

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 12<sup>TH</sup> DAY OF JANUARY, 2021

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

**WRIT PETITION NO.10760 OF 2020 (GM-RES)**

**BETWEEN:**

SOCIAL DEMOCRATIC PARTY OF INDIA (SDPI)  
REGISTERED UNDER RP ACT  
KARNATAKA STATE HQ AT  
NO.14C, HMS COMPLEX  
CUBBEN PET, BEHIND ULSOORGATE PS  
BANGALORE-560002  
REPRESENTED BY ITS SECRETARY  
ASHRAF ALI

... PETITIONER

(BY SRI. MOHAMMED TAHIR, ADVOCATE)

**AND:**

1. STATE BY CCB POLICE  
CENTRAL CRIME BRANCH  
COTTONPET MAIN ROAD  
SULTANPET, BAKSHI GARDENS  
CHICKPET, BENGALURU  
KARNATAKA-560053
2. ACT (ANW), CCB  
INVESTIGATION OFFICER  
OF CRIME NO 229/2020  
OF KG HALLI PS OFFICE AT  
CENTRAL CRIME BRANCH  
COTTONPET MAIN ROAD  
SULTANPET, BAKSHI GARDENS  
CHICKPET, BENGALURU  
KARNATAKA-560053

3. ACT (OCW), CCB  
INVESTIGATION OFFICER  
OF CRIME NO 195/2020  
OF DJ HALLI PS OFFICE AT  
CENTRAL CRIME BRANCH  
COTTONPET MAIN ROAD  
SULTANPET, BAKSHI GARDENS  
CHICKPET, BENGALURU  
KARNATAKA-560053

... RESPONDENTS

(BY SMT. NAMITHA MAHESH.B.G, HCGP FOR R1;  
SRI. PRASANNA KUMAR, ADVOCATE FOR R2 & R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W 482 OF CR.P.C, PRAYING TO QUASH THE ILLEGAL ORDER DATED 31.08.2020 BY THE HON'BLE 49<sup>TH</sup> ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT BANGALORE I.E., AT 1. ANNEXURE-D1, D2, D3 AND CONSEQUENTLY ALSO SET ASIDE ANNEXURE-E I.E., THE COPY OF THE MARZHAR IN CONNECTION GAVIPURA PETITIONERS OFFICE IN CRIME NO.229/2020 OF K.G.HALLI ALONG WITH LIST OF SEIZURE AND ETC.

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THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 15.12.2020, THIS DAY, **THROUGH VIDEO CONFERENCE**, THE COURT PRONOUNCED THE FOLLOWING:

### **ORDER**

1. The petitioner, a political party represented by its Secretary is before this Court seeking for quashing of the order dated 31.08.2020 passed by the 44<sup>th</sup> Additional City Civil and Sessions Judge, Bangalore in Crime No.229/2020 and

Crime No.195/2020 issuing warrants to search under Section 93 of the Criminal Procedure Code and consequent mahazars carried out in pursuance of said search at the various offices.

2. It is claimed that the petitioner being a political party has been targeted by the State. The petitioner carries out empowerment of the deprived section of the society and has not indulged in any unlawful activity.
3. It is stated that on 11/12.08.2020, there was vandalism and arson within the limits of D.G.Halli and K.G.Halli Police Stations. The said police stations were attacked on account of a blasphemous facebook post, which took an ugly turn allegedly on account of lack of timely intervention and action by the police.

4. It is in pursuance thereof Crime No.229/2020 was registered by K.G.Halli Police Station and Crime No.195/2020 was registered by D.G.Halli Police Station for offences under Sections 353, 143, 147, 148, 333, 332, 436, 427 read with 149 of IPC, Section 4 of Prevention of Damage to Public Property Act, 1984 and Sections 15, 16, 18 and 20 of Unlawful Activities (Prevention) Act, 1967.
5. The investigation was later on transferred to CCB Police i.e., respondent No.1 of which respondent Nos.2 and 3 were directed to investigate Crime No.229/2020 and Crime No.195/2020 respectively.
6. During the course of investigation, respondent Nos.2 and 3 arrested several persons, recorded their voluntarily statements and on the basis of

the said statements, sought for search warrants under Section 93 of Code of Criminal Procedure (for short, Cr.P.C.) to search three offices of the petitioner (Crime No.229/2020 and Crime No.195/2020).

7. The said request for search warrant was accepted by the Sessions Court, warrant had been issued and thereafter searches were conducted and mahazars were drawn up.

8. It is aggrieved by the same, the petitioner is before this Court contending that

8.1. the entire process resorted to by respondent Nos.2 and 3 are only to defame the petitioner.

8.2. There is no offence committed by the petitioner-organization or its officers.

8.3. The procedure prescribed under Section 93 of Cr.P.C. has not been followed.

8.4. The representatives of the petitioner are in touch with the Investigating Officers, they have cooperated with the Investigating Officers. At the most, notice under Section 91 of Cr.P.C. could have been issued instead of a search warrant under Section 93 of Cr.P.C.

8.5. The Investigating Officer having resorting to and requisitioning a search warrant under Section 93 of Cr.P.C. is completely unwarranted.

8.6. The Sessions Court ought to have considered that a notice under Section 91 of Cr.P.C. to produce necessary documents and/or record the statements of the

petitioner would have sufficed in the circumstances of the case.

9. Notice having been issued, the respondent has entered appearance and filed its detailed objection statements. In the said objection statement, it is contended that:

9.1. The order dated 31.08.2020 passed by the Special Judge, NIA Cases, Bangalore, issuing warrant of search is proper and correct and it does not suffer from any legal infirmities.

9.2. The investigation in Crime No.229/2020 and Crime No.195/2020 has been transferred from CCB to the National Investigation Agency (NIA) pursuant to order dated 21.09.2020 passed by the Ministry of Home Affairs, Government of

India, New Delhi. Pursuant thereto Crime No.229/2020 is registered in RC No.35/2020/NIA/DLI and Crime No.195/2020 is registered as RC No.34/2020/NIA/DLI and it is NIA which is carrying out the investigation and not respondent No.3 as alleged or otherwise.

9.3. It is stated that the petitioner has not approached this Court with clean hands inasmuch as the petitioner had filed an application on 03.09.2020 before the NIA, Special Court under Sections 451 and 457 of Cr.P.C. wherein it was specifically contended that the seizure proceedings was illegal and therefore, sought for return of the seized items.



9.4. The said application came to be dismissed by the Special Court for NIA on 27.10.2020, which has not been challenged.

9.5. Neither the application filed nor the order of dismissal of the application had been disclosed by the petitioner, as such, there is suppression of material facts by the petitioner.

9.6. That there are no act of defamation which is committed by either CCB police or NIA police,

9.7. There are statements of witnesses which are on record which had been forwarded to the Special Court, which was considered by the Special Court at the time of issuance of search warrant.

9.8. The petitioner is not entitled to the case diary and/or voluntarily statements during the course of investigation. As such, it has not been provided to the petitioner.

9.9. There is no mandatory requirement for issuance of notice under Section 91(1) of Cr.P.C. before issuance of a search warrant under Section 93 of Cr.P.C. The search which has been carried out has been so carried out in accordance with applicable law and procedure and on a search being carried out, several incriminating materials have been found in the premises of the petitioner.

9.10. The mahazars which are sought to be quashed by the petitioner is with an

intention to prevent the consideration of a valid and legitimate evidence by the Court.

9.11. The present petition has been filed only to try and suppress the material evidence from the Court. As such, it is contended that the writ petition is to be dismissed.

10. Sri.Mohammed Tahir, learned counsel for the petitioner while reiterating the contents of the petition further submitted that:

10.1. It is mandatory for a notice under Section 91(1) Cr.P.C. to be issued before a warrant of search being issued.

10.2. A warrant of search would only be required to be issued if the Court came to a conclusion that the incriminating articles could either be destroyed or done away

with if the search warrant is not issued, the order of issuing a search warrant has to be detailed showing the application of mind of the said Court as to why the step of issuing a search warrant is taken since issuance of such a search warrant can have an adverse impact on the person whose premises has been searched.

10.3. The application filed for returning of the items seized is different from the present application where the issuance of search warrant itself is being challenged. He therefore submits that there is no suppression of any material facts.

11. Sri.Prasanna Kumar, learned counsel appearing for respondent – NIA reiterating the contents of the statement of objections submitted that:

11.1.The offences which are alleged to be committed are very serious in nature inasmuch as two police stations had been vandalised, several vehicles were burnt, there were group of more than two hundred to three hundred persons who attacked the police officers, burnt the police station, damaged the public property including government and public vehicles. All this was done at the instance of the office bearers of the petitioner.

11.2.It is the petitioner's political organization which was made use for calling a meeting, instigating the mob to indulge in the violence and thereafter coordinated the violence, riots and arson resorted to.

11.3. It is after considering the statements made by the witnesses that the search warrant came to be issued. If the search warrant was not issued, there was a danger of the incriminating article being removed and/or destroyed.

11.4. On the above grounds, he submits that the order of issuing search warrant dated 31.08.2020 is proper and correct. That being so search having been carried out properly and mahazar being drawn up neither the search proceedings nor the mahazar can be quashed. Therefore, he seeks for dismissal of the above writ petition.

12. Heard Sri.Mohammed Tahir, learned counsel for the petitioner and Smt.Namita Mahesh, learned

HCGP for respondent No.1 and Sri.Prasanna Kumar, learned Counsel for the respondent Nos.2 and 3 and perused the papers.

13. On the basis of the pleadings filed and arguments advanced, the points which would arise for determination by this court are:

**13.1. Whether it is mandatory for issuance of a summons under Section 91 of Cr.P.C. before issuance of a warrant?**

**13.2. Is the search in the present case carried out in a proper and required manner?**

**13.3. What order?**

14. Section 91 of Cr.P.C. relating to summons to produce document or other thing is extracted herein below:

**"91. Summons to produce document or other thing.**

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

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

3. Nothing in this section shall be deemed-

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

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

15. Section 93 of Cr.P.C. relating to issuance of a search warrant is extracted herein below:



***"93. When search warrant may be issued:***

*1. (a) Where any Court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub-section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or*

*(b) Where such document or thing is not known to the Court to be the possession of any person, or*

*(c) 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) The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.*

*(3) Nothing contained in this section shall authorise any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority".*

**16. Answer to Point No.1: Whether it is mandatory for issuance of a summons under Section 91 of Cr.P.C. before issuance of a warrant?**

16.1. A perusal of Section 91 would indicate that whenever any Court or any Officer in charge of a police station considers that the production of any document or thing is necessary or desirable pending investigation, summons could be issued by such Court or Officer to the person in whose possession or power, such document is believed to be, requiring him to attend and produce it.

16.2. A perusal of Section 93 of Cr.P.C. would indicate that where any Court has reason to believe that a person to whom a summons or order under Order 91 or a

requisition under sub-Section (1) of Section 92 of Cr.P.C. has been or might be addressed, will not or would not produce the document or thing 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 for the purposes of any enquiry, a general search or inspection is to be carried out, a search warrant could be issued.

16.3. It is relying on Section 93(1)(a) of Cr.P.C. that Sri.Mohammed Tahir, learned counsel for the petitioner seeks to contend that only in the event of the Court coming to a conclusion that in the event of issuance of summons to a person, such person will not or would

not produce a document that a search warrant could be issued.

16.4. Having perused Section 93 of Cr.P.C., the reliance placed by the petitioner on Section 93(1)(a) is not sustainable. The entire provision would have to be read has a whole to arrive at the meaning and purport thereof more so when Section 93 (1)(a), (b) and (c) are qualified with the word 'or' after each of said sub-clauses. That would mean that they are in the alternate to each other and if any of the requirements is satisfied, a search warrant could be issued.

16.5. Section 93 of Cr.P.C. only provides for three different alternate circumstances. There is neither a priority in the

circumstances nor a serial chain link in the circumstances. In that, if any one of the requirements is satisfied, the Court may issue a search warrant to search or inspect the premises.

16.6. In the present case, a perusal of the order dated 31.08.2020 in relation to Crime No.229/2020 and the order dated 12.08.2020 in relation to Crime No.195/2020 indicates that the Court has considered that most of the accused in connection with the case are office bearers of the petitioner, as per the information received, the weapons in connection with the crime would be available in the office of the petitioner and as such, a search warrant was issued.

16.7. In view of the above, the reasoning of the Court and Court having appreciated the requirements and immediate need for issuance of a search warrant, I am of the considered opinion that the above matter would not come within the purview of Section 93 (1)(a) of Cr.P.C. but would come within the purview of Section 93(1)(c) of Cr.P.C. where the Court considers that for the purposes of any enquiry, trial or other proceeding be served by a general search or inspection, the court could issue such search warrants.

16.8. It is considering the said factors that the Court has issued the search warrants.

16.9. For the purposes of Section 93(1)(c) of Cr.P.C., there is no requirement of issuing summons under Section 91(1) of Cr.P.C. prior to issuance of the search warrant.

16.10. Thus, I am of the considered opinion that it is not in all cases that the summons have to be issued prior to issuance of a search warrant. Even a perusal of Section 93 (1)(a) of Cr.P.C. would indicate that if the Court were to come to a conclusion that the issuance of summons under Section 93 (1) or 92 (1) of Cr.P.C. would not result in the production of the said document or information, a search warrant could be issued. The procedure for issuance of search warrant under Section 93 of

Cr.P.C. is *dehors* and over and above the requirements under Section 91(1) of Cr.P.C.

16.11. In view of the above, I answer Point No.1 by holding that it is not required in all circumstances to issue a summons prior to issuance of a search warrant. A search warrant could be issued in terms of Section 93(1)(c) without issuing a summon under Section 91 of the Cr.P.C.

17. **Answer to Point No.2: Is the search in the present case is carried out in a proper and required manner?**

17.1. The petitioner itself does not make any allegation as regards the search being proper or improper.



17.2. The only contention of the petitioner is as regards the order of search being issued improperly without application of mind. The raid, search, seizure has not been impugned in these proceedings.

17.3. A perusal of the mahazar report indicates that all the requirements of carrying out of the search have been complied with. In view thereof, I am of the considered opinion that there is no infirmity in the search and seizure made in the present case.

18. **Answer to Point No.3: What order?**

18.1. In view of the finding on the above two points, the petition is dismissed.

**Sd/-  
JUDGE**

Prs\*