

**ILR**

**527**

**ILR 2004 KAR 527**

**TIRATH S. THAKUR & MOHAN SHANTHANAGAUDAR, JJ**

**Sri Somanath Kerebail vs The State of Karnataka, Through  
Deputy Commissioner of Excise, Belgam District\***

**CRIMINAL PROCEDURE CODE, 1973 — (CENTRAL ACT NO. 2 OF 1974) – SECTION 397 AND 401 – KARNATAKA EXCISE ACT, 1965 (21 OF 1966) – SECTION 54 – Section 54 of – The officers designated therein can search without warrant at any time by day or by night any place and seize anything found therein, which he has reason to believe to be liable to confiscation – Failure by the officials of – To record reasons for not having a search warrant, before conducting searches, cannot by itself constitute an illegality of the entire proceedings or confiscation – it should only be treated as a procedural irregularity not vitiating the conviction or confiscation – ON FACTS, HELD – Failure to record reasons must not affect the validity of the search, unless the accused demonstrates that he has by reasons of any such violation suffered any prejudice – So long as no such prejudice is shown, the failure to record reasons in such cases, should be treated only as a “procedural irregularity”.**

**– QUESTION FOR REFERENCE:**

**“Whether grounds of belief that an offence has been committed or being committed is sufficient compliance with Section 54 of the Act or in addition to it the seizing authority also has to mention his reasons for not obtaining search warrant before conducting search and seizure”.**

- Observing that the Excise Department would do well to equip their officers and all those who are competent to make searches, with the necessary legal knowledge to make a valid search without jeopardizing the legality of**

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\* C.R.P. No. 214/2002 dated 12th December 2003

**528 INDIAN LAW REPORTS 2004 KARNATAKA SERIES**

**any proceedings and answering the reference accordingly,  
the Court**

**HELD:**

*In the case of a search of a vessel, raft vehicle or animal, the offender will undoubtedly have the opportunity to escape if the officer proposing to conduct the search were to approach a Magistrate to obtain a search warrant before actually conducting the search. That is so particularly when illicit transport of excisable goods more often than not takes place at odd hours of the day and night to avoid detection such offenders are nabbed in the course of routine checks or on the basis of source information received by the excise authorities. To say that a search of a vehicle, vessel, raft or animal can be conducted only after obtaining a warrant may therefore be unrealistic and may potentially defeat the very object underlying the excise legislation. That is because in the case of excisable goods that are in a state of motion or capable of being put in a state of motion, any delay which is implicit in an attempt to get a search warrant will give the offender the opportunity to escape or destroy the evidence regarding the offence.*

*Failure to record in black and white what is obvious may not therefore by itself constitute an illegality so as to render the search or the subsequent proceedings based on the same illegal. Such failure may be only procedural irregularity not affecting the validity of the search.*

*The seizure of the goods while the same were in motion or were capable of being put into motion should sufficiently satisfy the conscience of the law that no prejudice on account of non recording of the reasons for not obtaining warrant has been caused.*

*Reference answered.*

**CASES REFERRED:**

**AT PARAS**

1. 1979 (1) KLJ 410/AIR 1979 SC 711 -  
K.L. Subbayya vs State of Karnataka (Ref) 2,5
2. ILR 1999 KAR 2872 – L. Srinivas vs  
Authorised Officer & Superintendent of Excise (Ref) 2

**ILR                      Sri Somanath Kerebail vs State of Karnataka                      529**

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3. *Crl. Rev. PTN. No. 706/2001 dd. on 26.2.02 -*  
*S. Patachimuthi vs The State of Karnataka and Anr. (Ref) 2*

Sri K.M. Nataraj, Advocate for Petitioner  
Sri H.S. Chandramouli, SPP for Respondent

**ORDER**

**Tirath S. Thakur, J**

This criminal revision petition is before us pursuant to a reference made by a learned Single Judge of this Court for an answer to the following question:

“Whether grounds of belief that an offence has been committed or being committed is sufficient compliance with Section 54 of the Act or in addition to it the Seizing Authority also has to mention his reasons for not obtaining search warrant before conducting search and seizure.”

The facts giving rise to the revision petition as also the present reference may in brief be set out first:

2. A tanker bearing registration No. 19/1572 was seized by the Excise Inspector at Belgaum on 18.12.2000 while the same was transporting 10,000 liters of spirit without any permit or license to do so. Proceedings for the confiscation of the tanker were concluded by the authorized officer in terms of an order dated 30.6.2001 by which he directed confiscation of the vehicle in question. Aggrieved by the same, the petitioner approached the Sessions Judge at Belgaum in Criminal Appeal No. 65/2001 who by his order dated 19.12.2001 affirmed the order passed by the authorized officer. Crl.R.P. No. 214/2002 was then filed in this Court against the aforementioned orders. This petition came up before S.R. Bannurmath, J., for hearing. One of the arguments that was urged before the learned Single Judge was that the order of confiscation was bad on account of a total non-compliance with the mandatory requirements of Section 54 of the Karnataka Excise Act. Relying upon the judgment of the Supreme Court in *K.L. SUBBAYYA vs STATE OF KARNATAKA*<sup>1</sup> and two Single Bench

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1. 1979 (1) KLJ 410/AIR 1979 SC 711

**530 INDIAN LAW REPORTS 2004 KARNATAKA SERIES**

decisions of this Court in *L. SRINIVAS vs AUTHORISED OFFICER & SUPERINTENDENT OF EXCISE*<sup>2</sup> and *S. PATACHIAMUTHI vs THE STATE OF KARNATAKA AND ANOTHER*<sup>3</sup> it was contended that the officer conducting the search was in terms of Section 54 of the Karnataka Excise Act required to record the ground of his belief that an offence under the Excise Act has been, is being or is likely to be committed and that a search warrant cannot be obtained without affording to the offender an opportunity to escape or of concealing evidence of the offence. Since the Officer concerned had not complied with the requirement of Section 54, the search and the consequent seizure and confiscation of the tanker was illegal.

3. The learned Single Judge was of the opinion that while Section 54 of the Excise Act required the Officer conducting the search to record grounds of his belief that an offence had been, is being or was likely to be committed before conducting any such search, the said requirement did not extend to recording the reasons why a search warrant could not be obtained without affording to the offender an opportunity to escape. Since that view was contrary to another single bench decision of this Court, the question whether any such requirements existed was referred to a larger bench for an authoritative pronouncement on the same. That is precisely how the matter has been placed before us for an answer the question extracted earlier.

4. We have heard learned Counsel for the parties and perused the record.

Sections 50 to 60-A appearing in Chapter VIII of the Excise Act deal with Detection, Investigation and Trial of Offences. While Section 50 requires landholders and officers to give information whenever any intoxicant is manufactured or collected or any hemp-plant cultivated in or on any land or building in contravention of the Act, Section 51 empowers the designated officers of the State to enter and inspect any place in which any licensed manufacturer manufactures or stores any intoxicant or place in which any intoxicant is kept for sale by any person holding a licence or to examine the accounts and registers or examine test, measure or weigh any materials, stills, utensils, implements,

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2. ILR 1999 KAR 2872

3. CrI. Rev. PTN. No. 706/2001 dd. on 26.2.02

**ILR Sri Somanath Kerebail vs State of Karnataka 531**

apparatus or intoxicant found in such place. Section 52 of the Act empowers the Officers of the State Government employed in the Excise Department, Police Department or the Revenue Department to arrest without warrant any person for an offence punishable under Sections 32, 33, 34, 36 or 37 of the Excise Act and to seize or detain any excisable or other article which he has reason to believe to be liable to confiscation under the Act or to detain and search any person upon whom, and any vessel, raft, vehicle, animal, package, receptacle or covering in or upon which, he may have reasonable cause to suspect any such article to be. Section 53 of the Act empowers the Magistrates to issue a warrant for search of any place in which he has reason to believe that any intoxicant, still, utensil, implement, apparatus or materials which are used for the commission of such offence or in respect of which such offence has been, is being or is likely to be committed are kept or concealed and for the arrest of any person whom he has reason to believe to have been, to be, or to be likely to be, engaged in the commission of any such offence. Section 54 of the Act on whose interpretation turns the answer to the question referred to us may be extracted in extenso. It runs as under:

**“54. Power to search without warrant –** Whenever the Excise Commissioner or a Deputy Commissioner or any Police Officer not below the rank of an Officer-in-charge of a Police Station or any Excise Officer not below such rank as may be prescribed, has reason to believe that an offence under Section 32, Section 33, Section 34, Section 36 or Section 37 has been, is being, or is likely to be, committed, and that a search warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may, after recording the grounds of his belief, -

(a) at any time by day or by night enter and search any place and seize anything found therein which he has reason to believe to be liable to confiscation under this Act; and

(b) detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid.”

It is evident from a close and careful reading of the above that the Officers designated therein can search without warrant at any time by day or by night any place and seize anything found therein which he

**532 INDIAN LAW REPORTS 2004 KARNATAKA SERIES**

has reason to believe to be liable to confiscation under the Act and detain and search and if he thinks proper arrest any person found in such place whom he has reason to believe to be guilty of the offences mentioned in the provision. The exercise of power to enter any place and to search, seize and arrest must be preceded by the Officer concerned recording the grounds of his belief that:

- i) an offence u/ss 32, 33, 34, 36 & 37 has been, is being, or is likely to be committed at the place which he intends to enter or search and,
- ii) that a search warrant cannot be obtained without affording to the offender an opportunity to escape or of concealing evidence of the offence.

The requirement of recording grounds of his belief is dual viz., that an offence has been, is being or is likely to be committed and that obtaining warrants is not possible without affording to the offender the opportunity to escape or conceal evidence. That is because the words 'has reason to believe' appearing in Section 54 qualify not only the commission of the offence but also the obtaining of search warrant without affording the offender the opportunity to escape or concealing evidence. The use of the word 'and' in Section 54 of the Act leaves no manner of doubt that the grounds of belief required to be recorded relate to both the aspects indicated above.

5. The incidental question that arises for consideration and must also be answered is whether failure of the Officer to record the grounds of his belief would vitiate the search or the proceedings based on the same. The requirement of recording reasons for his belief is two fold. In so far as the failure of the Officer conducting the search to record the grounds of his belief that an offence has been, is being or is likely to be committed is concerned, the same would render the search illegal and vitiate any proceedings including the conviction if any that may have been recorded on the basis thereof. The decision of the Supreme Court in *K.L. SUBBAYYA vs STATE OF KARNATAKA* (AIR 1979 SC 711) authoritatively declares that the violation of the statutory requirement of recording the reasons of belief regarding the commission of the offence will be fatal to the case of the prosecution. The Court has in that case observed:



**ILR                      Sri Somanath Kerebail vs State of Karnataka                      533**

“In the instant case, it is admitted that the inspector who searched the car of the appellant had not made any ground or then basis on which he had a reasonable belief that an offence under the Act, was being committed before proceeding to search the car and thus the provisions of Section 54 were not at all complied with.

This, therefore, renders the entire search without jurisdiction and as a logical corollary, vitiates the conviction. We feel that both Sections 53 and 54 contain valuable safeguards for the liberty of the citizen in order to protect them from ill-founded or frivolous prosecution or harassment.”

What is the effect of non-recording of the grounds for the belief that search warrant cannot be obtained without affording the offender an opportunity to escape or conceal the evidence of the offence has not been examined in Subbayya's case supra. In that case the officer had not recorded the grounds of his belief that an offence has been, is being or is likely to be committed. Their Lordships considered that to be a fundamental violation of the safeguards provided by Section 54 against unjustified harassment and accordingly set aside the order of conviction. The question whether a similar result should follow in a case where reasons for the belief regarding commission of the offence are available on the record maintained by the officer conducting the search but the same do not extend to recording the reason why a search warrant could not be obtained before a search is made, did not fall for consideration.

6. It was argued by Mr. Chandramouli that in the case of a search of a vehicle, vessel, raft or animal a search warrant cannot be obtained without affording to the offender the opportunity to escape. It is therefore an idle formality for the Officer to record what must be obvious to any prudent man. Failure to record the reasons why a warrant cannot be secured in the case of search of vehicles, vessels or animals should not in other words affect the validity of the search, according to the learned Counsel. There is considerable merit in that contention. In the case of a search of a vessel, raft vehicle or animal, the offender will undoubtedly have the opportunity to escape if the Officer proposing to conduct the search were to approach a Magistrate to obtain a search warrant before actually conducting the search. That is so particularly when illicit transport of excisable goods more often

**534 INDIAN LAW REPORTS 2004 KARNATAKA SERIES**

than not takes place at odd hours of the day and night to avoid detection. Such offenders are nabbed in the course of routine checks or on the basis of source information received by the excise authorities. To say that a search of a vehicle, raft or animal can be conducted only after obtaining a warrant may therefore be unrealistic and may potentially defeat the very object underlying the excise legislation. That is because in the case of excisable goods that are in a state of motion or capable of being put in a state of motion, any delay which is implicit in an attempt to get a search warrant will give the offender the opportunity to escape or destroy the evidence regarding the offence. The reason why a search warrant cannot be obtained is in such cases much too apparent. Failure to record in black and white what is obvious may not therefore by itself constitute an illegality so as to render the search or the subsequent proceedings based on the same illegal. Such failure may be only procedural irregularity not affecting the validity of the search. Any other interpretation would in our view lead to anomalous results and may even defeat the purpose underlying the excise legislation. The facts of the present case would amply demonstrate the anomaly that may arise if any other interpretation were to be placed upon the provisions of Section 54. The tanker in question was intercepted on the Poona-Belgaum Highway by the concerned Excise Inspector. The driver was asked as to what was being transported by him in the tanker in reply to which he is said to have disclosed that the tanker was carrying spirit. The Inspector then enquired whether the transport was authorized by any permit or license to which the reply given was in the negative. It was on the basis of these disclosures that the Inspector searched the tanker and found 10,000 litres of spirit being carried without any permit or license authorizing the carriage. The fact leading to the same have been recorded in the mahazar prepared by the Inspector which sufficiently disclose the basis of the Inspector's belief that excisable goods were being transported illegally calling for their seizure and confiscation. The record does not however bear any reasons why the Inspector concerned did not or could not obtain a search warrant from the jurisdictional Magistrate. If the violation of that requirement under Section 54 were to be treated as an illegality vitiating the search, it would mean that an offender caught red handed with illicit liquor would go scot free. It would also tantamount to placing a hyper technical interpretation on the provision ignoring the anomaly



flowing from such an interpretation. Such an interpretation would tend to defeat the very purpose of the legislation which the Court must avoid. The seizure of the goods while the same were in motion or were capable of being put into motion should sufficiently satisfy the conscience of the law that no prejudice on account of non recording of the reasons for not obtaining warrant has been caused.

7. There is yet another reason why the failure to record reasons why a warrant could not be obtained should not affect the validity of the search. The purpose underlying the requirement stipulated in Section 54 is to prevent malafide searches and unnecessary harassment to the innocent public. Now if the Officer concerned in the circumstances indicated above were to approach a Magistrate for a warrant to search the vehicle, it is obvious that the vehicle shall have to be detained till such time the warrants were issued. Assuming that the law authorizes the Inspector to detain the vehicle, any such detention pending the issue of a search warrant is bound to create greater hardship to the person in charge of the vehicle or the owner thereof than what may be cause if the search was conducted without a warrant. Suffice it to say that in cases where the failure to record reasons why warrants could not be obtained relates to goods, being transported from one place to the other, such failure must not affect the validity of the search unless the Accused demonstrates that he has by reason of any such violation suffered any prejudice. So long as no such prejudice is shown, the failure to record reasons in cases where the searches are conducted in vehicles, vessels, rafts or animals should be treated only to be a procedural irregularity. We must hasten to add, that we should not be understood to be suggesting that the officers conducting searches should not record reasons why a search warrant cannot be obtained even when non recording may be depending upon the facts of each case only an irregularity not vitiating the conviction or confiscation made on the basis thereof. Since the law requires the officer conducting the search to record the grounds of his belief on both the aspects, there is no reason why he should not follow the same and avoid a possible argument by the accused that he was prejudiced by non-compliance with that statutory requirement. Prevention is any day better than cure. The department would therefore do well to equip their officers and all those who are competent to make searches, with the necessary legal

**536 INDIAN LAW REPORTS 2004 KARNATAKA SERIES**

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knowledge about how a valid search is made without jeopardizing the legality of any proceedings based on the same. The data furnished to us by Mr. Chandramouli about the success rate of the prosecutions shocks the conscience of the Court for it shows how hundreds of prosecutions have failed only because of a flaw in the matter of recording grounds of belief under Section 54 of the Act. While Section 54 provides certain safeguards against malafide searches and consequent harassment of the innocent citizens the unscrupulous engaged in violating the law should not escape on account of the inefficiency, indifference or neglect of the officers who are charged with the duty of conducting searches. Failure of the officers to correct the errors being committed repeatedly may even give rise to the inference that the officers concerned are not keen to prevent such illegal activities and are possibly a privy to the rampant violation of the law. Beyond that it is neither necessary nor proper for us to say anything. The reference is answered with the direction that the Criminal Revision Petition shall now come up before the learned Single Judge for disposal in accordance with law.

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**ILR 2004 KAR 536**

**S.R. NAYAK & K. RAMANNA, JJ**

**President, CDMS vs The Managing Director,  
Bhadra Sahakari Sakkare Karkhane Niyamita and Others\***

**(A) CONSTITUTION OF INDIA — ARTICLE 12 — 1<sup>st</sup>  
respondent Sugar Factory whether “State” — Any body  
can be regarded as “State” if the Court were to find that  
the body concerned is financially, functionally and  
administratively dominated by or under the control of the  
Government and therefore amenable to the Writ  
jurisdiction under Article 226 of the Constitution.**

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\* Writ Petition No. 13524/1999 dated 25<sup>th</sup> February 2003