

Deep Chand
and others

v.

Additional
Director,
Consolidation of
Holdings,
Punjab and
another

Dua, J.

accordingly. In the circumstances of the case,
there would be no order as to costs.

A. N. GROVER, J.—I agree.

JINDRA LAL, J.—I agree.

D. FALSHAW, CHIEF JUSTICE.—I agree.

HARBANS SINGH, J.—I agree.

B.R.T.

FULL BENCH

Before R. P. Khosla, Gurdev Singh and P. D. Sharma, JJ.

NAWAL KISHORE THAKUR,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Criminal Original No. 74 of 1963.

1963.

Dec., 20th.

Code of Criminal Procedure (Act V of 1898)—S. 99—Petition under—Whether maintainable when search and seizure of documents has taken place under a warrant issued by a magistrate and not by the State Government by notification in the Gazette as provided in S. 99-A of the Code.

Held, that a petition under section 99-B of the Code of Criminal Procedure, 1898, is maintainable only if the action complained of had been initiated at the instance of the State Government, notified in the Official Gazette stating the grounds of its opinion and declaring the copy of every issue of the newspaper, etc., in view forfeited. It has further to be in respect of seizure of issues of the newspaper, etc., containing repugnant matter as contemplated under sections 124A or 153A or 295A of the Indian Penal Code. An application under section 99-B of the Code is not maintainable where search and seizure of documents, newspapers, etc., has taken place under a warrant issued by a magistrate.

Petition on behalf of the petitioner praying that the application of the petitioner under section 99-B, Criminal Procedure Code, be considered expeditiously and the order of forfeiture of documents be set aside.

R. N. NARULA, ADVOCATE, for the Petitioner.

K. L. JAGGA, ASSISTANT ADVOCATE-GENERAL, D. D. JAIN, ADVOCATE, AND SHER INDERJIT SINGH, P. P. KANGRA, for the Respondents.

ORDER

Khosla, J.—Criminal Original No. 74 of 1963, comprising the petition under section 99-B of the Code of Criminal Procedure had been, in view of the provisions of section 99-C of the said Code, placed for disposal before this Full Bench together with other so-called connected petitions, namely, Criminal Writs Nos. 4 and 6 of 1963 and Criminal Miscellaneous Nos. 1022 and 1023 of 1962.

Khosla, J.

The case made out and as gathered from the said petition under section 99-B of the Code of Criminal Procedure was that a search carried out pursuant to warrants issued under the order of Sub-Divisional Magistrate, Kulu, and recovery of articles including a cyclostyle machine resulting were unauthorised and illegal. These averments were not opposed, in fact could not have been, for the said warrants admittedly had issued under the provisions of Press Emergency Powers Act, 1931 which enactment clearly stood repealed by Act 56 of 1951. (The Press Objectionable Matters Act) which in itself subsequently was repealed by Act 36 of 1957 that came into operation on some date in September, 1957. Obviously, therefore, the impugned order directing issuance of warrant and the recoveries following were void and ineffective for the Press Emergency Powers Act at the relevant date, i.e., 8th of June, 1962, when the warrants issued, had no legal existence.

The real question that arises, has been canvassed and requires determination, however, is whether the instant petition under section 99-B of the Code of Criminal Procedure, subject-matter of Criminal Original No. 74 of 1963, was at all competent.

The perusal of the provisions of section 99-A of the Code of Criminal Procedure, which alone

clearly indicates that the complained of action had to initiate at the instance of the State Government, notified in the Official Gazette stating the grounds of its opinion and declaring the copy of every issue of the newspaper, etc., in view forfeited. It further was to be in respect of seizure of issues of the newspaper, etc., containing repugnant matter as contemplated under sections 124-A or 153-A or 295-A of the Indian Penal Code. The cause set out in the instant petition had nothing whatever to do with the matters comprising section 99-A supra.

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Khosla, J.

The impugned search, as already observed, had been carried out under the provisions of the Press Emergency Powers Act which no longer was alive.

The learned counsel appearing in support of the petition in fact frankly and fairly conceded that the instant petition under section 99-B did not lie. Criminal Original No. 74 of 1963, therefore, must fail and is dismissed. We would however in view of the issuance of warrants leading to the impugned recoveries having been wholly unjustified, direct that the articles recovered be restored to the petitioner forthwith.

The other matters had been tagged on to Criminal Original No. 74 of 1963. Of them Criminal Writ No. 4 of 1963 is a matter appropriately for decision by a Single Bench. Criminal Writ No. 6 of 1963, is for admission by a Division Bench. The other two petitions, namely, Criminal Miscellaneous Nos. 1022 of 1962 and 1023 of 1962 are also cognizable by Single Bench. These petitions, therefore, must be placed for disposal before the respective Benches as indicated.

Gurdev Singh, J.—I agree with the opinion of Gurdev Singh, J. my learned brother, R. P. Khosla J., and the order proposed by him.

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 Gurdev Singh, J.

The petition (Criminal Original No. 74 of 1963) was directed to be heard by a Special Bench of three judges of this Court in accordance with the provisions of section 99-C of the Criminal Procedure Code as it purported to have been made under section 99-B of the Criminal Procedure Code. The petitioner complained that certain issues of the newspaper 'Andhian' of which he is the editor, printer and publisher, were forfeited after having been seized in the course of a search (which, according to him, was illegal and *mala fide*) conducted by S.I. Partap Singh, Station House Officer, Kulu, on 9th June, 1962, and he prayed that the forfeiture of those documents be set aside.

It was only at the hearing before this Bench that it came to light that no order of forfeiture under section 99-A of the Criminal Procedure Code had been made by the State Government. Thus no application under section 99-B was competent as it is provided therein that it is only against an order of forfeiture made under section 99-A that the person having any interest in any newspaper, book or other document has a right to approach the High Court for setting aside the order of forfeiture. On that short ground the petition must fail.

In his affidavit filed by the Deputy Commissioner, Dharamsala, in reply to the petition, it was admitted that a search of the premises of the petitioner Nawal Kishore was conducted by S. I. Partap Singh, on 9th June, 1962, in the course of which he seized two news-sheets relating to Shri Daya Nand Dhir, Sub-Divisional Officer, (Civil), Kulu, and various other articles, including a cyclostyle-machine and a Will. This search was carried out in pursuance of the search warrant, Exhibit P. L., issued by the said Shri D. N. Dhir, respondent on

8th June, 1962, under sections 16 and 17 of the Indian Press Emergency Powers Act, 1931. We, however, find that this warrant of search on the face of it is illegal as the Indian Press Emergency Powers Act, 1931, under which the Sub-Divisional Officer purported to have issued it, was no longer on the Statute Book having been repealed by the Press (Objectionable Matter) Act, 56 of 1951, as far back as 22nd October, 1951. It is surprising indeed that instead of realizing their mistake and releasing the property which had been unlawfully seized, the respondents should have attempted to justify the search and the seizure of the petitioner's property referred to above. Even though the present petition is not competent under section 99-B of the Criminal Procedure Code, I am of the opinion that glaring illegality having come to our notice, it is the duty of this Court to interfere, and in exercise of its power under section 561-A of the Criminal Procedure Code prevent the abuse of the process of the Court and to secure the ends of justice by calling upon the respondents to restore the property seized from the petitioner on the basis of the search warrant, Exhibit P.L., dated 18th June, 1962, and I would order accordingly.

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Gurdev Singh, J.

The other connected matters do not require consideration by the Special Bench, and they may be placed before the appropriate Benches.

Sharma, J.—I agree with the order proposed by my learned brother R. P. Khosla, J, and have nothing to add.

Sharma, J.

