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to be confined to the facts of that case and in my opinion they could not have been intended and should not be construed to lay down any such general and broad proposition as is contended on behalf of the appellant before us. If, however, those observations are intended to lay down any rule of general application governing all cases of joint alienations by two or more co-owners so as to make indefeasible the alienation with respect to the share of the joint alienor dying earlier, irrespective of the rights of his other descendants or collaterals and of the terms of the declaratory decree holding the alienation not to be binding on the reversionary body, then in my humble opinion, in view of the foregoing discussion (and I speak with great respect) they do not reflect the correct legal position under the Punjab Custom and I would, therefore, respectfully disagree : see *inter alia Faqir Chand, etc., v. Mst. Bishan Devi, etc.*, (1). That decision is thus not applicable to the case in hand and is of no assistance to the appellant.

For the reasons given above, this appeal fails and is hereby dismissed but with no order as to costs.

Bishan Narain, J.

Bishan Narain, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS.

Before A. N. Grover, J.

KAILASH CHANDERA SHARMA,—Petitioner.

versus

THE SUPERINTENDENT OF OFFICES AND OTHERS,—  
Respondents.

Civil Writ No. 70-D of 1960.

1960  
March 31st

Code of Criminal Procedure (V of 1898)—Sections 94 and 95—scope and ambit of—Money orders and postal orders—Whether covered by the words “document or thing.”

(1) A. I. R. 1947 Lah, 185 (D. B.).

*Held*, that the language of sub-section (2) of section 95 of the Code of Criminal Procedure shows that the District Superintendent of Police can require the Postal or Telegraph Department to cause search to be made for and to detain any such parcel, document or thing which is wanted for the purposes of investigation, enquiry or trial or other proceeding. That object can only be achieved if the entire mail is first detained and then the documents, parcels or things which are required for the aforesaid purposes are searched so that orders may be obtained from the authorities mentioned in section 95(1) for requiring the Postal or Telegraph authorities to deliver the same to such person as those authorities may direct. An order under section 95(1) can only be made in respect of specific documents, parcels or things which can be ordered to be handed over to the investigating officer.

*Held*, that the words "document or thing" in sections 94 and 95 of the Code of Criminal Procedure are of general import and cover a postal or a money order.

(*Note*.—Letters Patent Appeal against this judgment was dismissed in limine. Editor).

*Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to grant to the petitioner, a writ of certiorari and mandamus and such other writs or directions or orders as this Hon'ble Court may deem fit and appropriate in the circumstances of this Case.*

KESHAV DAYAL AND SHRI R. K. MEHTA, ADVOCATES, for the petitioner .

JINDRA LAL, AND SHRI DALJIT SINGH, ADVOCATES, for the respondent.

#### ORDER.

GROVER, J.—In February, 1960 a petition was instituted under Article 226 of the Constitution by the petitioner alleging that he was carrying on the business of supplying various articles, like shoes, toys, cinema projectors etc., to foreign countries

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under the name and style of "K. Sharma", "Kailash Sharma" etc., and that mail parcels and money orders were despatched and received in the course of the petitioner's business. The petitioner did not receive the mail including money orders, registered and unregistered letters from 25th January, 1960, onwards whereupon he made enquiries by registered letters from the Sub-Postmaster, Malviya Nagar, New Delhi, and was informed that his mail was being withheld,—*vide* orders of the Superintendent of Police, New Dehli, dated 1st February, 1960 and the letter of the Superintendent of Police C.I.D. (Crime Branch), Delhi, dated 25th January, 1960. The orders of the postal authorities withholding the mail as also the purported orders of the Superintendent of Police were challenged on the ground of illegality and other legal and constitutional defects.

An affidavit in opposition was filed by the respondents stating that the Police had received several complaints from foreign countries that the petitioner had started various bogus firms and had lured a large number of persons abroad by various illegal means to send him huge amounts in the shape of British postal orders and had thus committed offences under section 420 and 406, Indian Penal Code. A case had been registered by the C.I.D. (Crimes).—*vide* first information report No. 10 dated 25th January, 1960 and investigation was being held. As the allegations against the petitioner were of cheating persons abroad through correspondence by post an order under section 95 of the Code of Criminal Procedure became necessary for the purposes of investigation. An order was made by the District Superintendent of Police requiring the Postmasters of Malviya Nagar, Yusaf Sarai and Mehrauli Post Offices to cause search to be made for and to detain all the documents, parcels or things addressed to the petitioner. The

Additional District Magistrate passed orders under section 95(1) of the Code of Criminal Procedure requiring the postal authorities to deliver such documents and things (specified therein) to Shri Faqir Chand Sub-Inspector C.I.D. (Crime Branch). It was made quite clear that no letters of personal nature had been taken delivery of. A copy of the order of the Superintendent of Police, C.I.D. (Crime Branch), dated 25th January, 1960, Exhibit R. 1, addressed to the Senior Superintendent of Post Offices has been filed as also the copies of the memorandums from the Superintendent of Police to the Additional District Magistrate, Delhi, requesting that orders under section 95(1) of the Code of Criminal Procedure might be issued with regard to the documents specified therein have been filed. The copies of the orders of the Additional District Magistrate directing the Postmasters of Yusaf Sarai and Malviya Nagar Post Offices to deliver the letters, etc., mentioned in those orders have further been attached to the affidavit in opposition. The petitioner sought to challenge all these orders by means of a counter affidavit and also a petition.

The learned counsel for the petitioner has sought to press all the points, which have been raised in the petition, but it will be sufficient to dispose of those points, which are really material. The first contention that has been raised is that under section 95(2) of the Code of Criminal Procedure the District Superintendent of Police cannot make an omnibus order directing the Postal or Telegraph Department to detain the entire mail including the money orders and V.P.P. articles or postal orders and that only such letters, etc., can be ordered to be detained as are specifically mentioned in the order. Section 95 appears in Chapter VII, which relates to processes to compel the production of documents and other movable property.

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Section 94 empowers an officer in charge of a police station to issue a written order to the person in whose possession or power any document or thing is, which is necessary or desirable for the purposes of investigation, enquiry, trial \* \* \*. Sub-section (3) of section 94, however, contains an exception, which is in the following terms:—

“Nothing in this section shall be deemed to affect the Indian Evidenence Act, 1872, section 123 and 124 or to apply to a letter, post card, telegram or other document or any parcel or thing in the custody of the Postal or Telegraph authorities”.

Then comes section 95, which may be set out in its entirety.”

[His Lordship read Section 95 and continued.]

Section 96 deals with a situation when a search-warrant may be issued by the Court. Orders in the present case have been made under both the sub-sections of section 95. The learned Counsel for both the sides, however, agree that when an order has to be made under section (95) (1) the document, parcels or thing must be specified, but as regards section 95(2) the contention of the learned counsel for the respondents is that all the documents, parcels or things have to be detained by the postal authorities to enable a search to be made for any particular documents, etc., which may be wanted for the purposes of investigation. It is contended that in the very nature of things it is not possible to specify those documents, parcels or things that should be detained by the Postal or Telegraph Department because unless the investigating officer makes some *prima facie* examination it is not possible for him to determine whether any

particular document, parcel or thing would be wanted for the purposes of investigation and with regard to which orders may be obtained under section 95(1). It appears to me that the contention of the learned counsel for the petitioner cannot possibly be accepted as that would render the provisions contained in section 95 nugatory and make them unworkable in actual practice. Moreover, the language of sub-section (2) of section 95 shows that the District Superintendent of Police can require the Postal or Telegraph Department to cause search to be made for and to detain any such parcel, document or thing, which is wanted for the purposes of investigation, enquiry or trial or other proceeding. That object can only be achieved if the entire mail is first detained and then the documents, parcels or things, which are required for the aforesaid purposes are searched so that orders may be obtained from the authorities mentioned in section 95(1) for requiring the Postal or Telegraph authorities to deliver the same to such person as those authorities may direct.

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The learned counsel for the petitioner has relied on some unreported decisions of the Allahabad High Court the first one being of A. P. Srivastva J. in Criminal Revision No. 1592 of 1959 decided on 9th November, 1959. There also a complaint had been made that a particular company was a bogus company and had been guilty of offences under section 420 and 406, Indian Penal Code. An order was made by the District Magistrate directing the Postmaster, Bulandshahr, to deliver such letters and parcels etc., as were being received to the investigating officer. The order was held to be vague and it was also laid down that the order of the District Magistrate would operate only in respect of letters and parcels,

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which had been received by the Post Office for delivery before the order in question had been passed. The order in that case was certainly open to the objection that it was not a correct order in accordance with section 95(1) because it did not specify the documents, parcels or things which were wanted for the purposes of investigation. Unless those are specified it is not possible to make any order under section 95(1) because specific documents, parcels or things alone can be ordered to be handed over to the investigating officer. The orders, which were made by the Additional District Magistrate in the present case are quite specific and it cannot be said about them that they are illegal on the aforesaid ground. The only objection that could be taken and was taken is that in the orders the Additional District Magistrate had not stated in terms of section 95(1) that in his opinion the documents mentioned in those orders were wanted for the purposes of investigation. The orders on the face of them gave an impression that they had been made in routine and that the Additional District Magistrate never applied his mind to the question whether those documents were actually wanted for the purposes stated in section 95(1). An affidavit of the Additional District Magistrate has, however, been filed in which it is stated that on 19th February, 1960, he carefully looked into the contents of the letters from the Superintendent of Police, C.I.D. (Crime Branch), Delhi, and noticed that there was a case registered under sections 420 and 406, Indian Penal Code, and that the letters in question were required for the purposes of the investigation of the case and thereafter, he signed the orders under section 95(1) as he was satisfied that the Police required those letters for the purposes of investigation. Thus the orders of the Additional District Magistrate under section 95(1) are perfectly valid

and no question of quashing them arises. A reference may be made to the other unreported decision of the Allahabad High Court (Criminal Reference No. 234 of 1959 connected with Criminal Misc. Case No. 2,401 of 1959). All that the learned Judge observed in that case is that the particular document, parcel or thing in respect of which the direction is being given to the postal authorities must be wanted at the time when the direction is given and must also be in the custody of those authorities. It would be stretching the meaning of the words too far to hold that they would cover an omnibus order passed with regard to all postal articles addressed to a particular person that might in future come into the postal authorities' custody. With all respect to the learned Judge, there is hardly much discussion with regard to the various orders, which can be made under subsection (1) and (2) of section 95 and it is not possible for me to derive much assistance from the aforesaid decision. The learned counsel for the petitioner also urged that the Additional District Magistrate was not competent to make orders under section 95(1) of the Code of Criminal Procedure. This argument cannot possibly be sustained in view of the notification in the Delhi Gazette, No. F. 2(24)/58-Home (2), dated 31st July 1958, which conferred all the powers of the District Magistrate under the Code of Criminal Procedure on Shri Mohammed Wasim Khan Yusufzai, who was to be an Additional District Magistrate in the Delhi District. Another matter that has been particularly stressed by the learned counsel for the petitioner is that money orders and postal orders cannot fall within the meaning of document, parcel or thing mentioned in sections 94(3) and 95. The word "document or thing" are of general import and there can be no doubt that they would cover a postal or a money order.

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The orders of the Superintendent of Police also, which were made under section 95(2) cannot be held to be illegal in view of the discussion of the scope and ambit of section 95(2) above.

On 11th March, 1960, I recorded an interim order in which I mentioned the undertaking, which had been given by the learned counsel for the respondents that all such correspondence will be allowed to be delivered to the petitioner as is not required for the purposes of the investigation. I have no doubt that the mail including money orders and postal orders addressed to the petitioner will not be unreasonably detained by the respondents concerned except in accordance with the provisions contained in section 95(2) and that such of them as are not required for the purposes of investigation shall be delivered to the petitioner with promptness.

In the result, there is no force in the petition and it is dismissed.

B. R. T.

CIVIL MISCELLANEOUS

*Before D. Falshaw and A. N. Grover, JJ.*

THE OFFICIAL RECEIVER OF THE ESTATE OF  
DAULAT RAM SURANA,—*Petitioner.*

*versus*

THE DEPUTY CUSTODIAN-GENERAL AND OTHERS,—  
*Respondents.*

Civil Writ No. 200-D of 1955.

1960  
—  
April 18th

*Administration of Evacuee Property Act (XXXI of 1950)—Sections 4, 7, 8 and 17—Nature, effect and scope of—Insolvent declared evacuee and his property evacuee property—Whether divests the Receiver of the insolvent's*