2025 INSC 1111

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11798 OF 2025
(Arising out of SLP (C) No.16830 of 2021)

ITC LIMITED … APPELLANT

VERSUS

STATE OF KARNATAKA & ANR. … RESPONDENTS

WITH

CIVIL APPEAL NO. 11799 OF 2025
(Arising out of SLP (C) No. 18336 of 2022)

J U D G M E N T

R. MAHADEVAN, J.

Leave granted in both the SLPs.

2. The appellant, ITC Limited, is engaged in the business of stationery items including Exercise Books / Notebooks, Pens, Pencils, etc. under its brand 'Classmate'. On 02.07.2020, Respondent No.2 acting under Section 15 of the Legal metrology Act, 2009[1], conducted an inspection at the appellant's premises

[1] For short, "the 2009 Act"

situated at Survey No.9/4, A, B 9/2, 9/8 Arjunabettahalli Village, Madurai Road, Nelamangala Taluk, Bengaluru, and seized 7600 CFCs / packages of 'Classmate' exercise books for the alleged violation of Rule 24(a) of the Legal Metrology (Packaged Commodities) Rules, 2011[2] which is punishable under Section 36(1) of the 2009 Act. Pursuant to the seizure, a seizure notice and a compounding notice both dated 02.07.2020 were issued to the appellant. Alleging that no search warrant was obtained prior to the entry and that the provisions of Sections 100(4) and 165 of the Criminal Procedure Code[3] were not complied with, the appellant preferred Writ Petition No.8954 of 2020 (GM-RES) under Article 226 of the Constitution of India before the High Court of Karnataka[4], seeking to quash the said notices and for a direction to Respondent No.2 to release the seized goods.

3. After hearing both parties, the learned Single Judge of the High Court, by order dated 04.09.2020, allowed the writ petition, quashed the notices issued by Respondent No.2, and directed the release of the seized goods, holding that the search and seizure were conducted without jurisdiction. Aggrieved by the said order, the respondents filed Writ Appeal No.572 of 2020 (GM-RES).

4. Upon consideration, the Division Bench of the High Court allowed the writ appeal and set aside the order of the Single Judge, by judgment dated 15.04.2021. In doing so, it was observed that the requirement of a search warrant does not

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[2] For short, "the 2011 Rules"
[3] For short, "Cr.P.C"
[4] For short, "the High Court"

arise where action is initiated under Section 15 of the 2009 Act and that the Authority is duly empowered to inspect, search, and seize. Hence, there was no illegality or procedural error in the search and seizure undertaken by the Authority. Feeling aggrieved, the appellant filed Special Leave Petition (C) No.16830 of 2021 before this Court.

5. In the meanwhile, the appellant also filed Review Petition No.388 of 2021 in Writ Appeal No.572 of 2020 seeking a review of the Division Bench's judgment. The said review petition was dismissed, by order dated 10.08.2022, against which, the appellant filed SLP (C) No.18336 of 2022 before this Court.

6. Pursuant to this Court's order dated 04.11.2022, SLP (C) No.18336 of 2022 was tagged with SLP (C) No.16830 of 2021. This Court, after hearing the submissions made by the parties, now proceeds to dispose of both matters by this common judgment.

7. The learned Senior Counsel appearing for the appellant, at the outset, submitted that there was no violation of Rule 24 of the 2011 Rules that would attract the penalty envisaged under Section 36(1) of the 2009 Act, as the CFCs in question are not "wholesale packages" but are merely meant for the protection and transportation of goods. Nevertheless, as a matter of abundant caution, declarations in terms of Rule 24 were affixed on these CFCs. In this regard, reliance was placed on the judgment in ***State of Maharashtra and Others v. Raj***

Marketing and Others[5], which draws a distinction between wholesale and secondary packages. It was further submitted that despite raising objections before the respondents and the High Court regarding the inapplicability of the 2009 Act and 2011 Rules, the same were not considered, thereby vitiating the foundation of the seizure.

7.1. The second submission was that Section 15 of the 2009 Act mandates the existence of "reasons to believe" as a condition precedent for conducting inspection or seizure. However, the seizure receipt dated 02.07.2020 does not disclose any such reasons recorded prior to the search. Further, the compounding notice issued under Section 48 of the 2009 Act, also dated 02.07.2020, similarly lacks any disclosure of reasons. The simultaneous issuance of both seizure and compounding notices, without due deliberation, indicates non-application of mind on the part of the respondents. While the learned Single Judge rightly acknowledged this lapse, the Division Bench failed to consider it adequately.

7.2. It was also contended that Section 100(4) Cr.P.C requires the presence of two or more independent witnesses during the conduct of a search. In the present case, only one witness – Nagabhushan, a driver employed by Respondent No.2 – was present. Such a person cannot be considered an "independent witness" within the meaning of Section 100(4). Moreover, there is no record of any "reasons to believe" either before or after the search, nor was any urgency or exigency

[5] (2011) 15 SCC 525

pleaded to justify immediate seizure. The respondents merely relied on Section 102 Cr.P.C., which does not dispense with the statutory requirement of a warrant or justification for seizure.

7.3. The learned Senior Counsel further contended that the premises in question – namely, a warehouse owned by the appellant – was not open to the public, and access was restricted to authorised personnel. Therefore, the respondents were required to obtain a warrant before conducting any search or seizure. It was also pointed out that the argument advanced by the respondents before the Division Bench – that Section 100 Cr.P.C applies only to closed premises – was raised for the first time during oral arguments and without any pleading or evidence. Such a submission was made solely to retrospectively justify the respondents' actions. Moreover, Section 2(n) of the 2009 Act, which defines "premises", makes no such distinction between open and closed premises. The Division Bench's failure to consider this aspect, even in the review petition, renders its decision legally unsustainable.

7.4. The learned Senior Counsel further contended that the appellant had no alternative efficacious remedy, as the very jurisdictional foundation of the seizure was illegal. Thus, the appellant rightly invoked the writ jurisdiction under Article 226 of the Constitution. The learned Single Judge of the High Court, by order dated 04.09.2020, allowed the writ petition on the ground that even where an alternative remedy exists, a writ petition would lie if the action is without jurisdiction. However, the Division Bench erroneously reversed the decision,

holding that in the absence of a violation of natural justice, the writ was not maintainable.

7.5. Additionally, it was submitted that the principles of natural justice were indeed violated, as the seizure and compounding notices were issued simultaneously, depriving the appellant of any opportunity of being heard. The appellant's request for a personal hearing was ignored. Furthermore, the review petition filed by the appellant against the Division Bench's judgment was dismissed summarily, without due consideration of these contentions.

7.6. In view of the above, the learned Senior Counsel prayed to allow these appeals by setting aside the impugned judgment and order passed by the Division Bench of the High Court.

8. In response, the learned Counsel for the respondents submitted that the Legal Metrology Act, 2009 was enacted to ensure consumer protection by mandating accurate declarations on goods sold by weight, measure, or number. Compliance with the Act and Rules is essential to safeguard consumer rights. The requirement for proper declarations on wholesale packages ensures transparency and accountability in trade practices.

8.1. Continuing further, it was submitted that the inspection and seizure were conducted at the appellant's commercial warehouse during working hours. The premises were neither a private dwelling nor inaccessible. Members of the appellant's staff were present during the inspection. The seizure was limited to

pre-packed notebooks, which were found to lack mandatory declarations as required under the Legal Metrology (Packaged Commodities) Rules, 2011. A seizure mahazar was drawn on-site, and notice was served on the authorised person present.

8.2. It was also submitted that the warehouse was a place of business, accessible to others, and not a closed or private premises. Referring to the definition of "premises" under section 2(n) of the 2009 Act, it was contended that the Division Bench rightly distinguished between open and closed premises and held that Section 100 Cr.P.C applies only to closed premises. Thus, the absence of a search warrant does not vitiate the seizure in this case.

8.3. The learned Counsel further argued that the procedural safeguards under the Code of Criminal Procedure, 1973 are not applicable in toto to inspections under the Legal Metrology Act. Section 15(4) of the 2009 Act incorporates Cr.P.C. provisions only to the extent applicable. Therefore, no warrant is required under Section 15 when the action is taken to determine compliance with the Act and the Rules. The Division Bench correctly held that under Section 15, the competent authority is empowered to enter premises, inspect, search, and seize goods in case of violations. The seizure notice dated 02.07.2020 (No.0691674) clearly sets out the nature of the offence and the grounds for seizure.

8.4. The learned Counsel also submitted that Rule 24 of the 2011 Rules mandates specific declarations on wholesale packages. The seized items – corrugated fibreboard containers (CFCs) containing pre-packed notebooks – fall

within the definition of "wholesale packages" under Rule 2(l) of the 2011 Rules. Hence, mandatory declarations were required to be directly printed on the package and not merely affixed through labels, as was done by the appellant. The respondents denied the appellant's claim of compliance, and asserted that the declarations were inadequate and in breach of Rule 24.

8.5. It was further contended that Section 165 Cr.P.C is not applicable and that seizure of goods can be undertaken without a search warrant under Section 102 Cr.P.C. read with Section 15(4) of the 2009 Act.

8.6. As regards the requirement of independent witnesses under Section 100(4) Cr.P.C., it was submitted that the action taken was an inspection, not a "search" in the strict legal sense. Therefore, the presence of two independent witnesses was not mandatory. The presence of one witness, being a driver of Respondent No.2 does not vitiate the legality of the seizure.

8.7. Finally, the learned Counsel for the respondents submitted that the appellant had an efficacious statutory remedy under Section 50 of the 2009 Act. Therefore, the appellant's decision to approach the High Court directly under Article 226, without first availing the alternative remedy, was improper and the writ petition was not maintainable. The allegation that the appellant's representation was disregarded, was denied. It was contended that reasonable opportunity was afforded, and the Division Bench addressed all relevant issues in detail in its judgment passed in the writ appeal.

8.8. In conclusion, it was submitted that the action of Respondent No.2 was in accordance with law and procedure, and hence, the judgment and order of the Division Bench warrant no interference at the hands of this court.

9. We have considered the rival submissions and perused the materials available on record.

10. The principal issue that arises for consideration herein is whether the inspection and seizure conducted by Respondent No.2 under Section 15 of the 2009 Act, without obtaining a prior warrant, was unlawful and violative of the principles of natural justice, thereby justifying invocation of writ jurisdiction under Article 226 of the Constitution.

11. At the outset, it is relevant to extract Section 15 of the 2009 Act, as follows:

> *"15. Power of inspection, seizure, etc. (1) The Director, Controller or any legal metrology officer may, if he has any reason to believe, whether from any information given to him by any person and taken down in writing or from personal knowledge or otherwise, that any weight or measure or other goods in relation to which any trade and commerce has taken place or is intended to take place and in respect of which an offence punishable under this Act appears to have been, or is likely to be, committed are either kept or concealed in any premises or are in the course of transportation,-*
>
> > *(a) enter at any reasonable time into any such premises and search for and inspect any weight, measure or other goods in relation to which trade and commerce has taken place, or is intended to take place and any record, register or other document relation thereto;*
> >
> > *(b) seize any weight, measure or other goods and any record, register or other document or article which he has reason to believe may furnish evidence indicating that an offence punishable under this Act has been, or is likely to be, committed in the course of, or in relation to, any trade and commerce.*
>
> *(2) The Director, Controller or any legal metrology officer may also require the production of every document or other record relating to the weight or measure referred to in sub-section (1) and the person having the custody of such weight or measure shall comply with such requisition.*

> *(3) Where any goods seized under sub-section (1) are subject to speedy or natural decay, the Director, Controller or legal metrology officer may dispose of such goods in such manner as may be prescribed.*
> *(4) Every search or seizer made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizures."*

11.1. From a plain reading of the above provision, it is clear that Section 15(1) of the 2009 Act contemplates that information may be received orally (which must be reduced into writing), or by way of personal knowledge, or through written information. Upon evaluation of such information or knowledge, the officer must have reason to believe that any weight, measure, or goods, in relation to which any trade or commerce has taken place or is intended to take place, and in respect of which an offence has been committed or is likely to be committed, are kept, concealed, or likely to be transported. In such a situation, the Director, Controller, or any Legal Metrology Officer may, under Section 15(1)(a), enter any premises and search and inspect such weight, measure, goods, records, registers, or other documents. Further, upon having reason to believe that an offence under the Act has been or is likely to be committed, and that such weight, measure, goods, records, registers, documents, or articles may furnish evidence of such offence, the officer may seize the same under section 15(1)(b). Sub-section (4) provides that such search or seizure shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973. Therefore, Section 15, on its face, mandates that there must be reasons to believe both for conducting a search or inspection of premises and for seizure of materials

therefrom. In addition, to satisfy the requirements of Section 15, the officials must also comply with the provisions of the Code of Criminal Procedure relating to search and seizure.

12. In the present case, the Division Bench of the High Court, considering the use of the words "search or seizure" in Section 15(4) of the 2009 Act, held that Section 100 Cr.P.C would apply only in respect of closed premises; and since, the business premises were open, the pre-requisites under Section 100 Cr.P.C were not required to be followed. It is, therefore, necessary to examine the scope of "place of inspection" as defined and applied under the 2009 Act.

13. Section 2(n) of the 2009 Act defines the term "premises" and reads as follows:

> *(n) "premises" includes—*
>
> *(i) a place where any business, industry, production or transaction is carried on by a person, whether by himself or through an agent, by whatever name called, including the person who carries on the business in such premises,*
> *(ii) a warehouse, godown or other place where any weight or measure or other goods are stored or exhibited,*
> *(iii) a place where any books of account or other documents pertaining to any trade or transaction are kept,*
> *(iv) a dwelling house, if any part thereof is used for the purpose of carrying on any business, industry, production or trade,*
> *(v) a vehicle or vessel or any other mobile device, with the help of which any transaction or business is carried on;*

13.1. The word "premises" is exhaustive and includes not only a place where goods are traded or manufactured but also where they are stored. It also includes the place where books of accounts or other documents are kept, a dwelling house

if any part of it is used for business, industry, production, or trade, and even a vehicle used in the course of business activity.

14. Section 15 contemplates three different actions, namely, search, inspection, and seizure. The provision authorises an officer entering the premises to conduct a search for the recovery or discovery of any concealed material used or proposed to be used in contravention of the Act and, during such search, to inspect such materials. If the officer has reason to believe that the material may be used as evidence, he is empowered to seize it. The language of Section 15(1) makes it clear that the officer must have reason to believe that an offence has been committed or is likely to be committed and that materials or evidence relevant thereto are available in the premises. These pre-requisites under Section 15(1) are common to inspection, search and seizure. Significantly, Section 15(1)(b) stipulates that, before seizure, the officer must have reason to believe that such materials, goods, records, or documents may furnish evidence indicating that an offence under the Act has been committed or is likely to be committed with regard to goods already traded or likely to be traded. The definition of "premises" and the phrase "intended to take place" further reinforce that the procedure prescribed under the Cr.P.C. must be followed even with respect to goods stored in warehouses or godowns, irrespective of whether open or closed.

15. Chapter VII of the Criminal Procedure Code deals with summons and searches. Part A concerns summon to produce, Part B relates to search warrants, Part C lays down general provisions applicable to searches, and Part D contains

miscellaneous matters. Section 93 Cr.P.C. empowers a Court to issue a search warrant in three circumstances: (i)where the Court has reason to believe that a person to whom a summons or order under Section 91 Cr.P.C. has been or might be issued, or to whom a requisition under Section 92 has been or might be addressed, would not comply with such summons, order, or requisition; (ii)where the thing for which search is to be made is not known to the Court to be in the possession of any person; and (iii)where a general search or inspection is considered necessary by the Court. A warrant may specify the particular place or part of a place to be searched or inspected, and only such place as is mentioned in the warrant can be entered. Section 93(1)(c) read with sub-section (2) uses the expression "search or inspect", thereby signifying that a warrant is mandatory for both search and inspection, and that the Court must record reasons to believe the necessity of issuing such warrant. Sections 94 and 95, in turn, deal with warrants in respect of stolen property, objectionable articles, and forfeited publications.

15.1. Part C commencing with Section 99 provides that the provisions in Sections 38, 70, 72,74, 77, 78 and 79, shall, as far as may be, apply to search warrants issued under Sections 93, 94, 95 and 97. These provisions relate to aid in execution of warrants of arrest, issuance, purpose, endorsement, authorization, and execution both within and outside India. Section 100(1) prescribes that where a place required to be searched or inspected is closed, the person in charge, upon production of the warrant, must allow ingress and afford all facilities for the search. Section 100(2) states that, in case of non-cooperation, the procedure under

Section 47(2) (relating to authority to break open the premises) shall be followed. Section 100(4) mandates that, before making a search under this Chapter, the person conducting the search shall call upon two or more independent and respectable inhabitants of the locality (or other localities, if necessary) to witness the search. If they refuse, they may be compelled, and if they still fail or refuse, they are liable to prosecution under Section 187 IPC. Section 100(5) further requires that persons witnessing the search and seizure must sign the mahazar, and a copy of such mahazar shall be delivered to the occupant.

15.2. Part D begins with Section 102, which deals with seizure by a police officer of goods alleged or suspected to be stolen, or goods found under circumstances creating suspicion of commission of an offence. Section 102(3) requires that such seizure be immediately reported to the Magistrate having jurisdiction. If the seized goods cannot be transported to Court, or where there is difficulty in securing proper accommodation for custody, or where they are no longer necessary for investigation, they may be handed over to a person upon such person executing a bond to produce them before the Court as and when required or under further orders. It is pertinent to note here that goods seized under Section 102 refers to goods recovered or seized during a causal recovery or general search, such as stolen goods or goods found accidentally, which the officer believes to be involved in some offence. It does not include goods seized under Sections 100(4) and 100(5) pursuant to a search or inspection conducted under Section 93 Cr.P.C. Section 102 thus addresses a distinct situation of seizure

during a general search, not during a search or inspection under Section 15 of the 2009 Act. A plain reading of Section 15 of the 2009 Act, along with Sections 93 and 100 (4) - (5) Cr.P.C leads to the irresistible conclusion that, in the absence of a search, there cannot be any seizure.

16. The respondents have consistently pleaded before both the writ Court and the Appellate Court that the search and seizure were carried out in accordance with Section 15 of the 2009 Act. Their present attempt to contend that there was no search but merely an inspection cannot aid their case, since the pre-requisites under both Section 15 of the 2009 Act as well as Section 93 Cr.P.C must be satisfied in either event. The expression 'closed premises' denotes premises, where access is locked or otherwise unavailable to the public except with the permission of the occupant, and cannot be construed narrowly to exclude open-air premises, if such access is not generally available to unauthorised persons. A distinction must be drawn between premises where the public has access for a limited purpose and premises that are truly public. In the case of a warehouse or godown, access is granted only to those who have some business connection with the owner. Even in trading premises, entry is subject to restrictions. Therefore, merely because a place is open at the time of visit does not mean that the requirements under Section 15 of the 2009 Act or the Cr.P.C. can be bypassed. Any officer intending to conduct a search or inspection and effect a seizure must necessarily follow the prescribed procedure and cannot forcibly enter premises without warrant or reasons duly recorded. These safeguards, embodied both in

the special enactment and the Cr.P.C., are designed to prevent arbitrary action and to uphold the guarantee of due process.

17. Section 165 Cr.P.C. deals with circumstances and pre-requisites for searches without warrant. As a general rule, every search must be preceded by a warrant and reasons to believe must be recorded. Section 165 applies where, due to exigent circumstances, it is not possible to obtain a search warrant. In such cases, the officer may, after recording his reasons in writing and specifying, as far as possible, the thing for which the search is to be made, conduct or cause a search of the place. Section 165(4) provides that the general provisions relating to searches contained in Section 100 also apply to searches under Section 165. It is therefore clear that even under Section 165, the existence of reasons to believe that an imminent search is necessary, must be recorded, with as much detail as possible. The mandate of Section 100(4) must also be satisfied even in searches under Section 165.

18. It must also be recalled that Section 15(4) of the 2009 Act requires compliance with the provisions of the Cr.P.C. relating to search or seizure when such actions are taken under the Act. Section 51 of the 2009 Act, expressly lays down that Section 153 Cr.P.C dealing with preventive action of the police, or the provisions of the IPC as they then stood, are not applicable to matters under the Legal Metrology Act. Therefore, the reference in Section 15(4) of the 2009 Act to the provisions of the Cr.P.C. cannot be read to mean that Section 165 Cr.P.C can be invoked only if an offence has already been registered. Section 165 itself,

under sub-section (4), makes other provisions of the Code applicable, leaving no room for ambiguity. Moreover, Section 165 speaks of searches during an investigation; it comes into operation once an investigation commences.

18.1. At this juncture, it will be useful to refer to the judgement of this Court in ***the State of Madhya Pradesh v. Mubarak Ali***[6], wherein the High Court had held that the investigation was initiated by the Inspector even before obtaining the mandatory prior permission, which was sought only after a lapse of ten days. This Court upheld the finding of the High Court and categorically held that the requirement of prior permission is a condition precedent for a valid investigation and not a mere procedural formality that can be cured retrospectively. Since the defect went to the root of jurisdiction, the belated sanction could not validate the investigation, and the appeal preferred by the State was accordingly dismissed. While so, the Court elucidated the scope of the term "investigation" in the following terms:

> *"12. In this view no other question arises for consideration. But as the learned Counsel appearing for the State contended that the observations of the learned Judge of the High Court that permission of the Magistrate was obtained ten days after the investigation was started was wrong, it would be as well that we considered the argument briefly. Section 4(1) of the Code of Criminal Procedure defines "investigation" as to include all the proceedings under that Code for the collection of evidence conducted by the police officer or other persons other than a Magistrate who is authorised by the Magistrate in this behalf. Chapter XIV of the Code prescribes the procedure for investigation. Investigation starts after the police officer receives information in regard to an offence. Under the Code "investigation consists generally of the following steps : (i) proceeding to the spot; (ii) ascertainment of the facts and circumstances of the case; (iii) discovery and arrest of the suspected offender; (iv) collection of evidence relating to the*

[6] MANU/SC/0038/1959 : AIR 1959 SC 707

> *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 of seizure of things considered necessary for the investigation and to be produced at the trial; and (v) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under s. 173." - See H. N. Rishbud and Inder Singh v. The State of Delhi MANU/SC/0049/1954 : 1955CriLJ526 ....."*

19. As seen above, Section 15 of the 2009 Act and Section 93 Cr.P.C speak about search and inspection. Both provisions treat "search" and "inspection" as distinct actions. Inspection refers to the verification of the books, records, or documents at the premises of a person, which is generally permissible under the respective law upon compliance with the prerequisites of authorization, recording of reasons to believe, and permission from the competent authority under law. It is made to verify compliance with the statute. A search, on the other hand, has a wider connotation. It implies the power to look in any place for any materials, goods, books, or documents believed to be secreted or concealed, which may evidence a violation and may be liable to seizure or confiscation. Further, to conduct either a search or an inspection, not only is a warrant ordinarily necessary, but there must also be reasons to believe that such a search is required.

19.1. Seizure refers to the act of taking the material object into custody for the purpose of investigation or enquiry. Detention refers to a situation where the owner, though retaining possession of the goods, is restrained from using them. There is also a subtle difference where a search followed by seizure is effected under a special enactment, which contemplates a sequence of mandatory steps.

Such proceedings are initiated not merely to charge a person with a violation but also to prevent further violations, as in the present case.

19.2. In every search conducted under a special enactment without a warrant, the requirement of recording reasons to believe is mandatory. The reasons necessitating the search must be relevant and must reflect application of mind based on some information – either from a third party or personal knowledge – and cannot be based on mere presumption or extraneous considerations. Such reasons cannot rest on mere suspicion or subjective satisfaction; something more substantial is required for a prudent person to conclude that a search and/or seizure is necessary.

19.3. Similarly, there must be application of mind before seizing goods, materials, or documents during a search. A rational nexus must exist between the articles seized and the contemplated violation under the applicable provisions. The authority effecting the seizure must record reasons for such seizure, and those reasons must demonstrate due application of mind to the materials available. [**See:** ***State of Madhya Pradesh v. Mubarak Ali (supra) and Radhika Agarwal v. Union of India***[7].]

19.4. Further, this Court in ***Narayanappa and others v. Commissioner of Income Tax, Bangalore***[8] while considering the expression "reason to believe", held as follows:

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[7] 2025 LiveLaw SC 255
[8] MANU/SC/0124/1966: AIR 1967 SC 623

> *"4. The belief must be held in good faith: it cannot be merely a pretence. To put it differently it is open to the Court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent, the action of the Income-tax Officer in starting proceedings under s. 34 of the Act is open to challenge in a court of law."*

19.5. It is also pertinent to mention here that various special enactments, such as the Legal Metrology Act, 2009, the Income Tax Act, 1961, the Customs Act, 1962, the Central Excise Act, 1944, the Finance Act, 1994, the Goods and Service Tax Act, 2017, the Narcotic Drugs and Psychotropic Substances Act, 1985, as well as several repealed indirect Tax Laws of different States, contain provisions relating to search and seizure. The above list is illustrative and not exhaustive, as there are many other enactments with similar provisions. In all such enactments, the object of search and seizure is, more often than not, to collect evidence relating to an ongoing investigation of an offence or violation, and in some cases, to prevent a violation. Further, in all these enactments, the procedure prescribed under the Cr.P.C, insofar as it is applicable to search and seizure, is to be followed. It is also settled law that unless the provisions of the Cr.P.C. are explicitly excluded, the same shall apply to special enactments as well. [**See:** ***Ashok Munilal Jain and another v. the Assistant Director, Directorate of Enforcement***[9]***, and Radhika Agarwal v. Union of India (supra)***]. Therefore, the ratio laid down by this Court in the various judgments could not have been ignored by the Division Bench of the High Court.

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[9] 2018 (16) SCC 158

20. In the present case, the respondent authorities conducted a search and inspection on 02.07.2020 during business hours at a commercial warehouse belonging to the appellant and seized 7,600 pre-packed wholesale packages of exercise books, for alleged violations of Rule 24(a) of the 2011 Rules and Section 36(1) of the 2009 Act. The search was conducted without a warrant, and no reasons were admittedly recorded either for conducting the search or inspection, or for seizure of goods. Therefore, the search and seizure are clearly vitiated by procedural violations.

20.1. Observance of due process of law and the principles of natural justice being intertwined, is a legal necessity to ensure that the action of the authorities does not result in manifest arbitrariness or abuse and misuse of power by those empowered to conduct inspection, search, and/or seizure. When the law prescribes a particular procedure to be followed while taking action, the same must be strictly adhered to. The Constitutional Bench of this Court in ***State of Punjab v. Baldev Singh and others***[10], categorically held that it is an imperative requirement that an empowered officer intending to search a person for possession of articles covered by the NDPS Act, must inform such person that he has a right to be searched, if he so chooses, before a Gazetted Officer or a Magistrate. This safeguard was recognised as a substantive right conferred on the accused, designed to ensure fairness and transparency, and therefore, required to

[10] MANU/SC/0981/1999: AIR 1999 SC 2378

be followed scrupulously. The Court further held that the obligation is to inform the accused of his right, though not necessarily in writing, and any failure to comply with this mandate would vitiate the search as being illegal and contrary to law. While considering procedural violations, the Bench cautioned as under:

> *"57. On the basis of the reasoning and discussion above, the following conclusions arise:*
> *...*
> *(4) That there is indeed need to protect society from criminals. The societal intent in safety will suffer if persons who commit crimes are let off because the evidence against them is to be treated as if it does not exist. The answer, therefore, is that the investigating agency must follow the procedure as envisaged by the statute scrupulously and the failure to do so must be viewed by the higher authorities seriously inviting action against the concerned official so that the laxity on the part of the investigating authority is curbed. In every case the end result is important but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The legitimacy of judicial process may come under cloud if the court is seen to condone acts of lawlessness conducted by the investigating agency during search operations and may also undermine respect for law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted. An accused is entitled to a fair trial. A conviction resulting from an unfair trial is contrary to our concept of justice. The use of evidence collected in breach of the safeguards provided by Section 50 at the trial, would render the trial unfair.*
> *..."*

20.2. In ***State of Rajasthan v. Rehman***[11], the question that arose for consideration was whether the provisions of Section 165 Cr.P.C could be invoked in respect of a search conducted by an Excise Officer under the Central Excise and Salt Act, 1944. The search in that case had been effected without recording reasons as mandated under Section 165 Cr.P.C. The Court observed that Section 18 of the Act expressly stipulated that searches under the Act shall be carried out

[11] MANU/SC/0181/1959 : AIR 1960 SC 210

in accordance with the provisions of the Cr.P.C. Consequently, it was held that Section 165 Cr.P.C was squarely attracted and that the search, having been conducted in violation of the said requirement, was illegal. The following paragraphs are apposite:

> *"7. Now we shall look at the provisions of the Criminal Procedure Code to ascertain which of its provisions regulating the mode of search are appropriate to the power conferred on the Deputy Superintendent under r. 201 of the Rules. In the Criminal Procedure Code there are four groups of sections regulating the searches authorised under it. Sections 47, 48, 51 and 52 appear in Ch. V of the Code which provides for the arrest, escape and retaking of persons. Section 47 provides for the search of a place entered by persons sought to be arrested; s. 48 for procedure where ingress is not obtainable; and Sections 51 and 52 for the search of the arrested persons. The second group consists of Sections 100, 101, 102 and 103 of Ch. VII of the Code. Section 100 deals with the search for persons wrongfully confined, and the other sections are general provisions relating to search warrants, duties of persons in charge of closed places and the requisitioning of persons to witness searches. Section 153 forms the third group and it falls under Ch. XIII of the Code which provides for the preventive action of the police. Under s. 153, a police officer can make a search without a warrant for the purpose of inspecting or searching for any weights or measures or instruments for weighing used or kept within the limits of his station, if he has reason to believe that the weights etc. are false. The fourth group of sections appear in Ch. XIV which provides for searches by a police officer during the investigation of a cognizable offence. The power of search given under this chapter is incidental to the conduct of investigation the police officer is authorized by law to make. Under s. 165 four conditions are imposed : (i) the police officer must have reasonable ground for believing that anything necessary for the purposes of an investigation of an offence cannot, in his opinion, be obtained otherwise than by making a search, without undue delay; (ii) he should record in writing the grounds of his belief and specify in such writing as far as possible the things for which the search is to be made; (ii) he must conduct the search, if practicable, in person; and (iv) if it is not practicable to make the search himself, he must record in writing the reasons for not himself making the search and shall authorize a subordinate officer to make the search after specifying in writing the place to be searched, and, so far as possible, the thing for which search is to be made. As search is a process exceedingly arbitrary in character, stringent statutory conditions are imposed on the exercise of the power. A comparative study of the aforesaid provisions with the provisions of r. 201 of the Rules indicates that searches made by a police officer during the course of an investigation of a cognizable offence*

can properly be approximated with the searches to be made by the authorized officer under r. 201 of the rules; for, in the former case, the police officer makes a search during the investigation of a cognizable office and in the latter the authorized officer makes the search to ascertain whether a person contravened the provisions of the Act or the Rules which is an offence. There is also no reason why conditions should be imposed in the matter of a search by the police officer under s. 165 of the code, but no such safe-guard need be provided in the case of a search by the excises under the Rules. We think that the legislature, by stating in s. 18 of the Act that the searches under the Act and the Rules shall be carried out in accordance with the provisions of the Code relating to searches, clearly indicated that the appropriate provisions of the Code shall govern searches authorized under the Act and the Rules. We therefore hold that the provisions of s. 165 of the Code must be followed in the matter of searches under s. 201 of the Rules.

8. There are no merits in the second contention either. The recording of reasons does not confer on the officer jurisdiction to make a search, though it is a necessary condition for making a search. The jurisdiction or the power to make a search is conferred by the statute and not derived from the record of reason. That apart, s. 18 of the Act in express terms states that searches shall be carried out in accordance with the provisions of the Code of Criminal Procedure. Section 165 of the Code lays down various steps to be followed in making a search. The recording of reasons is an importing step in the matter of search and to ignore it is to ignore the material part of the provisions governing searches. If that can be ignored, it cannot be said that the search is carried out in accordance with the provisions of the Code of Criminal Procedure: it would be a search made in contravention of the provisions of the Code.
9. For the reasons mentioned, we hold that the search made by the Deputy Superintendent in the present case in contravention of the provisions of s. 165 of the Code was illegal."

20.3. This Court in ***Ravinder Kumar v. State of Haryana***[12], held that the very action of search stood vitiated and, accordingly, allowed the appeal preferred by the appellant by quashing the complaint and FIR registered against him. In that case, the search had been conducted in violation of the mandatory safeguards prescribed under Section 30(1) of the Pre-Conception and Pre-natal Diagnostic

[12] MANU/SC/1006/2024 : AIR 2024 SC 4311

Techniques (Prohibition of Sex Selection) Act, 1994. It was observed that, apart from what was discovered during the illegal search and the documents seized in consequence thereof, there was no material whatsoever connecting the accused to the offence punishable under Section 23 of the 1994 Act. Since the search itself was wholly illegal, continuation of prosecution founded solely on such an unlawful search was held to be an abuse of the process of law. The relevant paragraphs read as under:

> *"12. The question is what meaning can be assigned to the expression "has reason to believe". Section 26 of the Indian Penal Code defines the expression "reason to believe", which reads thus:*
>
> > *26. "Reason to believe".- A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise.*
>
> *In the case of Aslam Mohammad Merchant v. Competent Authority and Ors. MANU/SC/2959/2008 : 2008:INSC:782 : (2008) 14 SCC 186, this Court had an occasion to interpret the same expression. In paragraph 41, this Court held thus:*
>
> > *41. It is now a trite law that whenever a statute provides for "reason to believe", either the reasons should appear on the face of the notice or they must be available on the materials which had been placed before him.*
>
> *However, interpretation of the expression will depend on the context in which it is used in a particular legislation. In some statutes like the present one, there is a power to initiate action under the statute if the authority has reason to believe that certain facts exist. The test is whether a reasonable man, under the circumstances placed before him, would be propelled to take action under the statute. Considering the object of the 1994 Act, the expression "reason to believe" cannot be construed in a manner which would create a procedural roadblock. The reason is that once there is any material placed before the Appropriate Authority based on which action of search is required to be undertaken, if the action is delayed, the very object of passing orders of search would be frustrated. Therefore, what is needed is that the complaint or other material received by the appropriate authority or its members should be immediately made available to all its members. After examining the same, the Appropriate authority must expeditiously decide whether there is a reason to believe that an offence under the 1994 Act has been or is being committed. The Appropriate Authority is not required to record reasons for concluding that it has reason to believe that an offence under the 1994 Act has*

been or is being committed. But, there has to be a rational basis to form that belief. However, the decision to take action Under Sub-section (1) of Section 30 must be of the Appropriate Authority and not of its individual members.

14. Therefore, in the facts of the case, no legal decision was made by the Appropriate Authority in terms of Sub-section (1) of Section 30 to search for the Appellant's clinic. As stated earlier, Sub-section (1) of Section 30 provides a safeguard by laying down that only if the Appropriate Authority has reason to believe that an offence under the 1994 Act has been committed or is being committed that a search can be authorized. In this case, there is no decision of the Appropriate Authority, and the decision to carry out the search is an individual decision of the Civil Surgeon, who was the Chairman of the concerned Appropriate Authority. Therefore, the action of search is itself vitiated.

16. A perusal of the impugned FIR and impugned complaint shows that its foundation is the material seized during the raid on 27th April 2017. Except for what was found in the search and the seized documents, there is nothing to connect the Accused with the offence punishable Under Section 23 of the 1994 Act. As the search itself is entirely illegal, continuing prosecution based on such an illegal search will amount to abuse of the process of law. The High Court ought to have noticed the illegality we have pointed out."

21. We have already held that Sections 100(4) and 100(5) Cr.P.C are applicable to the present case. Accordingly, the presence of two respectable independent witnesses from the locality was mandatory. It is significant to note that such witnesses may also be drawn from a different locality, provided they meet the requirements of independence and respectability. In the present case, however, the driver of the Assistant Controller – being a party to the inspection – acted as a witness, which is in violation of law. Although the respondents claimed that no one from the locality was forthcoming, there is nothing on record to indicate who was approached, when such request was made, whether a written request was given, and what further action was taken. The seizure mahazar also

fails to support the respondents' case, as it records none of the claims now relied upon in their defence. It is settled law that where the initial proceedings are vitiated, all subsequent proceedings are unsustainable. Any act in violation of law cannot be brushed aside on the ground that no prejudice was caused; every violation of law is deemed to cause some prejudice.

22. Further, there is nothing on record to suggest that the goods in the container differed from the particulars on the label, either in form, quality, or weight. The seizure mahazar only noted that the packages lacked clear and conspicuous declarations as required under Rule 24(a), which mandates that declarations on wholesale packages be printed and not affixed by way of a label. It is not disputed by the respondents that disclosures were made; their contention is merely that they were affixed as labels rather than printed. The appellant contended that the goods were stored in CFCs for transportation and that a label declaring the particulars required under law was duly affixed. The alleged violation was therefore, at best, technical. This contention is fortified by the judgment of this Court in ***State of Maharashtra and others v. Raj Marketing and another***[13]**,** and the accompanying clarification notification which explicitly stated that there was no bar on affixing labels on wholesale packages. FAQs 17 and 19 further clarify that storage in containers for transportation does not constitute wholesale packaging.

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[13] (2011) 15 SCC 525

23. In view of the foregoing, the entire proceedings from search to seizure are illegal and unsustainable, as neither a warrant was obtained nor reasons recorded for search, inspection, or seizure. The mandatory safeguards under Section 15 of the 2009 Act, and Sections 165, 100(4) and 100(5) Cr.P.C were disregarded. The 2009 Act itself contemplates action against officials violating its provisions under Sections 42 and 43. Compliance with statutory procedures, including recording "reasons to believe" before initiating search or seizure, is incumbent upon officials; non-compliance renders the action futile and results in arbitrary excise of authority. In the present case, the respondents not only violated Section 15 of the 2009 Act, but also failed to comply with Sections 100(4) and 165 Cr.P.C. Further, there is nothing on record to show that the search was so imminent as to justify dispensing with a warrant. On the same day as the inspection, search, and seizure, a notice under Section 48 of the 2009 Act was issued, specifying a compounding fee for contraventions of Sections 29, 36(1), and 36(2) of the Act, and Rules 18(2) and 27 of the 2011 Rules, and directing the appellant to respond within 15 days, failing which further legal action would follow. The Single Judge of the High Court correctly set aside these notices, but the Division Bench erroneously reversed the order. Therefore, the notices/orders issued by the respondents, as well as the judgment and order of the Division Bench of the High Court deserve to be quashed and are quashed. As a consequence, the order of the Single Judge stands restored.

24. Accordingly, the appeal arising out of the judgment in WA No. 572 of 2020 is allowed. Since the writ appeal judgment has been set aside, no further orders are necessary in the appeal filed against dismissal of the Review Petition, which is disposed of. There shall be no order as to costs.

25. Connected Miscellaneous Application(s), if any, stand disposed of.

…..……J.
[J.B. PARDIWALA]

……..…J.
[R. MAHADEVAN]

NEW DELHI;
SEPTEMBER 12, 2025.