

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF NOVEMBER, 2021

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.29697 OF 2017 (GM-RES)

BETWEEN:

1. DIRECTOR GENERAL OF
INCOME TAX (INVESTIGATION)
C. R. BUILDING,
QUEENS ROAD,
BENGALURU - 560 001.
2. PR. DIRECTOR OF
INCOME TAX (INVESTIGATION)
C. R. BUILDING,
QUEENS ROAD,
BENGALURU - 560 001.
3. PR. COMMISSIONER OF
INCOME TAX (CENTRAL)
C.R. BUILDING,
QUEENS ROAD,
BENGALURU - 560 001.

... PETITIONERS

(BY SRI K.V.ARAVIND, ADVOCATE (PHYSICAL HEARING))

AND:

1. DEPUTY COMMISSIONER OF POLICE
BENGALURU - EAST DIVISION,
BENGALURU - 560 001.

2. SRI K. GOVINDARAJ
S/O. (NOT KNOWN),
AGED (NOT KNOWN),
R/AT NO.206, 2ND MAIN ROAD,
DOMLUR 2ND STAGE,
BENGALURU-560 071.
3. THE STATION HOUSE OFFICER
INDIRANAGAR POLICE STATION,
INDIRANAGAR,
BENGALURU - 560 038.

... RESPONDENTS

(BY SMT.NAMITHA MAHESH B.G., HCGP FOR R1 AND R3
(PHYSICAL HEARING);
SRI K.SHASHIKIRAN SHETTY, SR. ADVOCATE FOR
SRI SANDEEP, ADVOCATE FOR R2 (VIDEO CONFERENCING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C. PRAYING TO QUASH THE COMPLAINT FILED BY THE R-2 BEFORE THE R-3 DTD.28.2.2017 AND FIR DTD.28.2.2017 IN CR.NO.52/2017 VIDE ANNEX-A AND B RESPECTIVELY TO THE W.P. AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.10.2021, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING :-

ORDER

The petitioners are before this Court calling in question proceedings in FIR dated 28.02.2017 in Crime No.52 of 2017, notice dated 13.04.2017 issued under Section 91 of the Cr.P.C. and a letter dated 20.06.2017.

2. Brief facts leading to the filing of the present petition, as borne out from the pleadings are as follows:-

The 1st petitioner is the Director General of Income-Tax (Investigation), the 2nd petitioner is the Principal Director of Income-Tax (Investigation) and the third petitioner is the Principal Commissioner of Income-Tax (Central). The 2nd respondent is the complainant. On 15.03.2016, search and seizure proceedings were initiated by the petitioners in terms of Section 132 of the Income Tax Act, 1961 ('the Act' for short) on the residential premises of the complainant and several incriminating documents including a diary that was found during the search were seized. The diary was found in the bedroom of the complainant. According to the petitioners, the diary had recordings of various transactions with abbreviations and amounts against each of the abbreviations.

3. The complainant was, at that point in time, holidaying at Goa. A search warrant that was issued against the

complainant was executed even at the hotel room, where the complainant was staying. The complainant returned to his residence and during the course of search, statement of the complainant was recorded under Section 132(4) of the Act, confronting the complainant with the contents of the seized incriminating materials including the diary. Several statements were later recorded by the petitioners in furtherance of the proceedings under Section 132 of the Act.

4. The complainant on 28.02.2017, registers a complaint before the 3rd respondent/Station House Officer, Indiranagar Police Station, Bangalore, alleging that there was gross violation of the procedure adopted in the search and certain documents that were seized and particularly, the diary that belongs to the complainant. In all, the complainant alleges that offences punishable under Sections 218, 193, 199, 182, 341, 406, 409, 457, 330, 466, 471, 472, 166-A read with Sections 34, 109 and 120-B of the IPC. The complaint resulted in registration of a FIR for the aforesaid offences on 28-02-2017, in Crime No.52 of

2017. Even at this point in time, the petitioners did not knock the doors of this Court as the FIR registered was against unknown persons. What triggered filing of the petition before this Court is a Police Notice dated 13.04.2017, issued by the 3rd respondent directing the 1st petitioner to hand over the diary that was seized during the raid conducted on the residence of the complainant. It is then, the petitioners could come to know that a FIR had been registered against them. This was replied by the petitioners on 20.04.2017, contending that the FIR could not have been registered against them as they were performing official duty in terms of Section 132 of the Act and protection under Section 293 of the Act was available to the petitioners.

5. The 3rd respondent did not stop with this communication but again directed the 1st petitioner to divulge the names of persons who had conducted the search and seized the documents. In reply, the petitioners sought a copy of the FIR as they were not even made aware of the FIR being registered against them. Since the notice under Section 91 of the

Cr.P.C. was issued to the petitioners as also the fact that the diary that was sought by the police was required for further investigation, the petitioners have knocked the doors of this Court calling in question entire proceedings in Crime No.52 of 2017 registered against the petitioners for the aforesaid offences.

6. This Court while entertaining the writ petition granted an interim order of stay of all further proceedings and the same is in operation even as on date.

7. Heard Sri K.V.Aravind, learned Advocate for the petitioners, Smt. B.G.Namitha Mahesh, learned High Court Government Pleader for the 1st and 3rd respondents and Sri K.Shashikiran Shetty, learned senior Advocate for Sri Sandeep, learned Advocate for the 2nd respondent.

8. The learned counsel appearing for the petitioners would vehemently argue and contend that the very registration of FIR against the petitioners is not maintainable as there is protection to the act of the petitioners under Section 293 of the Act and

under Section 138 of the Act any document or incriminating material seized in a search and seizure proceedings under Section 132 of the Act, cannot be handed over or divulged as Section 138 of the Act begins with a non-obstante clause. Section 91 of the Cr.P.C. cannot override the provisions of either under Sections 132, 138 or under Section 293 of the Act.

9. On the other hand, the learned senior counsel representing the 2nd respondent/complainant would vehemently refute the submissions and contends that the writ petition itself is not maintainable as the petitioners are not even named in the FIR and what is called in question is only a notice issued under Section 91 of the Cr.P.C. to which the petitioners would be at liberty to file reply and justify their stand that they would not be in a position to release the diary. Rushing to the Court and calling in question, nothing against them, would entail dismissal of the petition is the emphatic submission of the learned senior counsel.

10. The learned High Court Government Pleader representing the 3rd respondent would seek to justify the notice by only submitting that the petitioners would be at liberty to reply to the notice and challenging the notice by this writ petition would not be maintainable.

11. I have given my anxious consideration to the submissions made by the respective learned counsel and the learned senior counsel and have perused the material on record.

12. The afore-narrated facts are not in dispute and would not require reiteration. Before embarking upon the journey of consideration of facts of the case at hand, I deem it appropriate to notice the provisions of the Income-Tax Act insofar as they are germane for consideration of the *lis*. Section 132 of the Act deals with search and seizure and reads as follows:

"132. Search and seizure.—(1) Where the Principal Director General or Director General or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Additional Director or Additional Commissioner, or Joint Director or Joint Commissioner

in consequence of information in his possession, has reason to believe that—

- (a) any person to whom a summons under sub-section (1) of Section 37 of the Indian Income Tax Act, 1922 (11 of 1922), or under sub-section (1) of Section 131 of this Act, or a notice under sub-section (4) of Section 22 of the Indian Income Tax Act, 1922 (11 of 1922), or under sub-section (1) of Section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account, or other documents as required by such summons or notice, or*
- (b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act, or*
- (c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian Income Tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property), then,—*

(A) the Principal Director General or Director General or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner], as the case may be, may authorise any Additional Director or Additional Commissioner or Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income Tax Officer, or

(B) such Additional Director or Additional Commissioner or Joint Director or Joint Commissioner, as the case may be, may authorise any Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income Tax Officer (the officer so authorised in all cases being hereinafter referred to as the authorised officer) to—

(i) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

(ii-a) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;

(ii-b) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of Section 2 of the Information Technology Act, 2000, to afford the authorised officer the necessary facility to inspect such books of account or other documents;

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search:

Provided that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business.

(iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing:

Provided that where any building, place, vessel, vehicle or aircraft referred to in clause (i) is within the area of jurisdiction of any Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, but such Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in Section 120, it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorisation from the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner] having jurisdiction over such person may be prejudicial to the interests of the revenue:

Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the

person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii):

Provided also that nothing contained in the second proviso shall apply in case of any valuable article or thing, being stock-in-trade of the business.

Provided also that no authorisation shall be issued by the Additional Director or Additional Commissioner or Joint Director or Joint Commissioner on or after the 1st day of October, 2009 unless he has been empowered by the Board to do so.

Explanation.— For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this subsection, shall not be disclosed to any person or any authority or the Appellate Tribunal.

(1-A) Where any Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an

officer has been authorised by the Principal Director General or Director General or Director or any other Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner]to take action under clauses (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1), such Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, notwithstanding anything contained in Section 120, authorise the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.

Explanation.- For the removal of doubts, it is hereby declared that the reason to suspect, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) or sub-section (1-A) and it shall be the duty of every such officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to sub-section (1), serve an order on the owner or the person who is in immediate possession or control thereof that he shall not

remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

Explanation.—*For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1).*

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act.

Explanation.—*For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income Tax Act, 1922 (11 of 1922), or under this Act.*

(4-A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the

possession or control of any person in the course of a search, it may be presumed—

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document, stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested."

(emphasis supplied)

Section 138 of the Act deals with disclosure of information in respect of an assessee, which reads as follows:

"Section 138. Disclosure of information respecting assessee:

(1) (a) : The Board or any other income- tax authority specified by it by a general or special order in this behalf may furnish or cause to be furnished to-

(i) any officer, authority or body performing any functions under any law relating to the imposition of any tax, duty or

cess, or to dealings in foreign exchange as defined in clause (n) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999); or;

(ii) such officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette in this behalf, any such information received or obtained by any income- tax authority in the performance of his functions under this Act], as may, in the opinion of the Board or other income- tax authority, be necessary for the purpose of enabling the officer, authority or body to perform his or its functions under that law.

(b) Where a person makes an application to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in the prescribed form for any information relating to any assessee received or obtained by any

income-tax authority in the performance of his functions under this Act, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for and his decision in this behalf shall be final and shall not be called in question in any court of law.

(2) Notwithstanding anything contained in sub-section (1) or any other law for the time being in force, the Central Government may, having regard to the practices and usages customary or any other relevant factors, by order notified in the Official Gazette, direct that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assesseees or except to such authorities as may be specified in the order."

(emphasis supplied)

Section 138(2) of the Act as afore-extracted, is relevant for the purpose of the *lis* begins with a *non-obstante* clause reading “*notwithstanding anything contained in sub-section (1) or any other law for the time being in force*”, no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessee or except to such authorities as may be specified in the order. Therefore, on a conjoint reading of Sections 132 and 138(2) of the Act, would lead to an unmistakable conclusion that once such seizure proceedings are undertaken by the officials of the Department under authorisation, they are not obliged to furnish any document to any public servant in respect of such matters relating to the assessee against whom search and seizure is taken up.

13. Section 293 of the Act mandates a bar of institution of suits in civil Courts. The entire *lis* that is now generated between the parties is required to be considered on the touchstone of the

aforesaid provisions of the Act. Search and seizure proceedings were initiated against the 2nd respondent/complainant, who is a Member of the Legislative Assembly of the State of Karnataka. The search and seizure proceedings led to seizing of several documents, incriminating materials and a particular diary. The petitioners were empowered to conduct search and seizure of the said documents under Section 132(4) of the Act. Section 132(4-A) also deals with, where any books of accounts, other documents, money, bullion, jewellery or other valuable articles are found in the possession or control of any person in the course of search it is presumed that they belong to the assessee. Therefore, those incriminating documents including the diary were seized by the respondents during search. Section 138 of the Act, deals with disclosure of information in respect of assesses.

14. The aftermath of search is what is required to be considered on the touchstone of the aforesaid provisions. The complainant/assessee registers the complaint before the 3rd

respondent/Police on 28.02.2017. Since the issue has now emerged from the complaint, the same is extracted for the purpose of ready reference:

"From

*K.Govindaraj
#206, 2nd main Road, Domlur 2nd stage,
Bengaluru - 560 071*

To

*The Station House Officer
Indiranagar PS,
Bangalore.*

Sir,

*Subject: Criminal breach of trust, Theft of
information and Framing incorrect
documents by public servants and
other cognizable offences committed -
reg.*

*I wish to inform that I am a respectable
citizen of Bangalore and I am filing income tax
returns for the last 21 years and I have not been
found anywhere deviant in my income tax
assessments.*

*To my surprise and dismay, on March 15,
2016, when I was in Goa attending an important
sports event, my body search was done by the
Income Tax officials and I also came to know from
various media channels that my house was
searched ostensibly to detect violations of Income*

Tax Act on my part. I was shocked and traumatized by the search and I could not contact my wife, Smt.Hamsa Raj as my mobile phones were taken in to custody by the IT Officials. Further I was given to understand that a posse of income tax officials had entered into my house and did an extensive search of my house. Even after taking me into illegal custody at Goa; I was brought to Bangalore by IT Official from Goa, they did not provide me details of searches and of recovery, rather took me to the office of the Karnataka Olympic Association of which I am the President and took the search of the office. It is a matter of great concern that the KOA is the independent body registered under the Societies Act of Karnataka but search was done as a part of the wider conspiracy to defame and belittle me in the eyes of sports administration at the behest of powerful lobby, I am afraid. After hearing from my wife about certain relevant information and after recovering from shock and trauma, I filed a complaint to the Indira Nagar Police Station about fabrication of said evidences against me with political motive.

The procedure of the search has been defined in the law of the land and in accordance with the constitutional provisions of the Right of Liberty which is a fundamental right. The IT Department conducted the search of my house when I was in Goa and was not present in Bangalore and when my wife was alone in the house and she was not in a position to object for such illegal processes where the brute attack devoid of legal sanctity was orchestrated without essential requisite of the search by the Income Tax Officials. The officials did not submit themselves for search to inmate of

the House which is mandatory as per the procedure.

The above pre-requisite is an essential safeguard of the search to avoid any kind of planting of materials by unscrupulous investigators. Search party entering into my house where I have 4 bed rooms, living room, dining hall, kitchen, Pooja room, multiple toilets etc., it was impossible for any human being that too a lady to monitor such search.

Infact, the Hon'ble Supreme Court of India in various pronouncements has defined the need of the search parties exhibiting fairness in conduct. This search party did not exhibit any of the basic decency and legality expected of them and rather searched my house in a brazen fashion and planted the material and also prepared search mahazar which was incorrect documents prepared by public servants in the presence of my wife and another relative of mine (joined later) who had no knowledge about such acts being done in illegal fashion.

I was also personally shocked and traumatised and came to know details of incident through my wife and I brought to the notice of Police Department about false evidences created by public servants at the earliest opportunity.

The above offences have all essential ingredients of creating false documents which is punishable under the law by framing incorrect documents and with utter disregard to the directions of the law to be obeyed by the public servants. The purported diary and

other seized materials in contravention of the Income Tax Act had been made public and used as a tool of victimisation in collusion with political opponents. In fact, my letter to the Director General (Investigations) has brought out these facts much before a national TV channel showed the contents of the diary that unauthorised persons had access to information available with Income Tax Department. It is pertinent to inform that any seized materials vide Income Tax Act is out of purview of even Right to Information Act and can have limited access to the authorities concerned and others as per the law. Such being the position of law; the availability of information which is subject matter of income tax act proceedings with unauthorised persons clearly shows that either such persons have committed theft of such information or documents from the Income Tax Department or the authorities in Income Tax Department have committed the offence of criminal breach of trust by sharing the information which ought not to have been shared to unauthorised person and media for publications with wrongful political gain.

Contents of such planted diary have been vigorously used by the political opponents with ulterior motive which clearly demonstrates that it was a conspiracy to tarnish my image and lug me in false allegations.

I request your good office to launch investigation against all the persons and public servants involved in criminal breach of trust, theft

of information/documents and creation of false documents along with other offences committed under the following Sections as stated supra - 218, 193, 199, 182, 341, 406, 409, 457, 380, 466, 471, 472, 166 - A read with Section 34, 109 and 120-B of IPC 1681 for registration of FIR and take up investigation on priority."

(emphasis added)

A perusal at the complaint would in unmistakable terms indicate that what the complainant ultimately wanted is, the diary that was seized as according to the complainant, the Department would be using the diary for development of certain incriminating investigation. The FIR is registered on the basis of the complaint in Crime No.52 of 2017 for the aforesaid offences. The FIR is against unknown persons and unknown Government officials. The complaint in the FIR is, seizure of certain documents at the time of search. Pursuant to the said complaint, the 3rd respondent/Police issued a Police Notice on 13-04-2017 under Section 91 of the Cr.P.C. Section 91 of the Cr.P.C. reads as follows:

"91. Summons to produce document or other thing:—(1) Whenever any Court or any officer in charge of a police station considers that

the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed—

(a) to affect Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

In terms of Section 91 of Cr.P.C., an officer investigating into a crime is entitled to summon or compel production of a document or other thing. The notice issued against the petitioners reads as follows:

“As the diary which was allegedly seized during the raid conducted on the residence of Sri K.Govindaraj, MLC of Karnataka on 15-03-2016 is very much essential to conduct further investigation in Indiranagar PS, Dr.No.52 of 2017 under Section 166A, 182, 193, 109, 199, 208, 406, 466, 409, 457, 380, 472, 471, 120(B) r/w 34 IPC. You are hereby called upon to produce the alleged diary, in original, which was seized during the raid conducted on the residence of Sri K.Govindaraj, MLC on 15-03-2016 and indexed by you vide reference No.(2) as “A/KG/03” before the undersigned at Indiranagar Police on or before 20th April, 2017 at 11.00 a.m.

Further you are hereby also called upon to furnish the details of the officers, persons and officials who were present during the raid conducted on the residence of Sri K.Govindaraj, MLC on 15-03-2016.”

A perusal at the notice would clearly indicate that what the Police wanted was also the diary, which was allegedly seized during the raid. This notice under Section 91 of Cr.P.C., was replied by one of the petitioners on 20-04-2017, clearly indicating that no proceedings can be instituted against the petitioners and not even a notice seeking documents can be issued as confidentiality of such documents is provided under Section 138 of the Act. The Police did not stop at this, but issued another communication on 20-06-2017, directing one of

the petitioners to disclose the names and addresses of persons of the Department, who had accompanied the petitioners during search and seizure. Since the communication referred to the FIR in Crime No.52 of 2017 for the aforesaid offences, the petitioners immediately replied seeking a copy of the FIR and thereafter, have filed this writ petition challenging the aforesaid action.

15. Section 293 of the Act reads as follows:

“293. Bar of suits in civil courts:—No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act, and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act”

Section 293 of the Act, mandates that no suit shall be brought in any civil Court to set aside or modify any proceeding taken or order made under the Act and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for any act done in good faith under the Act. The bar that operates under Section 293 of the Act, is twofold i.e., no

proceedings shall be instituted before a civil Court and no prosecution shall lie against the government or any officer of the Government for anything done under the Act.

16. Admittedly, search and seizure is performed by the petitioners under the Act. The bar of divulging any information or any document taken into custody during the seizure is available under Section 138(2) of the Act. In the teeth of the said provision in the Act, the notice issued by the Police, on the face of it, would be contrary to law. The notice that the Police issued on 13.04.2017, is on the strength of the FIR for the alleged offences as aforesaid. Since the notice emanates pursuant to registration of the FIR, the registration of the FIR itself was bad in law, as recording of FIR against the petitioners, who are officers of Government and have performed certain acts of search and seizure under Section 132 of the Act, cannot be brought to prosecution particularly, for the offences alleged in the FIR. The complaint ought not to have been entertained by

the 3rd respondent/Police and registration of FIR ought not to have been done in the light of the aforesaid provisions of the Act.

17. It is rather shocking that what the complainant wants in the complaint is, the diary and what the Police want to secure from the petitioners is the diary and no other document is required by the Police for investigation of the allegations of offences, which run into 15 in number, but only the diary. It cannot but be held that the 3rd respondent was acting at the behest of the complainant to secure the diary by invoking Section 91 of the Cr.P.C., thereby summoning the diary. Since the FIR could not have been registered against the petitioners in view of the specific bar under Section 293 of the Act, the aftermath of such registration would be rendered without authority of law.

18. The submission of the learned senior counsel appearing for the second respondent / complainant is that, the writ petition is not maintainable as nobody is named in the FIR and challenging the said FIR by the petitioners in particular,

would not be maintainable. If the act of registration of the FIR had stopped at that point, the submission of the learned senior counsel would become acceptable. The ulterior motive in registration of FIR is seen in the subsequent proceedings. Police Notice is issued under Section 91 of the Cr.P.C. to the 1st petitioner wherein, it is indicated that Crime No.52 of 2017 is pending consideration. The second communication is issued on 20.06.2017, which again discloses offences punishable as aforesaid in Crime No.52 of 2017. Therefore, what the Police want to investigate is the act of search and seizure done by the petitioners, communication and police notice that are sent to the petitioners. Therefore, it cannot be urged by the learned senior counsel that the FIR names nobody and the writ petition would not be maintainable. This submission deserves to be rejected and is rejected.

19. The purport of Section 293 of the Act, is considered by the Apex Court in the case of **CIT v. PARMESHWARI DEVI**

SULTANIA¹, wherein the Apex Court was considering whether a civil suit would be maintainable against Income-Tax officials, who had performed their acts under Section 132 of the Act, with regard to search and seizure. The Apex Court has held as follows:

“Commissioner of Income Tax, Bhubaneswar and Union of India, Ministry of Finance have filed this appeal against the judgment dated 24-10-1994 of the Orissa High Court which the High Court dismissed their revision and affirmed the order of the subordinate court rejecting the plea of the Revenue that a suit for partition filed by the first respondent was not maintainable in view of the bar in Section 293 of the Income Tax Act, 1961 (for short, “the Act”).

... ..

3. From the facts, it is quite obvious that the plaintiff would not have filed the suit for partition as there was no dispute to her claim by other relatives but for the fact that gold ornaments were then in the custody of the Income Tax Department. Notices of the suit were served on Defendants 6 and 7. They filed an application in the Court on 7-8-1992 challenging the very maintainability of the suit in view of Section 293 of the Act. This section is as under:

“293. Bar of suits in civil courts.—No suit shall be brought in any civil court to set aside or modify any proceeding taken or

¹ (1998) 3 SCC 481

order made under this Act, and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act.”

... ..

17. We have seen above that the scope of Section 293 of the Act has been widened now even to include any proceeding under the Act and it is not confined merely to set aside or modify any order. **Form of the suit is not relevant. It is the substance which is to be seen. When the statute prescribed certain procedure and proceedings thereunder are held and order passed, it is difficult to accept a contention that that proceeding and order can be modified or set aside in a civil suit filed by a third party. Section 293 is specific and does not admit filing of a suit which has the effect of even indirectly setting aside or modifying any proceeding taken under the Act or order made thereunder. In the present case, search and seizure were effected as per the provisions of the Act, assets and documents seized and statement of Babulal recorded under sub-section (4) of Section 132 of the Act wherein he admitted that the gold was acquired from his and his brother's undisclosed income which he was even prepared to surrender to tax. It was thereafter in the course of further enquiry that he came up with a version that the gold ornaments in question belonged to his stepmother who bequeathed the same for the benefit of the children of the plaintiff and other children that would be born to the second wife of his**

father. This version did not find favour with the Income Tax Officer and he was not satisfied that the gold ornaments in question did not belong to Babulal. It was, therefore, not necessary for him to issue any notice under sub-section (7) of Section 132 of the Act to the plaintiff. In any case, the plaintiff was well aware of the proceedings before the Income Tax Officer and she could have also filed objection to the order made by the Income Tax Officer under Section 132(5) of the Act to the Chief Commissioner or Commissioner under sub-section (11) thereof which remedy she did not avail. Considering the whole gravamen of the plaintiff in the suit and the law on the subject, we are of the opinion that the Subordinate Judge and the High Court were not correct in rejecting the contention of the Revenue and holding that the suit was not barred under Section 293 of the Act."

(emphasis supplied)

The plea that was before the Apex Court was, whether the suit for partition filed by the 1st respondent therein, was maintainable in view of the bar under Section 293 of the Act arraigning Income-Tax officials as defendants. The Apex Court has clearly held that the trial Court and the High Court were not correct in rejecting the contention of the revenue and holding that the suit was not barred under Section 293 of the Act. The

purport of Section 293 of the Act, is considered in its affirmation. Therefore, the proceedings initiated in Crime No.52 of 2017 is rendered unsustainable in view of Section 293 of the Act and the subsequent Police Notice dated 13.04.2017, seeking the diary alone is rendered flawed and any further proceedings taken thereto by the 3rd respondent against the petitioners are all rendered unsustainable, in the light of the aforesaid reasons.

20. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) The FIR dated 28.02.2017, registered in Crime No.52 of 2017, before the 3rd respondent and all further proceedings taken up pursuant thereto stand quashed.
- (iii) The petitioners shall be entitled to all consequential benefits that would flow from the order (i) *supra*.

**Sd/-
JUDGE**