CIVIL MISCELLANEOUS

Before R. S. Narula, C.J. and M. R. Sharma, J.

JAGMOHAN MAHAJAN and another,—*Petitioners.*

versus

THE COMMISSIONER OF INCOME TAX, PUNJAB, PATIALA ETC,—*Respondents.*

Civil Writ Petition No. 119 of 1975.

August 13, 1975.

Income-tax Act (43 of 1961)—*Section* 132(1) *and* (5)—*Blank warrant of authorisation without the name of the person whose premises sought to be searched—Search in pursuance thereof and seizure of assets thereunder—Whether valid—Consequent action under section* 132(5)—*Whether permissible.*

Held, that the most serious content of a warrant of authorisation is the name of the person whose premises are sought to be searched in pursuance thereof for general warrants are no warrants at all because they know no one. Where blank warrants of authorisation are issued by the Commissioner of Income-tax under section 132(1) of the Income-tax Act, 1961 without filling in the name of the person whose premises are sought to be searched and one such warrant is utilised by the Authorised Officer for conducting the search of the premises of a person, the issue of such a warrant conclusively proves that the Commissioner who signed it was not satisfied that such a warrant should issue, but merely gave such a general warrant out of some lurking suspicion based either on rumours or on something less serious than that. From the practical point of view such a warrant can be, at the sweet will of the Officer in whose hands it happens to be, used for any one he likes and for conducting a general search for fishing out anything that may fall to his hands so that from the material so found a case may if necessary be made out against him. Search of the premises of a person in pursuance of such a general and blank warrant of authorisation is illegal because the existence of necessary facts on the basis of which the Commissioner has to form the requisite belief under clause (a), (b) or (c) of sub-section (1) of section 132 is a condition precedent for taking action under that section. Hence in the absence of a legal search under section 132(1) of the Act and a valid seizure of the assets thereunder, action under section 132(5) cannot be taken.

Petition under Articles 226/227 *of the Constitution of India praying that a writ of Certiorari, Mandamus, Prohibition or any other suitable Writ, Order or Direction be issued to the following effect:—*

(*i*) *the records of the case be sent for ;*

(*ii*) *the search warrants dated 8th October,* 1974 *be quashed;*

(iii) *the jewellery, which is in possession of respondent No. 4, taken from the locker which was in the joint name of the petitioners be returned ;*

(iv) *the diary seized also be returned;*

(v) *the seizure of jewellery be declared illegal ;*

(vi) *the proceedings subsequent to the search be declared illegal ;*

(vii) *the Income Tax Commissioner be directed to produce in Court immediately the information that was available with him on the basis of which the search warrants have been issued ;*

(viii) *the Income Tax Commissioner should also be directed to show as to who filled up the search warrants and why he signed the search warrants in blank ;*

(ix) *It is also prayed that final order be not passed under section 132(5) of the Act till the final decision of the writ petition.*

It is further prayed that :—

(a) *the notices of motion be dispensed with at this stage since the order has to be passed before the 15th January, 1975 ;*

(b) *the production of certified copies of the documents Annexures P/1 to P/7 be dispensed with as the same are not readily available with the petitioner.*

Costs of this petition also be allowed.

Kuldip Singh, Advocate, *for the Petitioners.*

D. N. Awasthy, Advocate with B. K. Jhingan, Advocate, *for the respondents.*

Sharma, J.—(1) The petitioners are residing in house No. 355, Sector 9-D, Chandigarh, along with Shri Mulkh Raj Mahajan, Advocate, Chandigarh. The latter is the father of petitioner No. 1 and father-in-law of petitioner No. 2. On October 17, 1974, this house was raided pursuant to a warrant of search authorised by

respondent No. 1 for conducting search of the house of Shri Mulkh Raj Mahajan, Adovcate. The Authorised Officer started searching not only the premises in possession of Shri Mulkh Raj Mahajan but also the portion which was in possession of the petitioners. They pointed out to the Authorised Officer that the search of the portion of the house in their possession was totally illegal because there were no proper warrants for that purpose with the Authorised Officer. Upon this, it is alleged that the Authorised Officer remarked that the question of getting warrants authorising the search of the portion in possession of the petitioners would also be settled immediately. In this connection, a telephone call was made to the Inspecting Assistant Commissioner of Income Tax, Chandigarh and roughly within about 15 minutes the requisite search warrant was sent to the Authorised Officer, even though the Commissioner of Income Tax was stationed at Patiala, at a distance of about 40 miles. As a consequence of the search, a sum of Rs. 1,770 in cash, some household articles and some bank accounts were found to be in possession of the petitioners. The Locker No. 85 in the New Bank of India, Sector 17, Chandigarh, jointly operated by the petitioners was opened on October 21, 1974, and 510 grams of gold ornaments were found lying therein. The ornaments alone were seized by the Income Tax Officer. The statement of petitioner No. 1 was recorded by the Authorised Officer in which he stated that he was not an income-tax assessee and had been running a poultry farm at Zirakpur, which he had started in 1966. He had 3,500 birds in the farm. About the jewellery, he stated that the same belonged to his wife and had been given to her at the marriage. On October 24, 1974, the Income Tax Officer, Chandigarh, served a notice upon petitioner No. 1 calling upon him to appear before him on November 20, 1974, at 11 A.M. to explain or to produce evidence for explaining the nature of possession and source of acquisition of the assets, both seized and unseized, mentioned in the notice. The petitioners have challenged the search and seizure of articles from their premises mainly on the ground that there was no information with respondent No. 1 to come to the requisite belief under section 132(1) of the Income Tax Act, 1961 (hereinafter called the Act). The additional ground taken is that blank warrants were placed at the disposal of the Inspecting Assistant Commissioner of Income Tax, Chandigarh, by the Income Tax Commissioner for conducting search of the premises of un-named persons and one such warrant was

utilised for conducting the search in the instant case. On behalf of the respondents, the issuance of the blank warrants of authorisation is not denied. Respondent No. 1 in his reply-affidavit, dated February 22, 1975, has stated as follows :—

> "It is admitted that the warrants of authorisation signed by the deponent were entrusted to the Inspecting Assistant Commissioner at Chandigarh for use in the case of the sons of Shri Mulkh Raj Mahajan. The use of these forms duly signed by the Commissioner after recording his reasons on 8th October, 1974, was fully authorised by the deponent contemporaneously."

In *H. L. Sibal* v. *The Commissioner of Income Tax, Punjab, Patiala, and others* (1), we held as under :—

(a) The existence of necessary facts on the basis of which the Commissioner of Income Tax could have formed the belief under clause (a), (b) or (c) of sub-section (1) of section 132 was a condition precedent for taking action under that section.

(b) It was incumbent on the Commissioner of Income Tax to record these reasons in writing before authorising a search.

(c) The Commissioner of Income Tax was not empowered to merely change his opinion on the basis of information already in his possession.

(d) The Authorised Officer was also duty bound to apply his own independent mind before seizing the assets found on the premises as a result of the search made.

(e) The seizure made at the intervention of an outside agency was no seizure in the eyes of law.

(f) In the absence of a valid seizure of the assets, action under section 132(5) of the Act cannot be taken against an assessee.

(1) Civil writ No. 150 of 1975, decided on July 15, 1975.

(2) The case of petitioner No. 1's father was dealt with by respondent No. 1 along with the case of Shri H. L. Sibal. In that file, respondent No. 1 has not at all adverted to the case of the petitioners. From this fact alone, it is clear that respondent No. 1, even if it be assumed that he did authorise the initiation of action against the petitioners, acted in the absence of any information on the basis of which statutory belief could be formed. The search of the premises of the petitioners must be declared to be illegal on this ground alone and we order accordingly.

(3) In *H. L. Sibal's case* (supra), we also held with reference to rule 112 of the Rules framed under the Act that the Commissioner of Income Tax is under law expected to sign a warrant of authorisation which is complete in all respects. There is abundant authority in support of the proposition that "general warrants are no warrants at all because they know no one". After discussing leading cases on the subject, E. Slade has observed as under in Thomas and Bellot's Leading Cases in Constitutional Law, 1934 Edition, on page 145:—

> "The illegality of such warrants was finally settled, as well as the illegality of warrants to seize papers, by the judgments in the above cases. Each of the cases given decides a different point : *Leach* v. *Money* that a general warrant to seize some person not named is illegal; *Wilkes* v. *Wood* decides the illegality of a warrant to seize the papers of a person not named; while *Entick* v. *Carrington* carries the latter point further, and establishes the illegality of a warrant to seize the papers of a person named — manifestly a sort of general warrant as regards the papers. These decisions are supported by two able judgments — of Lord Mansfied, in *Leach* v. *Money* in error, and of Lord Camden in *Entick* v. *Carrington*."

(4) In these circumstances, we feel no hesitation in holding that the search warrant utilised for making a search of the premises in possession of the petitioners was illegal. Under section 132(5) of the Act, proceedings can be initiated against a person only if money, bullion, jewellery etc. has been validly seized under sub-section (1) of that section. Since the very basis on which action under section

132(1) of the Act can be founded is missing in this case, no enquiry can be held against the petitioners under section 132(5) of the Act.

(5) As a result of the foregoing discussion, we quash the search warrant dated October 8, 1974, pursuant to which the premises in possession of the petitioners were searched and direct the respondents to return forthwith the articles recovered from the possession of the petitioners to them. The petitioners will also be entitled to have their costs.

R. S. Narula, C.J.

(6) I entirely agree with the order proposed by my learned brother Sharma, J. and endorse every word of what my Lord has said. At the same time I have not been able to restrain myself from adding a few words mainly because I fell so strongly about the patent illegality involved in the issue of a blank warrant of authorisation by the Commissioner in this case. One of the grounds on which the constitutional validity of section 132 of the Income Tax Act, 1961, has been upheld is that no warrant of authorisation for search can be issued without the satisfaction of as high an officer in the official hierarchy of the Income Tax Department as the Commissioner of Income Tax himself. I cannot conceive of a more serious outrage being committed on that statutory safeguard provided by the Parliament than a general warrant of authorisation being issued by the Commissioner without filling in the name of the person whose premises are sought to be searched. The issue of such a warrant conclusively proves that the officer who signed it was not satisfied that such a warrant should issue, but merely gave such a general warrant out of some lurking suspicion based either on rumours or on something less serious than that. From the practical point of view the warrant on the basis of which the premises of the present petitioner were searched could at the sweet-will of the officer in whose hands it happened to be used for anyone he liked and for conducting a general search for fishing out anything that may fall to his hands so that from the material so found a case could if necessary be made out against him. My learned brother Sharma, J. has referred to the opinion expressed by Mr. E. Slade in Thomas and Bellot's Leading Cases in Constitutional Law based on the case of *John Wilkes, Esq.* v. *Wood* (2), and I think the note

(2) 98 English Reports 489.

of warning struck by the Lord Chief Justice Pratt in that case as long ago as December 6, 1763, holds almost as good for this case as it was for *John Wilkes' case*. Though the issue of general warrants was authorised by the law of England at that time for suitable persons, the issue of such a warrant as well as the law justifying it came under a severe attack in the Court of King's Bench in *Wilkes' case* where search was conducted on the basis of a mere warrant which neither specified the name of Wilkes nor the papers which were sought to be recovered as a result of the search. It was argued before the King's Bench that the case extended far beyond Wilkes personally as it touched the liberty of every subject of the country, and if such a warrant was found to be legal, it would shake the most precious inheritance of Englishmen. It was argued that "In vain has our house been declared, by the law, our asylum and defence, if it is capable of being entered, upon any frivolous or no pretence at all, by a Secretary of State." It was observed that of all offences, that of seizure of papers was the least capable of reparation. It was emphasised that the law never admits of a general search-warrant, and that the officer authorised to issue a search-warrant is not capable of delegating his power to do so. On behalf of Wilkes it was stressed that if the general warrant was found to be legal it would fling the liberties of the subject into a very unequal balance. The Lord Chief Justice observed that the general question was whether a Secretary of State had a power to force persons houses, to break open their locks, to seize their papers, etc. by a general warrant upon a bare suspicion without the name of the person charged being mentioned in the warrant. The Lord Chief Justice further observed that nothing could be more unjust in itself than that the proof of a man's guilt should be extracted from his own bosom. Though section 132 does allow forcing open if necessary of premises, the breaking open of locks and the seizure of cash, bullion, jewellery and papers, the permission granted by the statute in that respect is hedged in by two very serious safeguards namely:—

(i) the satisfaction of the Commissioner (and not of anyone below him) as the *sine qua non* for the issue of the warrant; and

(ii) the requirement of the search being conducted in conformity with the principles laid down in section 165 of the Code of Criminal Procedure as far as may be.

(7) The most serious content of the warrant of authorisation is the name of the person whose premises etc. are sought to be searched. The warrant in this case was admittedly blank in that regard when it was issued under the signature of the Commissioner. The Commissioner has in the instant case acted in my opinion in a more high-handed manner than did the Secretary of State in the case *John Wilkes, esq.* v. *Wood* (supra). I am unable to congratulate the Commissioner for his betraying the confidence reposed in him by the drastic provision of section 132 and throwing all sense of propriety and responsibility to the winds on mere suspicion or pretence.

(8) With these words I agree that the petition should be allowed with costs and we order accordingly.

B.S.G.

APPELLATE CIVIL

Before Pritam Singh Pattar, J.

GURNAM KAUR and another,—*Defendants-appellants.*

versus

PURAN SINGH ETC.,—*Plaintiffs-respondents.*

Regular Second Appeal No. 1314 of 1973.

August 14, 1975.

Hindu Marriage Act (XXV of 1955)—Sections 5(i), 11 and 16—Grant of legitimacy under section 16 to children of a void marriage—Obtaining of a decree of nullity of such marriage—Whether a condition precedent—Such children—Whether entitled to inherit the property of their parents.

Held, that the obtaining of a decree of nullity of a void marriage under section 11 of the Hindu Marriage Act, 1955 is a condition precedent to the grant of legitimacy under section 16 of the Act to the children of such a marriage begotton or conceived before the decree. If a decree of nullity of such a marriage is passed then the children begotton or conceived before the decree are to be deemed to be legitimate children who would be entitled to inherit the property of their parents. However, if a decree of nullity has not been passed under