

HIGH COURT OF GUJARAT (D.B.)

**NEW SWADESHI MILLS OF AHMEDABAD LIMITED
V/S
S K RATTAN**

Date of Decision: 13 October 1967

Citation: 1967 LawSuit(Guj) 107

Hon'ble Judges: [A R Bakshi](#), [B G Thakor](#)

Eq. Citations: 1968 GLR 364, 1968 (5) GLT 14

Case Type: Special Civil Application

Case No: 1198 1967

Subject: Criminal

Head Note:

Criminal Procedure Code (V of 1898) - S.165, S.172- whether police empowered to search premises - conditions are mandatory before institution of search as mentioned in S.172 - conditions laid down must be fulfilled- Reasonable grounds must exist before the search- Suspicion may not be considered reasonable ground- police diary Under S.172 not a public document- may not be submitted before the Magistrate- Not to be considered as report Under S.165(5) - FIR may also not be taken as report Under S.165 - If provision of S.165 not complied with police action of seizing of looks invalid.

The requirements of the section which must be complied with before a police officer conducting an investigation could validly institute a search of the nature mentioned in sec. 165 are mandatory and not directory and those provisions must be strictly and substantially complied with. The requirements as to reasonable grounds of belief and the recording of reasons are conditions precedent to the

making of a search and seizure of things from the possession of another person. Belief which is based on reasonable ground can be said to be a reasonable belief and though there is wide scope for the exercise of discretion vested in the officer conducting the search in coming to a conclusion that he has entertained a reasonable belief the discretion has to be exercised on the principles rules or conditions set down by law and according to standards of a reasonable man. That is the only safeguard that has been provided against an arbitrary or capricious action and it is necessary that the person against whom such a provision is used should at some stage be able to know why an action has been taken against him. That is why the section makes it incumbent on the police officer to send forthwith the record that has been made under sub-sec. (1) or sub-sec. (3) of sec. 165 to the nearest Magistrate. The nature of the provisions thus makes it clear that what is provided therein is meant to be followed in its true sense and not as a matter of formality. The requirements must appear from the relevant documents to have been followed as these matters relate essentially to orders affecting the subject whose privacy is infringed and these documents and orders must be construed with reference to the language used therein. In other words those documents should show that the requirements and conditions set out in the section have been complied with by the officer before instituting the search. (Paras 8 & 9) Held that in the instant case the report submitted by the police officer to the Magistrate only shows that what is required by the section has not been complied with. If the officer was merely suspecting he could not have proceeded under the law to take step of instituting a search of a nature, which is referred to in the section. The document, which has been forwarded to the Magistrate, only shows that the officer had ground to suspect. The words grounds to suspect clearly indicate the nature of the grounds for the decision to which the police officer had arrived at. The grounds and reasons were in fact recorded by the police officer in the police diary, which he had prepared under sec. 172 of the Criminal Procedure Code. That document is not a public document and has not been forwarded to the Magistrate as required by subsec. (5) of sec. 165 of the Criminal Procedure Code. Therefore apart from the question as to at what place or where the grounds mentioned in sub-sec. (1) of sec. 165 should be recorded what has been recorded in the case diary maintained under sec. 172 is not the record which has been sent to the Magistrate and to which under the provisions of sec. 165 of the Criminal Procedure Code the person whose property was searched could have access. The first information report also was not a document which was meant to record the reasons as required by sub-sec (1) of sec. 165 and this document was never

intended to be sent as a report to the nearest Magistrate as required by the section. Moreover in the first information report there is merely a statement to the effect that there was a likelihood of persons concerned becoming aware of the inquiry and destroying the material evidence and it can hardly be said that the reasons as required by sec. 165 could be considered to have been recorded in the first information report. Therefore while instituting the search in respect of the two mills of the petitioner the provisions of sec. 165 of the Code of Criminal Procedure have not been complied with. The action taken by the police in seizing the books documents and articles from the custody of the petitioner must be held to be not in accordance with law. (Para 9) Collector of Monghyr v. Keshav Prasad Goenka State of Rajasthan v. Rehman referred to.

Acts Referred:

[Code Of Criminal Procedure, 1898 Sec 165, Sec 172](#)

Final Decision: Petition allowed

Advocates: [A K Sen](#), [I M Nanavati](#), [K S Nanavati](#), [C K Daphtary](#), [G M Vidyarthi](#), [R K Varma](#)

Reference Cases:

[Cases Cited in \(+\): 2](#)

[Cases Referred in \(+\): 3](#)

Judgement Text:-

Bakshi J

[1] This is a petition under Article 226 of the Constitution of India preferred by the New Swadeshi Mills of Ahmedabad limited against respondent No. 1 who is the Superintendent of Police central Bureau of investigation Special Police Establishment New Delhi respondent No. 2 who is the Inspector Special Police Establishment Fraud Squad I New Delhi and respondent No. 3 who is the Deputy Superintendent of Police Central Bureau of Investigation at Ahmedabad for quashing the orders passed under sec. 165 of the Code of Criminal Procedure and for return of documents seized and removed by the respondents from the premises belonging to the petitioner. The

petitioner is a textile manufacturing Company having two textile mills at Ahmedabad viz. the New Swadeshi Mills and the Manjushri Textiles. According to the petitioner on the morning of 15th June 1967 the first and the second respondents accompanied by Inspectors and panch witnesses came to the petitioners New Swadeshi Mills and thereafter the first and the third respondents similarly came to the petitioners another mill Manjushri Textiles. The Management of the two mills was informed that searches were to be carried out as regards the records of the mills and on inquiry by the Management as to the authority under which and the reasons for which the search was intended to be conducted the respondents showed the Management the orders purported to have been passed by the first respondent in favour of the second and the third respondents under sec. 165 of the Code of Criminal Procedure to search the premises of the mills and to seize the documents and the things enumerated in the list attached to the orders passed by the first respondent. The search that was started on the 15th June 1967 was continued in respect of the New Swadeshi Mills upto 22nd June 1967 and in respect of the Manjushri Textiles upto 20th June 1967. In the course of the search several books and other records and articles were seized by the respondents and removed from the mills to the Office of the Central Bureau of Investigation Ahmedabad. As stated in the petition all the documents papers vouchers bills registers and account-books have been removed from the two mills and these documents and books are from 1963 to 1967 in the case of the New Swadeshi Mills and from January 1964 to 1967 in the case of Manjushri Textiles. These actions of the respondents according to the petitioner have left the petitioner without any records or books for the purpose of carrying on the management and affairs of the mills and their day to day business and have prevented them from completing the audit of the accounts for the year 1966-67. It is stated that management of the petitioner-mills tried to get a copy of the first information report if any lodged against the petitioner-mills at Ahmedabad and applied to the Court of the Special Judges Delhi for certified copy of the first information report. The management of the mills however got an ordinary copy of the first information report lodged in the Delhi Court and that copy has been annexed as Annexure C to the petition. That document is a copy of the first information report recorded under sec. 154 of the Code of Criminal Procedure and is dated June 13 1967 x x x x x The management of the petitioner-mills then came to learn that reports were filed under sec. 165 of the Code of Criminal Procedure in the Court of the City Magistrate 3 Court Ahmedabad as regards the search Conducted by them in the mills of the petitioner. The management thereupon obtained certified copies of the reports filed by the 2nd and the 3rd respondents. As regards the New Swadeshi Mills of the petitioner the certified copy of the report that was made by the 2nd respondent has been

annexed with the petition as Annexure D. Annexure D contains two documents one of which is a report made by the 2nd respondent to the Court of the Special Magistrate 3 Court Ahmedabad City and the other is a copy of the grounds for the search along with the list of documents to be seized which was forwarded with the report. It is an admitted position that what was sent to the Magistrate as regards the Manjushri Textile Mills was Annexure 1V where it will be noticed that lines above the grounds for belief have been kept blank.

[2] It is the contention of the petitioner that the searches and the seizure as aforesaid were made without satisfying the conditions necessary for the exercise of the power conferred on the police under sec. 165 of the Code of Criminal Procedure. The first condition- precedent to the exercise of such powers according to the petitioner that the police officer making the investigation should have reasonable grounds for belief as stated in sub-sec. (1) of sec. 165 has not been satisfied inasmuch as the order of the first respondent dated 13th June 1967 proceeded on the basis not that there were reasonable grounds to believe but on the basis that there were reasonable grounds to suspect the existence of the facts mentioned in the section and that therefore the order suffered from the vice first of being in contravention of the specific requirements of sub-sec. (1) of sec. 165 of the Code of Criminal Procedure and secondly of the absence of application of his mind by the officer while deciding to institute the search. It was also contended on behalf of the petitioner that having regard to the circumstances of the case and the nature of the documents that were intended to be seized it could not be said that any officer could have reasonably come to the conclusion that the documents that were sought to be seized could not have been obtained otherwise than by a search and that therefore the action taken against the petitioner was totally arbitrary. It was further contended that the powers vested under sec. 165 Criminal Procedure Code were exercised mala fide and for the purpose of making a fishing examination of the books and records of the petitioner-Company under the guise of investigating an offense and that therefore also the search conducted by the respondents and the seizure made of the documents and books of accounts of the petitioner-Company were illegal and deserved to be set aside.

[3] The defence of the respondents was that the search was conducted after satisfying all the requirements of sec. 165 of the Code of Criminal Procedure and that the words reasonable grounds to suspect occurring at two places in Annexure D had accidentally crept in. It was the case of the respondents that the grounds for believing why searches were necessary had been earlier recorded and a deliberate decision was taken in this

regard. It was stated that in the said authorisation it was clearly mentioned that articles and documents were essential and vital for the purpose of investigation of the case and that the decision to search was taken with due care and attention and in compliance with the provisions of sec. 165 of the Code of Criminal Procedure. This defence would be applicable also in the case of Manjushri Textile Mills in which case as already stated almost a similar document as Annexure D was in existence without the blanks filled in as regards the grounds for making the search. The second ground of defence that was taken on behalf of the respondents was that it was clearly mentioned in the first information report that the mills had committed serious fraud by adopting one or more of the modes mentioned in the report which disclosed the commission of a cognizable offence. The fact that no open inquiry had been made by the Director of Revenue Intelligence has also been clearly stated in the first information report itself along with the fact that if such an inquiry was made there was every reasonable probability of the destruction and tampering of the records. That document has already been referred to and was produced as Annexure C to the petition. The third ground of defence was that the reasons for believing why a search under sec. 165 of the Criminal Procedure Code should be made in respect of the documents at a particular place were recorded in the case diary which is produced as Annexure 2 with the affidavit of respondent No. 1 from the case diary. x x x x x On the basis of this document it was contended that reasons in fact have been recorded for making a search by the first respondent and that therefore the requirements of sec. 165 Criminal Procedure Code were satisfied. In the affidavit of the first respondent it was also stated that Dy. S P. Pathan who was also associated with the investigation of the case had while conducting the search given grounds of his belief in his report under sec. 165 Criminal Procedure Code which was forwarded to the 3rd Court Special Magistrate Ahmedabad and this report to which reference has already been made was annexed to the affidavit of the first respondent as Annexure IV. It was urged on behalf of the respondents that there was sufficient material on the record to show not only that the requirements of sec. 165 Criminal Procedure Code were in substance complied with but that there were in fact reasonable grounds for making a search and the seizure was taken bona fide and not with any ulterior motive.

[4] In order to appreciate the real question that is involved in this matter it would be necessary to refer to some of the provisions of the Code of Criminal Procedure Part V of the Code relates to information to the police and their powers to investigate. Sec. 165 which occurs in Chapter XIV empowers an officer in charge of a police station or a police officer making an investigation to search for anything necessary for the purposes of an investigation into any offence which in his opinion cannot be otherwise obtained

without undue delay. It may be noticed that provisions regarding search for and seizure of property by police are contained in secs. 96 98 and 165 of the Code. Sec. 96 gives wide powers to Magistrates to issue a search warrant in the circumstances mentioned therein. The provisions contained in that section are as under :-

(1) Where any Court has reason to believe that a person to whom a summons or order under sec. 94 or a requisition under sec. 96 sub-sec. (1) has been or might be addressed will not or would not produce the document or thing as required by such summons or requisition or where such document or thing is not known to the Court to be in the possession of any person or where the Court considers that the purposes of any inquiry trial or other proceeding under this Code will be served by a general search or inspection it may issue a search-warrant:- and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Nothing herein contained shall authorise any Magistrate other than a District Magistrate or Chief Presidency Magistrate to grant a warrant to search for a document parcel or other thing in the custody of the postal or Telegraph authorities

Sec. 98 empowers a District Magistrate and the Magistrates mentioned in the section to issue a warrant authorising a police officer to make search of a house suspected to contain stolen property forged documents etc. Section 165 of the Code relates to a search to be made by a police officer who is making an investigation and who requires a thing necessary for the purposes of an investigation which he wants to obtain immediately but which he cannot obtain without undue delay otherwise than by a search. The issuance of a search warrant and the making of a search in the property of a citizen and for a thing in his possession is a grave step which necessarily involves some encroachment on the privacy of a subject but it is essential that in the larger interest of the administration of justice public officers connected with the administration of justice and preservation of peace and order in society should have adequate powers and reasonable facilities for making searches in the course of an Inquiry or an investigation. These considerations viz. the necessity of securing the private rights of a citizen and the need to see that

commission of offences is prevented and adequately dealt with investigated and brought to light are undoubtedly of paramount importance and to strike a balance between the two rival but conflicting considerations it has been provided while giving powers under the aforesaid sections that they should be used only in the circumstances provided therein. Sections 96 and 98 of the Criminal Procedure Code give powers of ordering searches to officers who exercise judicial functions but the discretion vested by the two sections has to be exercised if there are grounds which in the consideration of the officer exist for the exercise of such powers. Section 165 gives powers to search to a police officer but to a restricted and circumscribed extent as could be seen from the provisions of sec. 165 itself which are as under:-

(1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge or to which he is attached and that such thing cannot in his opinion be otherwise obtained without undue delay. such officer may after recording in writing the grounds of his belief and specifying in such writing so far as possible the thing for which search is to be made search or cause search to be made for such thing in any place within the limits of such station.

(2) A police officer proceeding under sub-sec. (1) shall if practicable conduct the search in person.

(3) If he is unable to conduct the search in person and there is no other person competent to make the search present at the time he may after recording in writing his reasons for so doing require any officer subordinate to him to make the search and he shall deliver to such subordinate officer an order in writing specifying the place to be searched and so far as possible the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search warrants and the general

provisions as to searches contained in sec. 102 and sec. 103 shall so far as may be apply to a search made under this section.

(5) Copies of any record made under sub-sec. (1) or sub-sec. (3) shall forth with be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate; Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

It would appear from the provisions of the section that the Legislature has been at pains to see that certain safe-guards are provided for the protection of the private rights of a subject in whose property a police officer purports during the course of an investigation to start search for a thing necessary for the purposes of an investigation into an offence. These powers have been given to an officer in charge of a police station or a police officer making an investigation and not to any police officer generally. The second requirement that is prescribed by the section is that the police officer acting under sec. 165 must have reasonable grounds for believing that he would find the thing in a place within the limits of the police station of which he is in charge. After the police officer has found that there are reasonable grounds for believing that anything necessary for the purposes of an investigation into an offence would be found in a place the section further requires that before starting to take action for search under the section instead of resorting to the normal procedure of applying for a search warrant to a Magistrate he must have reason to believe that the thing for which the search is sought to be made cannot be otherwise obtained without undue delay and in other words he should be further satisfied that the object of the search would be defeated if he would wait for making the search in the normal manner. When these requirements are satisfied the officer must record the grounds of his belief in writing and should also specify in such writing as far as possible the thing for which the search is proposed to be made. When all these requirements are fulfilled and not before the section authorises the police officer to search or cause search to be made for such a thing. It would thus appear from the provisions of the section that the section is meant to be used in cases where lack of time renders it impracticable to follow the ordinary course of making

searches by obtaining a warrant from a Magistrate. A search without a warrant from a Magistrate made under sec. 165 of the Code of Criminal Procedure is a process which can have serious consequences. It might affect the privacy of a subject though temporarily and unsettle his business affairs for the time being. Such being the nature and character of the provisions for search and seizure statutory conditions appear to have been imposed on such powers which have been vested in a police officer. The conditions which are required to be fulfilled before a search can be made under the section namely coming to a decision as regards the existence of reasonable grounds for belief and recording of reasons for such belief are important and obligatory conditions in the matter of search to be made under sec. 165 and if these conditions are not fulfilled or ignored it would mean that an important provision of law has not been followed and such provisions intended and meant for the safeguard of the rights of the subject cannot be held to be merely directory in nature. In the case of Collector of Monghyr v. Keshav Prasad Goenka A. I. R. 1962 Supreme Court 1594 the Supreme Court was considering the provisions of sec. 5A of the Bihar Private Irrigation Works Act. Sub-secs. (1) and (2) of that section read as follows ;

(1) Notwithstanding anything to the contrary contained in this Act whenever the Collector for reasons to be recorded by him is of opinion that the delay in the repair of any existing irrigation work which may be occasioned by proceedings commenced by a notice under sec. 3 adversely affects or is likely to affect adversely lands which are dependent on such irrigation work for a supply of water he may forthwith cause the repair of such irrigation work to be begun by any one or more of the persons mentioned in clause (ii) of sec. 3 or by such agency as he thinks proper:- Provided that the Collector shall cause public notice to be given at convenient place in every village in which the irrigation work is situated stating that the work mentioned therein has already been begun.

(2) When any such work has been completed the Collector shall cause notice to be given in the manner aforesaid stating that the work mentioned therein has been completed.

In the context of that section the Supreme Court at page 1701 of the Report observed that:-

We feel unable to accept the submission of learned Counsel that in the context in which the words for the reasons to be recorded by him occur in sec. 5A and considering the scheme of Ch. II of the Act the requirement of these words could be held to be otherwise than mandatory. It is needless to add that the employment of the auxiliary verb shall is inconclusive and similarly the mere absence of the imperative is not conclusive either. The question whether any requirement is mandatory or directory has to be decided not merely on the basis of any specific provision which for instance sets out the consequences of the omission to observe the requirement but on the purpose for which the requirement has been enacted particularly in the context of the other provisions of the Act and the general scheme thereof. It would inter alia depend on whether the requirement is insisted on as a protection for the safeguarding of the right of liberty of person or of property which the action might involve.

If such provisions are not considered to be mandatory it would result practically in removing the safe-guard that has been placed by the Legislature on the indiscriminate use of powers of search and seizure by a police officer. We are therefore of the view that the provisions of subsec. (1) of sec. 165 which provides for certain requirements which should be satisfied before a search could be started under that sub-section are mandatory in nature.

[5] Let us now examine the requirements of the section in some more detail. The police officer conducting the investigation must first entertain reasonable grounds for believing that anything necessary for the purpose of an investigation into an offence would be found in a place within the limits of the police station of which he is in charge or to which he is attached. He must first come to a decision that a thing is necessary i. e. useful for the purpose of his investigation into the offence which he is investigating and secondly he must also have reasonable grounds for believing that such a thing would be found in a place within his jurisdiction. After having come to a decision which as stated above must be based on reasonable grounds of belief it is necessary that he must further be of

the opinion that the thing which he wants could not be obtained without undue delay otherwise than by a search. Even if these requirements are satisfied the police officer could not forthwith proceed to make the search but he is required to record in writing the grounds of his belief and also to mention in such writing as far as possible the thing for which the search is to be made and it is only thereafter that he can proceed to search or cause search to be made. Sub-sec:-. (2) of sec. 165 further requires that a police officer proceeding under sub-sec. (1) should if practicable conduct the search in person but if he is unable to do so the section empowers him to depute the making of the search to any officer subordinate to him after delivering to such subordinate officer an order in writing specifying the place to be searched and so far as possible the thing for which the search is to be made. The police officer before authorising another officer to make the search is also required to record in writing his reasons for so doing. Sub-sec. (5) of sec. 165 then provides a further safe-guard by requiring that copies of any record made under sub-sec. (1) or sub-sec. (3) should forthwith be sent to the nearest Magistrate and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate. The nature and character of the provisions of this section have been summarized in the following observations made at page 312 in the case of State of Rajasthan v. Rehman reported in A.I.R. 1960 Supreme Court 210 The fourth group of sections appear in Ch. XIV which provides for searches by a police officer during the investigation of a cognisable offence. The Power of search given under this chapter is incidental to the conduct of Investigation the police officer is authorised by law to make. Under sec. 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;

(iii) 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 authorise 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.

[6] The section while prescribing the conditions uses the words has reasonable grounds for believing. Those words are words of significance because they indicate the nature and character of the grounds for the belief which a police officer must entertain before he takes the other steps necessary for him to take before he could institute a search in the property belonging to another. Those grounds of his belief have to be recorded by the police officer in writing and what he has recorded he has to intimate to the nearest Magistrate. If what has been recorded or sent to the Magistrate does not constitute what has been stated in the section as reasonable ground for believing that would undoubtedly be an infirmity which would have an important bearing in considering whether the search instituted by the police officer could or could not be considered to be a valid search. In the first place the word to believe must be distinguished from the word to suspect. To believe a fact is to regard that fact as true; whereas to suspect would imply a readiness to believe but without sufficient data. It would introduce to some extent an element of imagination or conjecture. The words reasonable grounds for believing included three concepts by the use of the three words (1) reasonable (2) grounds; and (3) believing. The use of the word grounds indicates the existence of a basis or a foundation for justification and by the addition of the word reasonable it further implies that the basis must be such as would be rational or agreeable to reason. The word to believe cannot be as we have seen above equated with the word to suspect. The whole sentence reasonable grounds for believing considered together with the true meaning of the words that constitute the sentence would mean:- that the conclusion arrived at should not be a mere suspicion but must be such as is regarded as true by the person making it (2) that such a conclusion or belief must have a basis and a foundation; and (3) that such a basis which may be described as grounds must be reasonable.

[7] The necessity of recording reasons seems to follow as a corollary and serves as an important aim in safe-guarding the subject against unjustifiable interference with his Individual and private rights. This provision seems to have been made with a view to prevent a police officer from initiating a process in the nature of a general search without having proper reasons with him before doing so. It has therefore been made incumbent upon him to record the reasons in writing before he could institute a search. If these reasons were to be provided that is to say recorded in such a manner that they could

never be seen except by the officer recording the same again the safe-guard provided by the section by requiring the police officer to record the reasons would become illusive. It is therefore quite natural and in the fitness of things and consistent with the intention of the Legislature that the reasons required to be recorded must be recorded in such a manner that they would not lie for an indefinite time in the personal or private possession of the officer recording the same. Such an intention of the Legislature is clear from the provisions of sub-sec. (5) of sec. 165 which provides that copies of any record made under sub-sec. (1) or sub-sec. (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate.

[8] As we have already seen the requirements as to reasonable grounds of belief and the recording of reasons are conditions-precendent to the making of a search and seizure of things from the possession of another person. Belief which is based on reasonable grounds can be said to be a reasonable belief and though there is wide for the exercise of discretion vested in the officer conducting the search in coming to a conclusion that he had entertained a reasonable belief the discretion has to be exercised on the principles rules or conditions set down by law and according to standards of a reasonable man. That is the only safe_ guard that has been provided against an arbitrary or capricious action and it is necessary that the person against whom such a provision is used should at some stage be able to know why an action has been taken against him. That is why the section makes it incumbent on the police officer So send forth with the record that has been made under sub-sec. (1) or sub-sec. (3) of sec. 165 to the nearest Magistrate. The nature of the provisions thus makes it clear that what is provided therein is meant to be followed in its true sense and not as a matter of formality. The requirements must appear from the relevant documents to have been followed as these matters relate essentially to orders affecting the subject whose privacy is infringed and these documents and orders must be construed with reference to the language used therein. In other words those documents should show that the Requirements and conditions set out in the section have been complied with by the officer before instituting the search.

[9] We have seen what are the requirements of the section which must be complied with before a police officer conducting an investigation could validly institute a search of the nature mentioned in sec. 165. We have also seen that those provisions of sec. 165 are mandatory and not directory and that those provisions must be strictly and

substantially complied with. Now let us see on the facts of the present case how far these provisions have been complied with. We have already referred to the report of the second respondent made by him to the Special Magistrate 3 Court Ahmedabad City and in that report the second respondent has stated that he has been directed to carry out the searches of M/s New Swadeshi Mills of Ahmedabad and that a copy of the grounds for the search along with the list of documents to be seized as issued to him was enclosed with the report. That report with its accompaniments would thus according to the respondents provide grounds for making the search. Now if we look to the accompaniment to the report Annexure D what is stated therein is that:-

Whereas there are reasonable grounds to suspect that the documents/articles as detailed in the attached list which are essential and vital for the purpose of investigation of the said case are in the possession or under the control of the management of M/s New Swadeshi Mills of Ahmedabad Ltd. Ahmedabad; AND WHEREAS there are further reasonable grounds to suspect that the said management may not produce the said documents/articles otherwise than upon a search;

The words that have been used are reasonable grounds to suspect and not reasonable grounds for believing as is required by sub-sec (1) of sec. 165. We have already seen the vast difference between what are grounds of belief and what are grounds of suspicion. It is the document which must speak for itself and it only shows that what is required by the section has not been complied with. If the officer was merely suspecting he could not have proceeded under the law to take the step of instituting a search of a nature which is referred to in the section. That is a document which has been forwarded to the Magistrate and that document only shows that the officer had grounds to suspect. The words grounds to suspect clearly indicate the nature of the grounds for the decision to which the police officer had arrived at and we are unable to accept the explanation that the words grounds to suspect had come to find place in the document by inadvertence or mistake. It was urged that while giving a construction and effect to the words grounds to suspect in Annexure D we must bear in mind the fact that the Grounds and reasons were in fact recorded by the police officer in the police diary which he had prepared under sec. 172 of the Criminal Procedure Code. That document has been produced as Annexure 2 to the affidavit of the first

respondent. But it must also be borne in mind that that document is not a public document and has not been forwarded to the Magistrate as required by sub-sec. (5) of sec. 165. Therefore apart from the question as to at what place or where the grounds mentioned in subsec. (1) of sec. 165 should be recorded what has been recorded in the case diary maintained under sec. 172 is not the record which has been sent to the Magistrate and to which under the provisions of sec. 165 of the Criminal Procedure Code the person whose property was searched could have access. It was urged by the learned Attorney General that we should look into the substance of the matter while considering the question whether the requirements of sec. 165 have been complied with or not. It was urged that in this context we must also look to the contents of the first information report which is Annexure C to the petition and that we must also see the case diary that has been maintained under sec. 172 and that after reading these two documents we must then try to construe and interpret what the words grounds to suspect would mean. The first information report Annexure C does not in any manner support or advance the argument made on behalf of the respondents. This was not a document which was meant to record the reasons as required by sub-sec. (1) of sec. 165 and this document was never intended to be sent as a report to the nearest Magistrate as required by the section. Moreover as could be seen from the first information report there is merely a statement to the effect that there was a likelihood of persons concerned becoming aware of the inquiry and destroying the material evidence and it can hardly be said that the reasons as required by sec. 165 could be considered to have recorded in the first information report Annexure C. As already stated the second respondent has clearly stated in his report that he was forwarding the grounds of the search along with his report and the Magistrate was thus informed of the grounds as stated therein. As regards the Manjushri Textile Mills nothing was shown to us which could be considered to comply with the provisions of sec. 165(1) but what was shown to us was Annexure 4 to the affidavit of the first respondent. If we refer to that document we find that the lines above the grounds for believing are kept blank and what follows next do not amount to grounds and that would mean that no such grounds have been mentioned. Nowhere else in that document have the grounds been stated and therefore it must be held that Annexure 4 does not satisfy the requirements of sub-sec. (1) of sec. 165. For the reasons aforesaid we are of the view that while instituting the search in respect of the two mills of the

petitioner the provisions of sec. 165 of the Code of Criminal Procedure have not been complied with and in view of the reasons stated above it is not necessary for us to consider the other submissions made on behalf of the parties including the submission as regards the nature of the action being mala fide or arbitrary. The action taken by the police in seizing the books documents and articles from the custody of the petitioner must be held to be not in accordance with law and consequently the petitioner would be entitled to restoration of those articles books and documents. Mr. Varma urged that the books documents and articles should be placed in the effective custody of the Magistrate and should not be returned to the petitioner. But the search in the course of which these documents books and articles were seized was in contravention of law and therefore the condition that prevailed before the search must be restored and these books documents and articles must be returned to the person from whose custody they were illegally seized. By an order dated September 25 1967 this Court had ordered that the Magistrate should affix his seal on the documents and articles that were seized.

[10] X x x x x

[11] The petition is allowed and the rule granted on the petition is made absolute with costs as indicated above.

[12] Mr. Varma asks for a Certificate to appeal to the Supreme Court of India on the ground that this is a case which is a fit one for appeal to the Supreme Court under Article 133(1)(c) of the Constitution. Leave to appeal granted. Petition allowed 1 Leave to appeal granted.

