Before S. S. Sandhawalia and J. M. Tandon, JJ.

KRISHAN KUMAR—*Petitioner.*

versus

STATE OF HARYANA—*Respondent.*

Criminal Misc. No. 5500-M of 1977

April 7, 1978.

Code of Criminal Procedure (11 of 1974)—*Sections* 2(*h*), 93, 165, 166, 397(2) *and* 482—*Investigation of cognizable offence—Search and seizure pursuant to a warrant in the course of such investigation—Whether a step in aid of investigation—Executed search warrant—Whether can be quashed in the exercise of inherent powers—Issuance of a warrant under section* 93—*Whether an interlocutory order so as to attract the bar of section* 397(2)—*Magistrate—Whether required to record reasons for his satisfaction, while issuing a search warrant.*

Held that obtaining of a search warrant from the Magistrate is nothing more than a step in aid of the investigative powers of the police and more particularly with regard to the areas and jurisdictions beyond the police station where the case is registered. Therefore, it follows that a search or seizure pursuant to the registration of a cognizable case whether with the aid of magisterial sanction under section 93 or *dehors* thereof under sections 165 and 166 of the Code of Criminal Procedure, 1973, is plainly a proceeding for the collection of evidence and therefore obviously within the ambit of an investigation under the Code. Thus, a search warrant under section 93 of the Code obtained in the course of investigation of a cognizable offence and the subsequent searches and seizures made thereunder are such integral parts of the investigation of the case that they cannot be interfered with or quashed at the preliminary stage when the matter is not even before a court for trial.

(Paras 15 and 20)

Held that where the searches authorised by the warrant have already been completed and the seizure of property from the persons concerned has been duly effected, then not the mere irregularity, but even the illegality of a search does not in any way vitiate or render *non-est* the seizure of property and goods made thereunder. At the highest the illegality or otherwise of a search whether with or without a warrant would be a matter pertaining to the right to resist an illegal search or at best be related to the weight of evidence to be attached thereto in the trial or other legal proceedings that may ensue. The illegality of a search warrant would not by itself render the proceedings thereunder or the seizures of goods which followed a total

nullity. Thus a search warrant under section 93 of the Code obtained during the course of the investigation of a cognizable offence which has been duly executed and returned has been exhausted and by the very nature of the things the searches and seizures thereunder cannot be reversed. Therefore, a petition seeking the quashing of such searches and seizures is futile in nature and virtually infructuous.

(Paras 21 and 24)

Held that the issuance of a search warrant is only a step in the course of the investigation of a cognizable offence and it would inevitably follow that the order must, therefore, be deemed to be interlocutory in character. That being so, it is plain that atleast the revisional jurisdiction against them is barred under section 397(2) and therefore the same or similar powers directed against the issuance of search warrants should not ordinarily be exercised under the inherent powers of the court.

(Para 27)

Held that section 93 of the Code merely requires the reasonable belief of the Court with regard to the requirements of that section. It no where provides either expressly or even by implication that the Magistrate is bound to record his reasons in detail. The Code itself in terms provides for the recording of reasons where the Legislature has thought fit to so prescribe. Therefore, to impose the requirement of recording reasons by precedent when the Legislature in its wisdom has not chosen to do so would be unwarranted. It is, therefore, plain that the recording of reasons under section 93 of the Act is not a legal requirement and the absence thereof involves no legal infirmity therein.

(Para 34)

Application under Section 482 Cr. P.C. praying that this Hon'ble Court be pleased to quash the search warrants dated 4th October, 1977 issued by Shri B. K. Gupta, Judicial Magistrate 1st Class, Bhiwani in F.I.R. No. 106, against Ch. Bansi Lal under section 5(2) of the Prevention of Corruption Act and sections 161 and 201 of the Indian Penal Code recorded on 1st August, 1977 and search of the premises of the petitioner for which there was no warrant and order the return of the articles taken away. Petition filed on 17th November, 1978.

K. S. Thapar, Advocate, (Dalip Singh and Deepak Thapar, Advocates with him), *for the Petitioner.*

S. C. Mohunta, A.G. Haryana (Naubat Singh, Senior Deputy Advocate General and H. S. Gill, Assistant Advocate General with him), *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, J.—

(1) Whether section 482 of the Code of Criminal Procedure 1973 authorises the quashing of a search warrant (and inevitably the searches and seizures in pursuance thereto) issued under section 93 of the Code and already executed in the course of an investigation of a duly registered cognizable case is the significant question which falls for determination in these four criminal miscellanous applications before us on a reference.

(2) Learned counsel for the parties agree that the facts are similar, if not identical and this judgment will cover all the four cases. It, therefore, suffices to advert to the factual background in criminal miscellaneous No. 5500 of 1977.

(3) On the first of August, 1977, a case under section 5(2) of the Prevention of Corruption Act and under sections 161, 165A and 201 of the Indian Penal Code was registered at Police Station Saddar Bhiwani against Ch. Bansi Lal, former Union Defence Minister. During the course of its investigation Shri K. C. Kapur, Superintendent of Police, Special Inquiry Agency, Haryana, moved an application before Shri B. K. Gupta, Judicial Magistrate, Ist Class, Bhiwani on the 4th of October, 1977 (Exhibit P. 1) praying for the issuance of search warrant with regard to the premises of the persons and the documents and records specified in the annexures attached to the application aforesaid. It was specifically mentioned in this application that on the basis of the information from various sources available to the Investigating Agency it was of the view that the persons in whose possession and the premises where such documents, articles, money and properties were concealed and secreted would not produce the same before the Police if called upon to do so and rather they would do away with all such documents, properties and articles which would be detrimental to the smooth and proper investigation of the registered case. It was undertaken that the search warrants would be returned to the Court after execution within a fortnight.

(4) After hearing the Public Prosecutor for the State in support of the said application and on the basis of the record made available to him, the learned Magistrate recorded the following order:—

"*Present* : Public Prosecutor for the State.
Heard.

Search warrants be issued as prayed for.

B. K. GUPTA,
Judicial Magistrate,
Ist Class, Bhiwani.
4-10-1977.

In pursuance of the warrants aforesaid the premises of the petitioner were searched on the following day i.e. 5th of October, 1977, by the Deputy Superintendent of Police and in the presence of three witnesses 43 documents were taken into possession,—**vide** Annexure P-3. This specifically mentions that the copy of the memo of possession was given to Shri Krishan Kumar, son of Shri Tarlok Chand, and Naresh Kumar, son of Shri Tarlok Chand, and apparently their signatures were taken thereon. The present application was then preferred after one month and 12 days of the execution of the said warrants seeking to quash out only the search warrant but also the subsequent searches and seizures made thereunder.

(5) As the very maintainability of a petition of this nature appeared to be in some doubt in view of the recent and categorical observations made in *Kurukshetra University and another* v. *State of Haryana and another*, (1), I had directed a notice of motion to the Advocate General, Haryana, specifically on the point of its competency.

(6) A detailed written statement has been filed on behalf of Shri K. C. Kapur, Superintendent of Police, Special Inquiry Agency, Haryana. Therein it has been averred that the Public Prosecutor appearing on behalf of the State presented the case diaries to the learned Magistrate and had argued and highlighted the prayer with regard to the relevant material which warranted the issue of search warrants. It was only thereafter, that the learned Magistrate being satisfied regarding the justification for the issue of search warrants, passed the impugned order under Section 93 of the Code. It is then averred that the said search warrants had been not only duly executed and recovery made there under but thereafter had been returned to the learned Magistrate on the 19th of October, 1977. The preliminary objection is raised on this ground that the petition is now infructuous and not maintainable.

(1) A.I.R. 1977 S.C. 2229.

(7) As regards the merits, some averments of facts made on behalf of the petitioner have been controverted and the stand taken is that any defect in the search warrant can have only two legal consequences, namely, that a right to resist the same may accrue to the person whose premises are sought to be searched, or at best the Court would be put on its guard to examine carefully the evidence with regard to the seizure. It is the claim that beyond these two consequences no further legal results ensue and the searches and seizures of the articles remain unaffected. Lastly the firm stand is that the case being yet at the investigation stage and not having been filed in any court, the present petition is incompetent. All allegations of *mala fides* with regard to the moving of the application for search warrant and its subsequent execution, have in terms been denied.

(8) In view of the significant issues involved, the case was admitted for hearing before a Division Bench,—**vide** my detailed reference order dated 28th of November, 1977. In the wake thereof, the other three cases raising identical issues of law and facts were also referred and are being heard and disposed of together.

(9) At the very threshold I may highlight that it would not be fruitful to enlarge the arena of enquiry in the present case. It deserves notice that what is strictly under challenge, on behalf of the petitioners in all these cases, are the search warrants under section 93 of the Code obtained by the Police in the course of the investigation of a cognizable offence which have been duly executed and subsequently, returned to the Court. Therefore, the cases of search warrants not already executed or those which have been obtained otherwise than in the course of investigation of a cognizable offence clearly form a class apart and different consideration might well apply to them. I would, therefore, scrupulously exclude the other class from my ken and confine myself strictly to the specific issue which arises for consideration in the present case.

(10) A three-pronged attack has been mounted against the very maintainability of the present petition on behalf of the respondent State. It is first contended that the obtaining of a search warrant under section 93 of the Code (and the proceedings consequent thereto) arising in a cognizable case duly registered is nothing but

a step in the course of investigation thereof. Admittedly at the present stage no challan or final report has been filed in any court. Therefore, if the course of investigation in a cognizable case by the Police cannot be quashed it follows a *fortiori* that a mere step thereunder like a search conducted under Section 165 of Criminal Procedure Code, or search warrant obtained from the Magistrate in aid thereof, cannot equally be interfered with or quashed at this preliminary stage.

(11) Secondly, the challenge is based on the ground that once a search warrant, even if invalid, has been issued and executed it stands exhausted, and by the very nature of things the process cannot be reversed. There can be no question of quashing or setting at naught any fact or a *fait accompli.*

(12) The third ground of challenge is sought to be raised on the principle underlying a recent amendment of the law with regard to the criminal revisional jurisdiction brought about by Section 397 of the present Code in substitution of the earlier and corresponding provisions of the old one. In particular emphasis is laid on subsection (2) of Section 397 which now in terms provides that the power of revision shall not be exercised in relation to any interlocutory order passed in any appeal, trial, enquiry or other proceeding. On these premises it is contended that the issuance of a search warrant or the refusal thereof is at the highest of an interlocutory nature and if expressly the revisional jurisdiction has been barred with regard thereto, the same result cannot be achieved by skirting the said provision by exercising identical jurisdiction under the garb of inherent powers under Section 482 of the Code.

(13) Whilst adverting to the first contention on behalf of the respondents in assailing the very maintainability of the present petition, the question that arises at the threshold is as to what precisely is the nature and legal character of a search warrant and seizures made thereunder by the Police in the course of investigation of a registered cognizable case. The core of the issue is whether this falls within the investigation of such a case. Reference in this connection has, therefore, to be inevitably made to section 2(h) of the Code of Criminal Procedure, 1973 which describes investigation in the following terms:—

> "Investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer

or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf."

At this very stage, it is also apt to advert to the other relevant provisions of the Code. Chapter XII deals with the powers of the police to investigate into offences, both cognizable or otherwise. The significant distinction with regard to the investigation of these two classes of cases obviously is that whilst in cognizable cases the Station House Officer is forthwith empowered to investigate into the offence, in a non-cognizable case, he cannot do so without the order of a Magistrate having power to try such a case or commit the case for trial as provided under section 155(2) of the Code. Now section 165 empowers an officer-in-charge of police station making an investigation into a cognizable case to search or cause search to be made for anything necessary for the purposes of the investigation within the limits of his jurisdiction. He may do so either himself or require an officer subordinate to him to make the search after recording in writing his reasons therefor. The succeeding section 166 authorises an officer-in-charge of a police station to require an officer-in-charge of another police station whether in the same or a different district to cause a search to be made in any place in which the former officer might cause such a search to be made within the limits of his own station. Thereafter the officer so authorised can proceed in accordance with the provisions of section 165 even in areas beyond the jurisdiction of the police station in which the case has been registered. It is thus plain that on the registration of a cogniztble case (with which we are primarily concerned here), the police officer investigating the same can for adequate reasons conduct a search himself within his jurisdiction or authorise or require another to do so on his behalf both within and without the limits of his own police station.

(14) Chapter VII of the Code authorising the issuance of search warrants under sectton 93 deals with processes to compel the production of things. A police officer investigating into a cognizable offence, therefore, has the option of resorting to the provisions of sections 165 and 166 of the Code or to seek an added aid of the magistracy under section 93 thereof. Now it appears to be plain that a search or seizure in the course of the investigation of a cognizable case whether made with the aid and sanction of the search warrant under section 93 or without it under sections 165 and 166 is

obviously a proceeding for the collection of evidence conducted by a police officer. Therefore, it is plainly within the ambit of investigation as defined or described by section 2(h) of the Code referred to earlier.

(15) There appears to be no manner of doubt that a search or seizure under sections 165 and 166 of the Code would plainly fall within the ambit of the investigation by the police. This indeed was not even seriously disputed on behalf of the petitioners by Mr Thapar. Indeed counsel was fair enough to concede that a search under sections 165 and 166 of the Code could obviously not form the subject-matter of a collateral attack for quashing the same only. It was conceded that there was no precedent in which such a search had been quashed aliunde. The obtaining of a search warrant from the Magistrate appears to me as nothing more than a step in aid of the investigative powers of the police and more particularly with regard to the areas and jurisdictions beyond the police station where the case is registered. Therefore, it seems to follow that a search or seizure pursuant to the registration of a cognizable case whether with the aid of magisterial sanction under section 93 or *dehors* thereof under sections 165 and 166 of the Code is plainly a proceeding for the collection of evidence and, therefore, obviously within the ambit of an investigation under the Code. On principle, therefore, there is no option but to hold that a search and seizure pursuant to a warrant under section 93 obtained in the course of investigation of a cognizable offence is nothing but an integral step therein.

(16) Though the matter does not appear to admit of any doubt yet it is equally well-supported by the binding precedents of the final Court. In *H. N. Rishbud and another* v. *State of Delhi* (2), their Lordships held in no uncertain terms as follows:—

> "Thus, the Code investigation consists generally of the following steps (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4), Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) *the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and .....*"

(2) A.I.R. 1955 S.C. 196.

Their Lordships also opined in the aforesaid judgment that the things enumerated above were steps in the investigation and it was permissible for an officer in-charge of a police station to depute some subordinate officer for some of the steps. The aforesaid view was in terms quoted and reiterated by their Lordships in *The State of Madhya Pradesh* v. *Mubarak Ali* (3), and does not seem to have been deviated from thereafter.

(17) Once it is held that a search and seizure in the course of the investigation of a cognizable case under section 93 is an integral step thereof and the matter falls plainly within a string of precedent that such an investigation cannot be interfered with or quashed till the matter finally comes to Court. Since the issue appears to me as fully covered by authority, it is unnecessary to elaborate the same because it is manifest that if the whole investigation is protected it would be farcical to allow challenges to individual steps or finical actions taken during the course of that very investigation by way of collateral attack for quashing them.

(18) The *locus classicus* directly covering the point is *Emperor* v. *Khwaja Nazir Ahmed* (4), and the following oft-quoted words of Lord Porter therefrom may be recalled:—

> "In their Lordship's opinion, however, the more serious aspect of the case is to be found in the resultant interference by the Court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law impose upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships, think, be an unfortunate result if it should be held possible to interefere with those statutory rights by an exercise of the inherent jurisdiction

(3) A.I.R. 1958 S.C. 702.

(4) A.I.R. 1945 P.C. 18.

of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under section 491, Cr. P.C. to give directions in the nature of Habeas Corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then. It has sometimes been thought that section 561-A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so."

(19) The aforesaid view received the express affirmance of their Lordships in the well-known case of *State of West Bengal* v. *S. N. Basak* (5). The rule in Basak's case has then been re-affirmed in *Hazari Lal Gupta* v. *Rameshwar Prasad and another* (6), with the following observations:—

"* * *. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal Procedure Code the High Court does not interfere with such investigation because it would then be impeding investigation and jurisdiction of statutory authorities to exercise power in accordance with the provisions of the Criminal Procedure Code."

In *Jehan Singh* v. *Delhi Administration* (7), their Lordships whilst upholding the preliminary objection against an application for quashing the proceeding yet in the course of the investigation directed their dismissal as being incompetent and pre-mature. Lastly Chandrachud, J. (as his Lordship then was) speaking for the Court in *Kurukshetra University and another* v. *State of Haryana and another* (1 *supra*) was equally categorical:—

"It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under section 482 of the Code of Criminal Procedure, it could quash a First Information Report. The police had not even

(5) A.I.R. 1963 S.C. 447.

(6) A.I.R. 1972 S.C. 484.

(7) A.I.R. 1974 S.C. 1146.

commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the F.I.R. It ought to be realized that inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases."

(20) In the light of the aforesaid overwhelming weight of authority, I must conclude that a search warrant under section 93 of the Code obtained in the course of an investigation of a cognizable offence and the subsequent searches and seizures made thereunder are such integral parts of the investigation of that case that they cannot be interfered with or quashed at this preliminary stage when the matter is as yet not before a Court for trial.

(21) Adverting now to the second ground of attack on behalf of the respondents, the primary focus is on the fact that the impugned search warrant has not only been duly executed but was returned to the Court on the 19th of October, 1977. The present application, as already noticed, was moved one month and 12 days after the issuance of the warrant and nearly a month after its execution and return to the Court. It is not in dispute that the searches authorised by the warrant have already been completed and the seizure of property from the persons concerned has been duly effected. Once that is so, there appears to be high authority for the proposition that not the mere irregularity but even the illegality of a search does not in any way vitiate or render *non-est* the seizure of property and goods made thereunder. At the highest the illegality or otherwise of a search whether with or without a warrant would be a matter pertaining to the right to resist an illegal search or at best be related to the weight of evidence to be attached thereto in the trial or other legal proceedings that may ensue. The illegality of a search warrant would not by itself render the proceedings thereunder or the seizures of goods which followed a total nullity. In *Radha Kishan* v. *State of Uttar Pradesh* (8), their Lordships on this aspect have observed in no uncertain terms as follows :—

"We will deal with the last four points first. So far as the alleged illegality of the search is concerned it is sufficient

(8) A.I.R. 1963 S.C. 822.

to say that even assuming that the search was illegal the seizure of the articles is not vitiated. It may be that where the provisions of sections 103 and 165, Code of Criminal Procedure, are contravened the search could be resisted by the person whose premises are sought to be searched. It may also be that because of the illegality of the search the Court may be inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further consequence ensues."

Now it is worth recalling that the aforesaid observations were made in the context of an illegal search in violation of sections 103 and 165 of the old Code. It deserves pointed mention that section 165 of the old Code which is substantially in *pari materia* with the provisions of the present one did authorise an officer incharge of a police station or an officer making an investigation in a cognizable offence to either make a search himself or cause it to be so made within the limits of its jurisdiction. It is plain that this power of search is vested in the police officer himself in the course of investigation of a cognizable offence and is independent of any judicial sanction or authorisation therefor. Similarly section 103 of the old Code had laid down the procedural safeguards for conducting such a search. Now if a patent violation of the aforesaid statutory provisions and their consequent illegality would not wholly vitiate the actual search and seizures, it appears to follow plainly that searches and seizures made under a warrant issued by a Magistrate under section 93 would at least be on an identical and indeed on a higher footing. If the illegal action of even a police officer does not render *non-est* the search and seizures made by him then it would obviously be the least so where a similar search and seizure is made with the sanction of a judicial authority even if exercised irregularly. Therefore, the quashing or setting aside of a search warrant under section 93 in these circumstances where it has already been executed would be in the nature of an exercise in futility if the search and seizures made thereunder would inevitably remain substantially unaffected.

(22) It bears repetition that Mr. Thapar had to virtually concede that no petition for quashing merely an alleged illegal search conducted under section 165 or section 166 of the Code of Criminal Procedure would be competent at least during the investigating stage. He fairly stated that in the plethora of case law could discover no

precedent seeking the quashing of a search under section 165 or section 166 of the Code during the course of the investigation of a cognizable offence. If that be the situation, it appears even more unlikely that a proceeding for quashing a similar and identical search would lie merely because an Investigation Officer in identical circumstances had sought the sanctity of a judicial order for conducting the search which he could have well done himself under the aforesaid provisions of the Code. To my mind, the judicial inter-position under section 93 of the Code can only sanctify rather than weaken the action of the Investigation Officer. It deserves highlighting that in the present case we are concerned only with the issuance of a search warrant during the course of the investigation of an offence which is admittedly cognizable. If such an illegal search or seizure cannot be quashed then it would be the more so in case of a search conducted with the judicial sanction of a Magistrate under section 93 of the Code.

(23) Now rationale apart, there appears to be high authority for the proposition that the power under section 93 of the Code, once exercised and duly complied with by its very nature goes beyond the pale of effective judicial review and is incapable of being reversed. A Division Bench of the Madras High Court in *Indian Express (Madurai) Private Ltd. and others* v. *Chief Presidency Magistrate* (9), had occasion to observe as follows:—

> "The first respondent had examined Mr. Charanjiv Lall on oath and only after being satisfied that the documents called for were necessary for the purpose of investigation and would not, as asserted by Mr. Charanjiv Lall, be produced by the company if called upon so to do, the learned Chief Presidency Magistrate issued the search warrant after applying his judicial mind to the question. *The learned Magistrate was not bound to record his reasons in writing.* All that section 96 of the Criminal Procedure Code requires is that the Magistrate must have reason to believe such is the state of affairs or, in other words, the Magistrate must be satisfied that there is necessity for the search warrant to be issued, as otherwise the thing would not

(9) 1974 Company cases 106.

be produced. The Criminal Procedure Code gives powers to a police officer to request for the issue of a search warrant if he has reasonable grounds for believing that such search was required for the purposes of investigation into the offence which he is authorised to investigate and Mr Charanjiv Lall who applied for the search warrant apprised the learned Chief Presidency Magistrate of the necessary materials on the basis of which a search warrant was required and the Magistrate was satisfied as to the necessity for such a warrant and then issued it. *That being so the act of the Magistrate in so issuing the search warrant would not be open to judicial review under article 226 of the Constitution.* Further as pointed out by the learned Judge *Ramaprasada Rao, J., the search warrants have already been executed. It would be futile now to issue a writ quashing the issuance of the warrant.* Therefore, we see no grounds at all to issue a writ of certiorari to quash the search warrants dated June 7, 1971."

Now it deserves recalling that the aforesaid observations were made in the context of the unamended Article 226 of the Constitution of India. Therein the amplitude of powers vested in the High Court was the widest because it authorised it to issue writs 'for any other purpose' apart from the category of writs specified in the Article itself and otherwise well-known to British jurisprudence. Now if the wide-ranging powers under the unamended Article 226 were also precluded from quashing the search warrant and setting at naught what in effect was a *fait accompli* it seems extremely unlikely that any such result can be effected by resorting to the rather limited scope of inherent powers under section 482 of the Criminal Procedure Code.

(24) I would, therefore, hold that a search warrant under section 93 of the Code obtained during the course of the investigation of a cognizable offence which has been duly executed and returned stand exhausted and by the very nature of things the searches and seizures thereunder cannot be reversed. Therefore, a petition seeking the quashing of such searches and seizures is futile in nature and virtually infructuous.

(25) Coming now to the third ground of attack levelled on behalf of the respondents, the issue arises pointedly in view of the

recent provisions of sub-section (2) of section 397 of the Code which limits the revisional jurisdiction in the following terms :—

> "397 (2) The power of revision conferred by sub-section (I) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry trial or other proceedings."

(26) Now the object and purpose of this amendment to the law appears hardly to be in doubt. A reference to the relevant report of the Law Commission would make it manifest that it was plainly meant to put an end to all collateral attacks to interlocutory orders during the course of a trial, enquiry, investigation or other proceeding. This was so done because experience had shown that the exercise of revisional jurisdiction with regard to interlocutory order had in actual practice tended to hamstring the judicial process in criminal cases leading to inordinate delays. Indeed at times the revisional remedy, therefore, becomes worse than the disease itself The Legislature, therefore, designedly put the interlocutory orders beyond the pale of the revisional jurisdiction which prior to this amendment were equally encompassed by the same. Even Mr. Thapar had fairly conceded that where the legislature had chosen to bar jurisdiction in a specific field, it would hardly be open to the Court and in any case not apt to nullify or bypass such a bar under the garb of inherent powers. It has been long well-settled that the Code of Criminal Procedure is exhaustive with regard to matters for which it expressly provides and the scope of inherent powers is automatically excluded therefrom.

(27) The point, therefore, at once arises whether the issuance of a search warrant under section 93 of the Code during the course of the investigation into a cognizable offence is not an order which is essentially interlocutory in nature. Now it is plain that if it partakes of this quality then the revisional jurisdiction of the Court under the Code at least is barred and the remedy can be resorted to only on the conclusion of the investigation, trial, enquiry or other proceeding. I have earlier after an exhaustive discussion held that the issuance of a search warrant in this particular context is only a step in the course of the investigation of a cognizable offence and it would inevitably follow that the order must, therefore, be

deemed to be interlocutory in character. The following observations of their Lordships in *Amar Nath and others* v. *State of Haryana* (10) would by analogy support this view:—

> "* * *. Thus, for instance, order summoning witnesses, adjourning cases, passing orders for bail, calling for reports *and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie* under section 397(2) of the 1973 Code."

That search warrants have been usually assailed under the revisional jurisdiction of the Court is not in doubt, and indeed the cases cited by the learned counsel for the petitioner to which reference would be made hereafter would themselves indicate that search warrants have been the subject matter of attack under the revisional jurisdiction conferred on the Court. That being so, it is plain that at least the revisional jurisdiction against them is barred under section 397(2). Therefore, there is substantial content in the stand of the learned counsel for the respondents that the same or similar powers directed against the issuance of search warrants should not be exercised under the inherent powers of the Court. This aspect was at one stage concluded by the following observations of their Lordships in *Amarnath's case*, (supra) :—

> "* * *. A harmonious construction of sections 397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred under section 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of section 482 would not apply. It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject-matter. Where there is an express provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers."

However, there is no manner of doubt that the strictures and the rigour of the aforesaid rule has been watered down by the subsequent judgment of their Lordships in *Madhu Limaye* v. *State of*

(10) AIR 1977 S.C. 2185.

Maharashtra, (11). Modifying the aforesaid rule in part Untwalia J., speaking for the Court had this to say :—

> "* * *. But then if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. *But such cases would be few and far between. The High Court must exercise the inherent power very sparingly.*"

In the light of the aforesaid observations, one must, therefore, proceed now to examine whether the impugned interlocutory order is one of the clearest abuse of process of the Court and whether the present case is one of those rare ones where the inherent powers of the Court should be invoked to override the bar created by section 397(2). I may at the very outset say that it is not even remotely possible to hold so in the present case.

(28) Now the principal ground of attack raised by Mr. Thapar against the issuance of the search warrant was the alleged non-application of the judicial mind by the learned Magistrate. It was contended that the order was given mechanically without even perusing the first information report in the case and was issued with regard to areas and premises far beyond the jurisdiction of the learned magistrate. It was also contended that subsequently the warrant was endorsed to numerous other police officers numbering nearly 80 for its execution.

(29) It appears to me that even the star argument raised on behalf of the petitioner has ultimately turned out to be a very damp squib. Learned counsel for the petitioner had waxed eloquent on the fact that some of the premises covered by the search warrant were located at New Delhi and even at Calcutta and this would

(11) A.I.R. 1978 S.C. 47.

indicate that the learned Magistrate had not even remotely applied his mind before issuing the same. The argument is plainly devoid of any substance. A mere reference to section 93 of the Code would indicate that the issuance of search warrants under this section by a Magistrate is without any territorial limitation and is not confined to the area of jurisdiction of the particular Magistrate. The position is equally evident by precedent. Faced with the plain language of the statute and the case law, Mr. Thapar had ultimately to concede that the Magistrate was entitled to issue a warrant for any place within the country and the fact of his having done so was a matter which could not possibly bring in the least infirmity in his order.

(30) On the other hand, the learned Advocate General of Haryana was on very firm ground in contending that there was both intrinsic and extrinsic evidence to show that the order was a considered one having been passed on the basis of the records and after consideration of the same. It was rightly pointed out that therein the presence of the Public Prosecutor for the State was expressly noticed and further the learned Magistrate had recorded that he had heard him in support of the petition. It was rightly contended that the word 'heard' in a judicial order has a precise connotation and reliance was rightly placed even to its ordinary dictionary meaning in this context. In the Random House Dictionary the relevant meaning of this word is in the following terms :—

> (5) "To give a formal, official, or judicial hearing to (something); consider officially, as a Judge, sovereign, teacher, assembly, etc., ; To hear a case. (6) To take or listen to the evidence or testimony of (someone) : To hear the defendant."

In the shorter Oxford English Dictionary, the following meaning is ascribed to this word :—

> "(5) To listen to judicially in a Court of law ; to give (one) a hearing; to try (a person or case) ; (6) To listen to with compliance ; to accede to, grant."

It is evident from this that the intrinsic evidence belies entirely the sketchy and unfounded allegations of the petitioner that the learned Judicial Magistrate did not apply his mind to the matter.

(31) The learned Advocate General of Haryana then has rightly pointed out that the very application made before the Court which was put up for perusal expressly mentioned the number of the first information report, the sections under which it was registered and the name of the accused person and his designation and status. Considering the fact that the matter was presented in Court before the Magistrate by the Public Prosecutor, a natural presumption arises that the diaries must inevitably have been made available. However, the issue is not left even to mere inference or presumption because in the return it has been specifically averred as follows :—

> "* * *. It may also be mentioned that alongwith the application P. 1 list of documents, and other articles for which the search was to be conducted was also attached.
>
> Thereupon the learned Public Prosecutor appearing on behalf of the State showed the case diaries to the learned Magistrate and argued the matter highlighting the relevant material warranting issue of search warrants. It is only thereafter that the learned Magistrate, after having felt satisfied regarding the justification for the issuance of search warrants, passed order, annexure P/2 to the petition. This speaks volume about the application of Judicial mind of the learned Magistrate of issuance of search warrants."

It appears to be plain that the submission that the relevant documents or record were not adverted to is rested on no factual foundation whatever.

(32) As regards the subsequent endorsement of the search warrants to a number of other police officials reference may be made to sections 74, 93 and 99 of the Code. Section 74 lays down that a warrant directed to any police official may also be executed by any other police official whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed. Section 99 amongst others provides that the provisions of section 74 applies to search warrant issued under section 93 of the Code. In this context, it then deserves notice that annexure 'A' to the application made reference to 86 persons and premises with regard to which the search warrant was sought. An undertaking was given that the search warrant should be returned within a fortnight. Inevitably

these searches could not possibly be executed by a single police officer. It was rightly pointed out that the very purpose of the search warrant would have been defeated if the searches were not conducted with despatch and almost simultaneously in order to prevent the destruction or the concealment of the evidence and documents pertaining thereto.

(33) It is manifest from the above that the allegation on behalf of the petitioner regarding the non-application of mind by the learned Judicial Magistrate in issuing the search warrant stands conclusively repelled on the present record.

(34) The other argument raised on behalf of the petitioner is that the learned Magistrate had not recorded his detailed reasons to indicate his satisfaction or reasonable belief for issuing the search warrants and it has, therefore, to be struck down. I am unable to appreciate this contention on principle. It deserves pointed notice that section 93 merely requires the reasonable belief of the Court with regard to the requirements of that section. If nowhere provides either expressly or even by implication that the Magistrate is bound to record his reasons in detail. It is worth recalling that the Code itself in terms provides for the recording of reasons where the Legislature has thought fit to so prescribe. Reference in this connection may be made to section 116(3), 145(1), 165(1), 167(3), 203(1), 227, 239, 245, 256, 274 and 412 of the Code. Therefore, to impose the requirement of recording reasons by precedent when the Legislature in its wisdom has not chosen to do so would to my mind be unwarranted. In fact the learned Advocate General for Haryana has argued that reading section 93 in juxtaposition with the other sections which provide for the recording of reasons would inevitably lead to the conclusion that no reasons need be given and the reasonable belief of the Magistrate on the basis of the record and the exercise of his judicial discretion thereupon is all that is the requirement of the law. In fact he went to the length of contending that the recording of too detailed reasons in the order for issuance of search warrants which necessarily is a public document would forthwith reveal all the steps of investigation and the nature of the things and the persons from whom these are sought to be recovered, at that very stage when as yet investigation may be of a confidential and secret nature. I would refrain from opining on this aspect of the learned Advocate General's argument but this much at least is plain that the recording of reasons under

section 93 of the Act is not a legal requirement and the absence thereof, therefore, involves no legal infirmity therein.

(35) Apart from principle and the statute itself, there is then the High authority of the Division Bench reported in *Manicklal Mondal and another* v. *The State* (12), for the proposition that in issuing a search warrant, a Magistrate is not bound to record his reasons in writing and the Code merely requires that he should be himself satisfied that there is necessity for the issuance of the same. This view has been later followed in *Kanailal Jatia and others* v. *Ramkrishnadas Gupta,* (13). The Division Bench in *Kalinga Tubes Ltd., and others* v. *Suri and another,* (14) has also taken a similar view. Even the special Bench in *Shri Melicio Fernandes* v. *Shri Mohan Nair and another,* (15), on which Mr. Thapar has placed reliance has in terms observed that the Magistrate was not bound to record his reasons in writing.

(36) In the context of the sections of the Code which even require the recording of the reasons, it deserves notice that there is high authority for the proposition that even there the mere failure to record the same does not in any way vitiate the proceedings. A Division Bench of this Court in *Ajaib Singh and another* v. *Amar Singh and others,* (16) has held that the omission of the Magistrate to pass an order in accordance with section 145(1) is a curable irregularity. In this context their Lordships of the Supreme Court themselves in *Bai Radha* v. *State of Gujarat* (17), have observed as follows:—

> "* *. In this case, however, it was observed that the recording of reasons under section 165 did not confer on the officer jurisdiction to make search though it is a necessary condition for doing so. *Jurisdiction or power to make a search was conferred by the statute and not derived from the recording of reasons. These observations are sufficient* to dispose of the first point which has been pressed

(12) AIR 1953 Calcutta 341.
(13) A.I.R. 1958 Calcutta 128.
(14) A.I.R. 1953 Orissa 153.
(15) A.I.R. 1966 Goa 28.
(16) (1964)1 I.L.R. 1.
(17) A.I.R. 1970 S.C. 1396.

about the omission to record the reasons before the search or even thereafter in a proper way."

It must, therefore, be held that the alleged absence of detailed reasons recorded in writing does not by itself detract in any way from the validity of the order issuing the search warrant.

(37) Once that is so, it is plain that the scope of judicial review of an order issuing the search warrant by a superior Court becomes indeed limited. If the matter is primarily one of the reasonable belief and satisfaction of the Magistrate concerned and he need not record any reasons then it is an obvious pointer towards the fact that the question of quashing such a discretionary order cannot easily arise.

(38) To conclude on this aspect of the case, I am unable to find any legal or factual infirmity in the impugned order. This being a judicial order is indeed far from being an abuse of the process of the Court which alone would warrant the invoking of the exceptional inherent powers for quashing an order essentially interlocutory in nature.

(39) However, within this jurisdiction there are undoubtedly Single Bench decisions where such power of quashing or setting aside search warrants has in terms been exercised either under the revisional or the inherent jurisdiction. Mr. Thapar very fairly conceded that the Full Bench judgment reported as *Income-tax officer Jullundur* v. *The State*, (18) is not relevant because admittedly therein the search warrant had not been executed and there had been an order of stay from the very beginning in all the Courts. Similarly the facts in *Major Avtar Singh* v. *The State and others*, (19) clearly indicate that the search warrant in that case had also not been executed and the Court came primarily to the conclusion that there was no material whatsoever before the Magistrate on which he could be satisfied about the necessity of issuing the general search warrants and that he had not applied his mind to the facts thereof. These cases are, therefore, plainly distinguishable from the present one.

(18) A.I.R. 1950 E.P. 306.

(19) 1970 Cur. L.J. 619.

(40) In the case reported as *Shiv Dayal* v. *Sohan Lal Bassar*, (20) the matter was considered in the context of issuance of three search warrants but the judgment does not indicate whether all or any of these had been executed. On the other hand from the tenor of the discussion, it appears that the said search warrants had been stayed at the very initial stage by the Additional Sessions Judge and he had recommended the matter to the High Court in the revisional jurisdiction. This judgment is, therefore, distinguishable but nevertheless there are observations therein to the effect that the recording of reasons before the issuance of search warrant is obligatory and failure to do so would necessary lead to the inference that the exercise of discretion was arbitrary and hence this would be a good ground for setting aside the order. With respect I am unable to agree with this line of reasoning for the detailed reasons recorded above and would, therefore, overrule the same on this specific point. In *Shri Harbans Singh, Ex-Chairman, Punjab State Electricity Board* v. *The State of Punjab etc.* (21), a search warrant apparently having been executed was quashed under section 482 of the Criminal Procedure Code. It first deserves highlighting that the search warrant in this case was issued under section 96 of the former Code of Criminal Procedure 1898 in which there was no provision analogous to section 397(2) of the present Code which bars the exercise of revisional jurisdiction in the matter of interlocutory orders. This apart, it deserves notice that the point whether an executed search warrant secured in the course of the investigation of a cognizable offence stood on a different footing was neither raised nor even remotely adverted to by the learned Single Judge. A perusal of the judgment would indicate that the issue was not adequately agitated at all and reliance was primarily placed on *Shiv Dayal's case* (supra) for quashing the search warrants. For the reasons recorded in detail above. I, with respect, am of a contrary opinion and would, therefore, overrule this judgment.

(41) Before parting with this judgment I would notice the extremely fair stand taken on behalf of the respondent-State by the learned Advocate General. He had submitted that investigation in the cases was as yet proceeding (which has been slightly deterred by the pendency of these petitionss) and the petitioners had been merely deprived of the possession of certain articles and documents

(20) A.I.R. 1970 Pb. & H. 468.

(21) Cr. Misc. 3692-M/74, decided on 4th October, 1977.

by virtue of the search warrant. He has repeatedly offered that the petitioners in all the cases are at liberty to show to the investigating agency that any property not directly relevant to the investigation of the case may be returned to them and such a request could be favourably considered and disposed of. The stand of the petitioners in these connected applications, however, was prestigious and adamant that they would not resort to the relevant authority for the return of the property and instead they claimed the quashing of the whole proceedings as void *ab initio*. I hope that the rejection of this petition would in no way alter the stand taken on behalf of the respondent State in case the petitioners choose to approach them in the matter hereafter. I conclude that—

(i) the impugned search warrants under section 93 of the Code and the subsequent searches and seizures made thereunder in the course of an investigation of a cognizable offence are such internal steps therein that they cannot be interfered with whilst the investigation is proceeding apace and the matter is not as yet before any Court for trial;

(ii) the impugned search warrants under section 93 of the Code obtained during the course of the investigation of a cognizable offence have been executed and returned to the Court and, thus stand exhausted. Therefore the petitions seeking the quashing of such searches and seizures are futile in nature and virtually infructuous;

(iii) there is no legal or factual infirmity in the impugned orders directing the issuance of a search warrant. These being valid judicial orders are indeed far from being an abuse of the process of the Court which could possibly warrant the invoking of the exceptional inherent powers for quashing such orders which are essentially interlocutory in nature.

(42) In the result all the four Criminal Miscellaneous Applications Nos. 5500-M, 5093-M, 4739-M, and 5836-M of 1977 are hereby dismissed.

K.T.S.