

## Shiv Dayal Vs Sohan Lal Bassar

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Jan. 8, 1970

**Acts Referred:** Criminal Procedure Code, 1898 (CrPC) â€” Section 94, 94(1), 96

**Citation:** AIR 1970 P&H 468 : (1970) CriLJ 1517

**Hon'ble Judges:** Manmohan Singh Gujral, J

**Bench:** Single Bench

**Advocate:** K.S. Kawatra and M.P. Maleri, for the Appellant; I.S. Vimal, Asst. A.G., C.L. Lakhanpal, I.S. Vimal and P.S. Man, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

Manmohan Singh Gujral, J.

These are three references by the Additional Sessions Judge, Jullundur, by three separate orders dated 5th

August, 1968, recommending that in one case the order of the Judicial Magistrate First Class, Jullundur, dated 21st August, 1967, and in other

two cases the order of the Judicial Magistrate First Class, Phillaur, dated 22nd May, 1968, whereby search warrants for taking possession of

trade marks, bill books, etc., were issued, be quashed. As all these references involve common questions of law and fact and the cases out of

which these references have arisen relate to the same parties, the present order will dispose of all the three references.

2. The facts giving rise to these references have been stated in detail in the referring orders and are not in dispute. Bakshi Ram and his two brothers

Shiv Dayal and Kishan Chand were joint owners of two firms known as. Amin Chand and Sons and Landra Engineering and Foundry Works.

These were partnership firms and were engaged in the manufacture and sale of chaff cutters, their parts, etc. The firms were using registered trade

marks on the manufactured goods in their factories which were situated at Landra and Phillaur. The trade marks were registered with the Registrar

of Trade Marks at Bombay under different names which it is not necessary to set out.

Bakshi Ram, the father of Sohan Lal respondent, suspecting that his partners had become dishonest and had started misappropriating the assets of

the firms served a notice on his partners dissolving the firms. The notice was received by the other partners in February, 1967, and in reply it was

requested by the other two partners that the dissolution be postponed till 31st March, 1968, being the end of the financial year. Bakshi Ram,

however, did not agree to this and only allowed the firms to continue running for the purpose of winding up till 31st March, 1967. In spite of the

dissolution of the firms the partners other than Bakshi Ram continued to run the business of manufacture and sale of agricultural implements under

the trade marks which had been got registered by the firms for their own exclusive use and benefit.

Being of the view that the acts of Shiv Dayal and Kishan Chand offended Sections 78 and 79 of the Trade and Merchandise Marks Act, 1958,

and Sections 416, 420, 478, 482, 463, 485 and 486 of the Indian Penal Code, Bakshi Ram got a complaint filed through his son Sohan Lal

against his two partners Shiv Dayal and Kishan Chand in the Court of the Judicial Magistrate First Class at Jullundur. In that complaint he also

made an application for the issuance of warrants u/s 96 of the Criminal Procedure Code and on that application search warrants for the recovery

of the goods bearing the infringed trade marks and other materials such as seals, stamps, patterns, etc., were issued. Shiv Dayal and Kishan Chand

filed a revision petition before the Court of Session and obtained a stay order. In the meantime, Bakshi Ram died on 4th February, 1968, and his

son Sohan Lal learning that the other two partners of the firms, namely, Shiv Dayal and Kishan Chand, have formed two separate firms by the

inclusion of a third partner in each firm under the name and style of Messrs Amin Chand and Sons and Landra Engineering and Foundry Works,

filed two separate complaints in the Court of the Judicial Magistrate First Class, Phillaur on 21st May, 1968, under Sections 78 and 79 of the

Trade and Merchandise Marks Act, 1958, and Sections 416, 420, 478, 482, 483, 485 and 486 of the Indian Penal Code on the allegations that

the accused in those cases were using the Infringed trade marks which they had no right or authority to use and which were the property of the

firms before they were dissolved.

In these complaints applications u/s 96 of the Criminal Procedure Code for issuance of search warrants for the search of the office, factory and go-

down and recovery of trade marks, patterns and bill books were also made. On these applications search warrants as prayed for were issued on

22nd May, 1968. Against these orders Shiv Dayal and Kishan Chand filed revision petitions praying for the quashing of the search warrants. The

learned Additional Sessions Judge, Jullundur, by three separate orders dated 5th August, 1968, has recommended that the search warrants in all

the three cases should be quashed. The recommendation has been made on the following two grounds:--

(1) To issue a search warrant for the production of the papers and books in a particular premises for the purpose of an enquiry as to whether the

owner of the premises had used or sold articles with counterfeit trade marks was a gross perversion of law and that the warrant had been issued

without the learned Magistrate fully appreciating the gravity of the situation and the effect of his order,

(2) It was not stated in the order that the documents were necessary or desirable for the purpose of the enquiry before him and the Magistrate had

not given any reason for issuing the search warrants u/s 96 of the Criminal P. C.

3. I have heard the learned counsel for the parties at length. In order to appreciate the rival contentions of the parties, a reference will have to be

made to the applications filed by Sohan Lal u/s 96 and the orders passed thereon. The applications in all the three cases are in identical terms and

the relevant portions of one of those are as follows:--

2. That the accused have in their possession the articles and goods bearing infringed Trade Marks "LANDRA" and others and also seals, stamps,

patterns, etc. etc. used for the purpose of the Trade Mark "LANDRA" and others as fully detailed in the complaint and in the last para of this

petition and the Account Books, and the relevant record relating to the manufacture and sale of the goods manufactured ""under the firm name

Amin Chand & Sons the impugned joint Trade Mark.

3. That the complainant has received creditable information with a view to destroy the evidence of infringement and contravention of the provisions

of the Trade and Merchandise Marks Act and as well as the Indian Penal Code the accused are about to remove the said goods and articles and if

the accused are successful in doing so, the complainant will be greatly handicapped with the prosecution of the case and the seizure of the goods

u/s 85 of the Trade and Merchandise Marks Act of 1958 of goods bearing the infringed marks LANDRA and others as mentioned in the

paragraph above.

4. It is, therefore, most respectfully prayed that this Hon"ble Court be pleased to issue Search Warrants of the Office, Factory and godown of the

firms M/s. Amin Chand & Sons, village and Post Office, Landra. Tehsil Phillaur, for the recovery of the goods, bearing infringed Trade Marks

"LANDRA" "Raja Shahi" "Vir shah" and "Amin Chand & Sons" and other materials such as seals, stamps, patterns, etc. etc. which may be used

for the purpose of infringement of the Trade Marks Landra & others, as fully detailed in the complaint and the Account Books and other

documents and relevant record relating to the manufacture and sale of the goods, chaff-cutting machines, parts thereof and blades therefore and

other agricultural implements and machinery manufactured and maintained by M/s. Amin Chand & Sons.

On the first application which was filed on 16th August, 1967, before the Judicial Magistrate First Class, the following order was passed on 21st

August, 1967:--

Present counsel for the complainant Heard. Search warrants for the recovery of goods and material as prayed for is issued for 6-9-1967.

Warrants be given dasti.

On the other two applications the following order was passed:--

The case be sent to S. H. O. Phillaur u/s 202, Criminal P. C. Trade marks and patterns belonging to firm Amin Chand & Sons (M/s. Landra

Engineering and Foundry Works in the other case) be taken into possession. Search warrants be issued. Bill books be also taken into possession.

4-5. On behalf of the petitioners It was alleged that the trade marks stood jointly In the name of the petitioners and Bakshi Ram deceased and

there was no question of infringement of trade marks on their part. It was also contended that Sohan Lal had filed false complaints in order to ruin

the business and put pressure on the petitioners so that he could get undue advantage from them. In this connection, it was also pointed out that on

24th September, 1967, an agreement had been arrived at between the three brothers whereby all the questions relevant to the partition of the

assets of the firms had to be referred to arbitration and till the final partition by the arbitrators the business of the firm was to be carried on as

before. It was also stated that Bakshi Ram had filed a civil suit for rendition of accounts in respect of the Landra Engineering and Foundry Works.

On the basis of the agreement, it was urged, that the petitioners could legally use the trade marks and no question of the commission of any offence

arose on their part. These arguments were also raised before the learned Additional Sessions Judge and he rightly took the view that at this stage it

was not proper to express any opinion as to whether the petitioners could legally carry on the business of the firms to the exclusion of the heirs of

Bakshi Ram as at this stage we were only called upon, to decide the question of the justification of the issuance of the search warrants.

6. The material parts of Sections 94(1) and 96(1) of the Criminal P. C. read as under:--

94. (1) Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, 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 in

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

stated in the summons or order.

96. (1) Where any Court has reason to believe that a person to whom a summons or order u/s 94 or a requisition u/s 95, Sub-section (1), has,

been or might be addressed, will not or would not produce the document or, things as required by such summons or requisition, or where such

document or thing is not known to the Court to be in the possession of any person.

or 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.

From a bare perusal of Section 96(1) it emerges that it contains three alternatives and whereas alternative No. 1 relates to Section 94(1), the other

two alternatives are not concerned with this provision. The requirement of previous notice or summons and the non-compliance with it or the

likelihood of such non-compliance is prescribed only for the first alternative and not for the other two alternatives. A general search or a search for

a document not known to be in possession of any particular person is not controlled by the requirements of Section 94(1). In *State of Gujarat v.*

*Shyam Lal Mohan Lal Choksi* AIR 1965 SC 1251 the Supreme Court has taken the view that no search warrant could be issued to search for

documents known to be in the possession of the accused. This result followed from the view that Section 94 did not apply to an accused under

trial.

7. Unfortunately, neither in the application made by the complainant nor in the order passed by the learned Magistrate it was clearly specified

whether the warrant was being issued under the first part or the second part or the third part of Section 96(1). From the language of the

application, however, it appears that the provisions of the first part of Section 96 (1) were being invoked. In paragraph 2 of the application it was

mentioned that the complainant apprehended that with a view to destroy the evidence of the infringement and contravention of the Trade and

Merchandise Marks Act the accused were likely to remove the goods and articles from the office, factory and godown of the firms and if that was

allowed to be done the complainant would be handicapped in the prosecution of the case and the seizure of the goods. From the language of this

paragraph it could be spelled out that an effort was made to fulfil the conditions of Section 96(1), namely, that if a summons or order u/s 94 was

issued to the accused they would not produce the goods and articles bearing infringed trade marks and other seals, stamps and patterns which

were in the possession of the accused. In view of the observations of the Supreme Court in Shyamlal Mohanlal's case AIR 1965 SC 1251 search

warrant u/s 96(1) could not be issued and the order was, therefore, not legal.

8. During the arguments it was urged on behalf of the respondents that the warrant was issued under the third part of Section 96(1) of the Criminal

P. C. which authorises the Court to issue a warrant if the purpose of an enquiry, trial or other proceeding could be served by a general search or

inspection. This argument, in my opinion, is not well merited. Where the documents and things are known to be in the possession of the accused

and their location and place of storage are also known the warrant would not be a general warrant for search and inspection and would be

covered by the first part of Section 96(1) of the Criminal P. C. The words "the document or thing" occurring in the first part of Section 96(1)

envisages that specific documents and articles which could be required by a person could be obtained by the issue of a warrant u/s 96(1) of the

Criminal P. C. Where, therefore, what is required is specific documents or articles including books of accounts, etc., alleged to be in the custody

of the accused the warrant would be one under the first part of Section 96(1) and not the third part.

9. It is obvious from the order that it contains no reasons as to why it was considered necessary to issue the warrants. The function of issuing a

warrant is a judicial function. Though it is not specifically laid down in Section 96 that the order should contain reasons therefor, but it has been

repeatedly laid down that where the orders of the Court are open to appeal or revision by a higher Court it is highly desirable to give reasons in

support of the order so that the superior Courts would be in a position to judge whether there has been a proper exercise of the discretion or not-

Unless the reasons are apparent on the record, failure to state reasons could lead to the inference that the exercise of discretion was arbitrary and

not based on well-recognised principles and this could be a good ground for setting aside the order.

In the present case, the learned counsel appearing for the respondent has not been able to give any cogent reason to show that it was necessary to

issue a search warrant in such sweeping terms requiring the production of all the accounts books of the firms and of the goods bearing the infringed

trade marks lying in the premises of the firms and also the production of all the dyes, etc. All that the learned counsel for the respondent could

advocate was that in order to establish his case it was necessary for him to show that the accused were using the infringed trade marks and were

selling goods bearing the infringed trade marks. On the other hand, it is urged by the learned counsel for the accused-petitioners that the facts

sought to be proved by the complainant were admitted by them in their affidavit and could even otherwise be easily proved by the complainant by

the production of witnesses to whom these goods were being sold." Without going into the question as to how best the complainant could prove

his case, it is sufficient to say that there was no justification for the issue of search warrant for the seizure of the books, goods, dyes, stamps, etc.,

lying in the office, factory and godown of the firms.

In any case, during the proceedings before the Additional Sessions Judge the accused have given a list of the trade marks, dyes, etc., which were

being used by them and it would, therefore, be not necessary that the manufactured goods bearing the infringed trade marks should be produced in

Court or taken possession of in obedience to the search warrants issued by the Judicial Magistrate. I am, therefore, satisfied that the exercise of

the discretion by the Judicial Magistrate was not proper and had been exercised without bearing in mind that a warrant for search is not a mere

formality and in fact is a drastic act and the power should be sparingly exercised. These, therefore, appear to be fit cases for accepting the

references made by the Additional Sessions Judge and I accordingly set aside the orders passed by the learned Magistrates dated 22nd May.

1968 and 5th August. 1968, issuing the search warrants.