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M.P. SHARMA AND ORS. V. SATISH CHANDRA, DISTRICT MAGISTRATE, DELHI AND ORS.: AN ANALYSIS

(By Nishtha Vaswani)

INTRODUCTION

Evidence, the most crucial part of a case on which any and every case depends. Evidence may comprise of any document, material thing or even property that can be seized from the accused on account of being an evidence, etc. Every person has right to property and to possess the same, but when there is order by the court or there is need for greater good of the society, then one has to sacrifice the possession either temporarily or permanently of his or her property. In some instances seizure is required to extract certain information from the property to get the investigation of an offence being completed and collect the important points, so as to get through a proper and fair trial in the court. There are provisions in law for the same and even a separate Act; the most essential part of a case needs strong and tight provisions though some are challenged in court of law. Evidence in Criminal Procedure Code of India is dealt under various sections, but the focus area of this paper is section 96 of the old Criminal Procedure Code which was in question in the given case and deal with when search warrant can be issued.

Right to property, a fundamental right which was declared as a legal right by 44th Amendment in 1978, but before that there have been cases where it has been used as fundamental right and judgments have been given, the question is not regarding whether they were right or wrong but whether they were fair or not. The right being a fundamental right either can be used or can be misused as a protection by public for their own interest as it was done in the given case wherein the constitutional validity was questioned of a provision inculcated under the Criminal Procedure Code of India.

There are provisions in the Constitution of India wherein it is mentioned that a person cannot be forced to be a witness in his own case but whether the same applies to the property of that person or not is a question, whether the documents belonging to the accused or a party to case can also be denied to be used in his case is a question, whether the person can protect his property including the documents to be included as an evidence taking protection under the provisions of the constitution is a question, which were also discussed in the given case and will be highlighted.
in the paper along with the case laws and precedents which were used by the judges to support the pointers in the judgment given and whether this case will act as a good or a bad precedent for the upcoming cases or to how much extent has been used as a precedent by the judges in later stages. The case was decided in 1954, very soon after the independence of the nation and before the major amendments being to the Acts and laws in the country, how were the laws or the provisions applied at that period of time and how the judges of that period analyzed the same will also discussed in the paper with respect to the given case. The Criminal Procedure Code was also not amended at that period of time, thus the old laws were applied in the case.

FACTS OF THE CASE

The bench deciding the case of M.P. SHARMA AND ORS. Vs. SATISH CHANDRA, DISTRICT MAGISTRATE, DELHI AND ORS. comprised of Justices M. Chand Mahajan (then Chief Justice of India), B. Jagannadhadas, Ghulam Hasan, Natwarlal H. Bhagwati, T.L. Venkatraman Aiyyar, B.K. Mukherjea, Sudhir Ranjan Das and Vivian Bose. Justice B. Jagannadhadas described the facts of the case. There were two applications asking relief under Article 32 were combined and dealt together as the facts were similar and connected. On July 9, 1946 M/S Dalmia Jain Airways Ltd. was registered in office of the Joint Stock Companies, Delhi by its Registrar with ten crore authorized capital. The registrar lodged information and mentioned to the Inspector General of Delhi Special Police Establishment that on June 31, 1952 the company had been liquidated. The Government instructed for an investigation to be done into company’s affairs and an inspector was appointed under section 138 of the Indian Companies Act for the same. After the commencement of the company there were deliberate actions done for misappropriation and embezzlement of funds as per the report of the inspector and to preserve the real status, false accounts to show loss were shared with the shareholders of the company. The offences under section 406, 408, 409, 418, 420, 465, 467, 468, 471 and 477(a) were alleged pointing out the fraud transactions and fake accounts. The nominees of Seth R.K. Dalmia, Director and Chairman of Dalmia Jain Airways Ltd. were controlling Dalmia Cement and Paper Marketing Ltd., Dalmia Jain Aviation Ltd. and Allen Berry and Company Ltd.; to commit misappropriation these companies were used and to examine the same the accounts of all the mentioned companies, some of which were located outside Delhi was requested to be inspected by the registrar. On November 19, 1953 Special Police recorded a FIR
(First Information Report) in which the demand for speedy investigation of the accounts of which list was made available consisting of the offices, places and persons who had the accounts. Under section 96 of the Criminal Procedure Code, 1898 District Magistrate issued warrants for search at thirty four places at same time and permitted for investigation with regard to the non-cognizable offences stated in FIR. The searches were initiated on November 25, 1953 and continued for few day and various documents were seized. The petitioners prayed for the documents seized to be given back and to quash the search warrants as they were illegal. There were many questions raised in the petition but the Supreme Court did not consider questions regarding the illegal and irregular searches which did not involve any violation of the constitution, as these matters would better have been dealt by the High Court by application under Article 226 of the constitution. Therefore the violation of fundamental rights of petitioners under Article 20(3) and Article 19(1)(f) by the impugned searches was contended by them in front of Supreme Court by challenging the validity of the searches constitutionally.¹

**ISSUES IN THE CASE**

There were only two issues which were decided by the court. Article 19(1)(f) before being omitted by the 44th Amendment of the Constitution in 1978 held right to property as the fundamental right which included the right to hold, acquire and dispose of the property. The petitioners stated that since their right to property was violated by the search warrants, they had the right to get back their documents as it was their premises from which they were derived. The issue was whether the impugned search and search warrants were violative of Article 19(1)(f)?

Article 20(3) provides for right against self-incrimination which means no person can be compelled to be witness against himself and as per the petitioners the documents were violative of this as their own documents were being used against them. The issue was whether the documents seized were against Article 20(3) as they were collected from the petitioner’s premises?

¹ AIR 1954 SC 300
JUDGES VIEW

The write-up of judgment gives an idea regarding the thought of the judges while deciding the case, which seems that whole bench had the same point of view as all the points mentioned and explained in the judgment are very clear and sharp. The issues were dealt one after the other. The issue regarding Article 19(1)(f) was not given much emphasis whereas the issue regarding Article 20(3) was mentioned in quite detail.

The court observed that the right to property that is conferred by Article 19(1)(f) of the Constitution of India does not provide absolute right, it has certain reasonable restriction which can come into effect either by an existing law or by a future law. The restriction may be for the general public interest. The petitioners had contended the search which was conducted as arbitrary in nature and had harmed their reputation in public because it was large scale search. The constitutionality of section 96 was questioned before the court of law claiming that the search ordered under this section violates their fundamental right as their property was invaded. The documents that were taken out of the custody of petitioners was claimed as interference with their property. However, the judges decided in negative and did not support the argument of the petitioners in this respect. It was held by the court that “a search by itself is not a restriction on the right to hold and enjoy property”. The seizure that was made was only made for investigation purposes for limited period of time that too with proper procedure being followed and permission being granted for such search. This provide for a reasonable restriction on right to property and a restriction of this kind cannot be considered as unconstitutional. The query that the damages or harm if any caused to the property seized will be considered as an action outside the legal authority to do so, but such can be redressed in a separate suit. Therefore, the court giving a very short opinion decided that section 96 of the Code under which the impugned search warrants were issued is valid and not violative of Article 19(1)(f) of the constitution.

The search as contended by the petitioners was illegal and unconstitutional as the documents collected were incriminatory in nature as they were collected from accused himself and hence would come under prurview of Article 20(3). The Article does not prima facie include the search and seizures, but due to the application of liberal construction on constitutional guarantees, it can be included; this concept was supported by various American decisions and was accepted by the

2 Ibid.
court as it was mentioned that Article 20(3) does not only comprises of forced oral incrimination but also coerced document seizure from accused and used as evidence against himself. The point was not only raised for present accused but any person who after collecting the documents may be accused in future and that forcible seizure of documents used against him. The court held that this question was very important and to decide the same the origin and intent of the concept of self-incrimination has to read in. The Indian constitution makers had adopted it from American system and thus to decide the scope of this rule, the court referred to English and American law.³

The English law incorporated protection against self-incrimination after the case of John Lilburn⁴ which abolished the Star Chamber and defined that no accused should be forced to give oath or produce documents against himself. The Star Chamber followed inquisitorial practice of collecting the facts and giving severe punishments. However, in 1898 an amendment in Evidence Act was made, which made it optional for the accused to be witness against himself or not. The court referred Phipson’s Evidence, ⁹th Edition for this reference. The concept of self-incrimination was carried by the American law and was incorporated in their Constitution by ⁵th Amendment and was given a wide scope. It included both oral and documentary presentation of evidence. In later times in case of Boyd v. United States⁵, it was decided that unreasonable search and seizures would be included under self-incrimination principle and in case of Weeks v. United States⁶ it was held that such evidences collected will not be admissible in court of law.⁷

In the context of Indian law, the court defined the concepts which were continued from 1852 are mentioned in section 342 of the Criminal Procedure Code, 1898 which mentions that the accused can be asked questions after the examination of witnesses of prosecution and it is at the discretion of the magistrate to ask the questions and the respond thereof can be used as evidence against or in favor of the accused; the accused had right to silence and even say false because no oath was to be taken by the accused.⁸ The court mentioned that in section 132 of the Evidence Act, 1872 it is mandatory to answer all the question that are put up to a witness immaterial of the result of incrimination against the witness himself; only that on the basis of such answer the

³ See supra note 1
⁴(3 State Trials 1315)
⁵(116 US 616)
⁶ (232 US 383)
⁷ See supra note 1
⁸ The Code of Criminal Procedure, 1898
witness shall not be arrested.\textsuperscript{9} The court opined that the Indian law is similar to that of English law in concept of protection against self-incrimination. The court stated three points on which Article 20(3) is based upon viz. first, it is right for an accused person; second, protects to be compelled to be a witness and third, the protection is to preserve accused form giving evidence against himself. The FIR was lodged against the persons whose premises were searched, thus the first point was satisfied and though the documents collected were for investigation purposes but were incriminating in nature. The FIR lodged consisted of some companies as well but no question was raised regarding whether companies will come under the purview of Article 20(3) or not. The only argument was for the accused persons being forced to be witness against themselves, which only highlights the second point mentioned above by the court. The court held with the support of American case laws that Article 20(3) has a wider scope and can include not only oral testimony but also documents and gestures which point out something against accused; the gesture is for an accused who cannot speak or the like. In the present case any mandatory and forceful presentation of evidences by accused against whom FIR was lodged would attract the guarantee provided under Article 20(3) as it reads as “to be a witness” and not “appear as witness”\textsuperscript{10}

The court again citing \textit{Boyd v. United States}\textsuperscript{11}, mentioned its facts and observed that the majority in this case supported the view that search and seizure of private documents of an accused is equivalent to coerced production of document by accused, thus the former is violative of protection provided against self-incrimination under American law, but only if the search conducted was unreasonable or illegal and in the judgment of this case it was also provided what searches would be legalized. However, the minority mentioned that there lies a difference between forceful production of documents and search and seizure of documents to be used as an evidence. Overall, there was no perfect rule regarding search and seizure being considered as self-incriminating in nature.

The court finally observed that the searches were conducted with order of the Magistrate and were carried by police officers under their duty, the latter was an executive duty and former a judicial decision or order which involved no right of any individual, hence there could be no

\textsuperscript{9} The Indian Evidence Act, 1872
\textsuperscript{10} See supra note 1.
\textsuperscript{11} See supra note 5.
question raised on searches being violative any fundamental right of the individual. Thus, the case was dismissed with no costs.\textsuperscript{12}

**RESEARCHER’S VIEW**

The judgment was very prolonged and could have been dealt in shorter notes as major part of the judgment deals with the history of provisions of search in India and history of law relating to the same in English and American law. There were many books cited in the judgment which were not that much needed to support their judgment because in the end the decision was given by explaining a simple point of no fundamental right of individual being in course because search was an executive function performed by the police on a proper judicial order. The judgment given was fair enough because if the searches would have been held as wrong, this case would been used as a strong precedent in support of concealing evidences in name of right to property by the accused persons if any document was needed as evidence from their possession. Police is a neutral party and it would not support either prosecution or accused in any manner, so any evidence that is collected cannot always work against accused only, it may help the accused to support his argument in court of law. The more accused tries to hide the documents or to preserve them from coming into court, as it was in this case, it would create an apprehension that some wrong has been committed by the accused and that is why he is trying to hide things from the court. The Bench had referred to few American case laws which were quite useful in deciding the case, but important thing that needed clearance was ‘reasonable search’ as in India there is no law defining as to what is a reasonable search and who cannot conduct it. Since, there was no law regarding this, the aspect was not dealt in the case by the court. An important issue could have been stood up as whether companies or corporate bodies can be included in purview of Article 20(3) as most companies were mentioned in the FIR that was filed and on the basis of which search warrants were asked from the Magistrate. The court also highlighted this point but since the parties were only stuck up on the issue of the warrants against persons and their right to property being violated, the court did not deal with this issue. But this was a very interesting question, although not decided. The court had considered search warrants on the premises of the accused as reasonable restriction on exercising the fundamental right of right to property and very much positive in doing. This case is an example how right to property which was a

\textsuperscript{12} See supra note 1.
fundamental right before 1978 was misused in the cases by people and which would have overpowered lot of provisions. Now, right to property is not a fundamental right and it is better because any accused now cannot question such searches on this ground at least that without the prior permission of accused there can be no search on his premises. Otherwise, people could have got time to hide the things if there was a procedure to take permission from the person to search his premises for collection of evidences or to investigate anything, which would have prolonged the cases a lot. Since, a warrant issued by the Magistrate in case of non-cognizable offences gives full right to search any area to police officers and therefore it makes investigation task easier. Overall, the bench was right in deciding the case referring to the Indian law prevalent during that time.

CONCLUSION

The concept of self-incrimination was highlighted in the case regarding the document collection from the premises of accused and being used as evidence against him in the case. The court was very much correct in not using the liberal construction rule for making out the meaning of Article 20(3) as otherwise it would have created a passage for the accused to save themselves from the evidences being collected against them from them only, for example in case of any document which is required as an evidence in any case as it was in this case the account books of the companies which was seized from the premises of the accused which was an evidence which was collected from the accused against him and thus stands as a very strong evidence because firstly, it highlights the knowledge of the accused of existence of such document and secondly he cannot deny such because it would be a false in court of law if he tell lies. The liberal construction rule must only be applied when there is need of law to justify the justice in a case and not merely because a party makes strong statements for applying it. The court in this case understood the history of self-incrimination, the application of this rule and the protection for an accused being a witness against himself in Indian law as well as English and American law. The court compared all the aspects and went through the existent laws and provisions present at that time and gave the decision based upon them. The case mainly dealt with whether the search warrants that were issued by the Magistrate were violative of the right to property as the intrusion by the police officers on the property of the accused and seizure of his documents was not accepted by the accused and were he also the denied that there was no need of his prior
permission to enter his premises to investigate the matter and look into the documents. The documents that were seized clearly showed that there was embezzlement with funds involved and different companies were used for it. This shows that the accused was well aware of the fact that the fraud was being committed and to hide the same he wanted his documents to be returned to him and the searches to be held as unconstitutional and illegal. The court was well aware of the Indian laws and digging up into the interpretation of the self-incrimination rule led out the synonyms judgment of the Bench which was written by Justice B. Jagannadhadas.