indulging into severe violation of

provisions of the Income Tax Act and as such was kept under watch. Investigation reveals that at least seven companies, including M/s Aastha

Promoters & Developers Pvt. Ltd., M/s Kamini Kaushal Kanchan Construction Pvt. Ltd. and M/s Apcon Homes Pvt. Ltd. had indulged in large scale

evasion of tax, apart from defrauding gullible customers. Allegedly, 30-40 per cent of the amount, valuing the property, was received in cash from

them.

6. We have perused the satisfaction note, Annexure-A annexed along with an affidavit in response, which refers the name of the Petitioner as a

Director of M/s Apcon Homes Pvt. Ltd. and the Petitioner to be part of the small but well nit group of persons managing seven companies engaged in

the development of nine projects of constructions at different locations in Ranchi, Jamshedpur and Dhanbad. All were falling within the territorial limits

of the authority conducting search and seizure operation. Petitioner's name as also the companies along with the premises to be searched are

mentioned therein.

7. Before this Court, the Petitioner has not tried to explain unaccounted money reflected in the documents seized during the search. The challenge,

limited in nature, is on the legal ground of there being no material germane reflecting satisfaction of the authorized person.

8. We must first understand the procedure to be followed under Section 132 of the Act. The relevant portion of the Section is extracted as follows:

“132. (1) Where the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief

Commissioner or Principal Commissioner or Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner

in consequence of information in his possession, has reason to believe that

any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any

books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or

under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable

article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian

Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this Section referred to as the undisclosed income or property)

then, " [the authorized officer may]

(i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents,

money, bullion, jewellery or other valuable article or thing are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys

thereof are not available;

(iia) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorized officer has

reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other

valuable article or thing; ...

(Emphasis supplied)

9. The Section provides when a competent authority can engage in a search and seizure procedure against any person pursuant to fulfilling the

requirement of the 'reason to believe.' The law on the process to be followed under the provisions of search and seizure is now well settled. The

principles therein have been determined through multiple cases including ITO v. Seth Bros., (1969) 2 SCC 324, Pooran Mal v. Director of Inspection

(Investigation), (1974) 1 SCC 345 and Partap Singh v. Director of Enforcement, (1985) 3 SCC 72.

10. In the case of Seth Bros. (supra), the Hon'ble Apex Court has held that:

"8. The Section does not confer any arbitrary authority upon the Revenue Officers. The Commissioner or the Director of Inspection must have, in

consequence of information, reason to believe that the statutory conditions for the exercise of the power to order search exist. If the action of the

officer issuing the authorization, or of the designated officer is challenged the officer concerned must satisfy the Court about the regularity of his

action. If the action is maliciously taken or power under the Section is exercised for a collateral purpose, it is liable to be struck down by the

Court. Where the Commissioner entertains the requisite belief and for reasons recorded by him authorizes a designated officer to enter and search

premises for books of account and documents relevant to or useful for any proceeding under the Act, the Court in a petition by an aggrieved person

cannot be asked to substitute its own opinion whether an order authorizing search should have been issued.

(Emphasis supplied)

11. The Hon'ble Apex Court has discussed these cases in the recent case of Director General of Income Tax (Investigation) v. Space wood

Furnishers Private Limited (2015) 12 SCC 179. The relevant portions are extracted as follows:

8. The principles that can be deduced from the aforesaid decisions of this Court which continue to hold the field without any departure may be

summarised as follows:

8.1. The authority must have information in its possession on the basis of which a reasonable belief can be founded that

(a) the person concerned has omitted or failed to produce books of account or other documents for production of which summons or notice had been

issued

Or

such person will not produce such books of account or other documents even if summons or notice is issued to him

Or

(b) such person is in possession of any money, bullion, jewellery or other valuable article which represents either wholly or partly income or property

which has not been or would not be disclosed

8.3. There must be application of mind to the material and the formation of opinion must be honest and bona fide. Consideration of any extraneous

or irrelevant material will vitiate the belief/satisfaction

8.6. Such reasons, however, may have to be placed before the Court in the event of a challenge to formation of the belief of the authorized official

in which event the Court (exercising jurisdiction under Article 226) would be entitled to examine the relevance of the reasons for the formation of the

belief though not the sufficiency or adequacy thereof.

(emphasis supplied)

12. From the above-highlighted principles, it is certain that for the procedure under Section 132 of the Act to be valid, the competent authority ought to

apply their mind to the information in possession. Also, their actions called into question in a Court of law, they ought to, satisfy its application. The

Court therefore only ought to examine the relevance of the reasons provided by the competent authority and not substitute its own opinion on whether

an order ought to have been issued.

13. As per the law propounded above, it is important to probe whether the relevance petitioner's resignation from the impugned Company, is an

exercise of questioning the 'sufficiency or adequacy' of the decision of the authority. Hence, it becomes imperative to discuss the law on the power of

the Court to examine the "sufficiency or adequacy" of the evidence and the reasons provided by the competent authority in this regard.

14. In *Spacewood (supra)*, it held that the High Court in its exercise of Writ Jurisdiction under Article 226, has the power to examine the, "the

relevance of the reasons for the formation of the belief [of the authority] though not the sufficiency or adequacy thereof." The interference of the

High Court was struck down because by reproducing the details of the Satisfaction Note the High Court had vitiated the intention of the proceedings

under Section 132 and other proceedings against the assessee. The Hon'ble Apex Court opined that,

"25. The remaining findings of the High Court with regard to the satisfaction recorded by the authorities appear to be in the nature of an appellate

exercise touching upon the sufficiency and adequacy of the reasons and the authenticity and acceptability of the information on which satisfaction had

been reached by the authorities. Such an exercise is alien to the jurisdiction under Article 226 of the Constitution."

15. It is therefore apparent that the power of the High Court is limited in this context, in that it cannot exhaustively reproduce the details of the

satisfaction note and in turn step into the shoes of an appellate authority of the Revenue. Thus, the power of the High Court is limited only to assessing

whether relevant reasons were recorded while initiating proceedings.

16. In yet another decision of the Hon'ble Apex Court in the case of *Union of India v. Agarwal Iron Industries*, (2014) 15 SCC 215, it stood held

that the High Court can scrutinize the file where the reasons for the search and seizure have been recorded and find whether the authority has

appropriately observed and recorded the reasons that form the opinion requiring search and seizure. The Hon'ble Apex Court has recommended that

in such instances the High Court should peruse the file and see whether the reasons meet the requirement of law. The relevant portions are extracted

as follows:

"10. The terms used are "reason to believe". Whether the competent authority had formed the opinion on the basis of any acceptable

material or not, as is clear as crystal, the High Court has not even remotely tried to see the reasons. Reasons, needless to say, can be recorded on the

file and the Court can scrutinize the file and find out whether the authority has appropriately recorded the reasons for forming of an opinion that there

are reasons to believe to conduct search and seizure. As is evincible, the High Court has totally misdirected itself in quashing the search and seizure

on the basis of the principles of non-traverse.

11. In our considered opinion, the High Court would have been well advised to peruse the file to see whether reasons have been recorded or not and

whether the same meet the requirement of law.Ã¢â‚¬â€œ

(emphasis supplied)

17. The case of Manish Maheshwari v. ACIT (2007) 3 SCC 794, has also observed as under:

Ã¢â‚¬â€œ17. The provisions contained in Chapter XIV-B are drastic in nature. It has draconian consequences. Such a proceeding can be initiated, it would

bear repetition to state, only if a raid is conducted. When the provisions are attracted, legal presumptions are raised against the assessee. The burden

shifts on the assessee. Audited accounts for a period of ten years may have to be reopened.Ã¢â‚¬â€œ

18. The nine Judge bench of the HonÃ¢â‚¬â€œble Apex Court in the case, K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, has clearly placed

substantial importance on the protection of the privacy of an individual and has read it to be part of their fundamental rights under Article 21 of the

Constitution of India. They have also recognized the way search and seizure proceedings under the Act encroach upon this fundamental right. The

relevant portion is extracted as follows:

Ã¢â‚¬â€œ78. After the decision in Canara Bank (District Registrar and Collector v. Canara Bank, (2005) 1 SCC 496) , the provisions for search and seizure

under Section 132(5) of the Income Tax Act, 1961 were construed strictly by this Court in P.R. Metrani v. CIT (2007) 1 SCC 789 on the ground that

they constitute a Ã¢â‚¬â€œserious intrusion into the privacy of a citizenÃ¢â‚¬â€œ. Adverting to Canara Bank among other decisions, the Court held that the right to

privacy is crucial and imposes a requirement of a written recording of reasons before a search and seizure could be carried out.Ã¢â‚¬â€œ

19. Search and seizure proceedings, place considerable power in the hands of the Revenue Department. Hence it becomes essential that a consistent

system of checks and balances be maintained against it. This power empowers the Revenue Department to bypass the privacy of an assessee or any

individual, whom the Revenue has a Ã¢â‚¬â€œreason to believe,Ã¢â‚¬â€œ would hold some information regarding tax evasion activities. In light of this power

which clearly encroaches against the fundamental right to life and personal liberty, in as much as their privacy is concerned, must be contained within

the limits of the law. Hence a strict reading of these empowering sections is necessary to avoid the pitfall of granting unfettered powers to the

Revenue Department.

20. Therefore, it would only be amenable to apply these draconian consequences of the invasion of one's privacy when a valid search has been

conducted. These cases mentioned above serve to instil the gravity of the proceedings initiated under Section 132.

21. The search and seizure procedure requires the authority to apply their mind and pay heed to all relevant facts while concluding that a warrant of

authorization must be issued. The authority, ought to record their reasons in reaching the conclusion that such proceedings ought to be initiated against

the assessee. The jurisdiction of this Court merely extends to keeping a check on the relevance of the reasons recorded and not go beyond in

assessing the sufficiency or adequacy of the reasons provided.

22. The Satisfaction Note was clearly concerned with tax evasion activities conducted by various companies and persons mentioned therein and the

same has been relied upon by the authority to initiate the proceedings under Section 132. Further it must be kept in mind that the Court cannot

substitute its own opinion in this regard.

23. Petitioner's assertion of having resigned from the Company and nothing to do with the same, cannot be accepted as a disputed fact in writ

jurisdiction, more so when records of the Registrar of Companies reflected the position to be otherwise. In any event, whether Petitioner, any which

way was connected with the Company or not; or the documents reflecting huge amounts of cash transactions stood reflected in the books of accounts

and was not an undisclosed income is again a question of fact which can be easily taken before the authorities in the adjudicatory proceedings. The

same was allowed to be completed by this Court by way of the interim order dated 21st of April, 2010 with the only restraint of not passing a final

order.

24. The impugned action is neither mala fide nor arbitrary or capricious.

25. The decisions rendered by the learned counsel for the Petitioner in para 5 of the written submission, is only reflective of the industry of the counsel

which we find not necessary to deal with given our having noticed the decisions rendered by the Hon'ble Apex Court referred to supra.

26. Learned counsel for the parties raises no other point.

27. In our considered view, the note of satisfaction does record reasons calling for necessary authorization to carry out search and seizure operation.

28. The search and seizure operations carried out by and in terms of Section 132(1) of the Income Tax Act cannot be said to be illegal and ultra vires

the Statute.

29. The Writ Court cannot go into the sufficiency and adequacy of the reasons recorded in the note of satisfaction in terms of Section 132 of the

Income Tax Act.

30. For all the reasons mentioned above, the writ petition stands dismissed.

31. Interlocutory application, if any, shall stand disposed of.