

(1995) 04 PAT CK 0004

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 671 of 1974 (R)

Ashoka and Company

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-04-1995

Acts Referred:

Citation : (1995) 04 PAT CK 0004

Judgement

R.N. Sahay, J.—The petitioner is a registered firm having its place of business at L-7/2, Bistupur Bazar, P.S.Bistupur in the town of Jamshedpur. By this Criminal writ application the petitioner challenges the authority and jurisdiction of the 3rd respondent (Assistant Commissioner, Commercial Taxes, Urban Circle Jamshedpur) to seize the items described in Annexure-2, in exercise of his power u/s 31(5)(a) of the Bihar Finance Act, 1981 (in short the Finance Act) and the order dated 5.10.94 (Annexure-6) passed u/s 33(5)(b) of the Act whereby a penalty to the tune of Rs. 1,15,893.45 has been imposed on the firm. The circumstances leading to the present proceeding may be stated in brief. The petitioner firm has separate place of business, one at Bistupur and other at Parsudih Market Yard. Both the places are registered under the Finance Act. The Joint Commissioner, Sales Tax has permitted the firm to keep the Accounts jointly.

2. On 26.9.94, third respondent inspected the business premises of the petitioner and having detected certain irregularities in maintenance of accounts, placed the following items under seizure:

1. Vanaspati 602 tins. 2. Refined Sun Flower 13 tins. 3. Sunflower (Captain) 5 tins. 4. Mustard oil (Kishore) 37 tins. 5. Mustard oil refined (Jyoti) 8 tins. 6. Mustard oil (Mangal) 48 tins. 7. Pure Ghee (Krishna) 4 Packs x 5 Kg each 8. Pure Ghee (Krishna) 1 Kg x 12 packs. 9. Fenyle 15 bottles. 10. Gram 1 Bag.

3. Pursuant to the seizure and inspection, notice (Annexures. 3 & 3/A) was served on the petitioner on 27.9.94. The petitioner was directed to appear on the date fixed in the case with the necessary documents. The notice was issued u/s 33(5)(b) of the Bihar Finance Act. The petitioner appeared and filed show cause

(Annexure-5) contending therein that the person-incharge of the business was not present at the time of inspection and hence necessary documents could not be produced. It was submitted that all the goods found in the business premises were properly accounted for. It was prayed that proceeding be dropped. The third respondent did not attach any credence to the show cause and he by order dated 25.10.94 imposed penalty, impugned in this application. The third respondent has given reasons for imposing the penalty. Consequently demand notice (Annexure-7) was served on the petitioner.

4. Shri Gododia, learned Sr. Counsel for the petitioner has contended that seizure and penalty are all illegal and arbitrary. He endeavoured to demonstrate this by reference to facts asserted under paras 16 to 22 and 25 of the application. He contended that the show cause notice served on the petitioner was vague. Therefore, the petitioner could not file an effective reply. He submitted that notice was not in terms of Rule 19 of the Sales Tax Rules. Shri Gadodia argued that the third respondent has given no cogent reason for rejecting the claim in respect of the mustered oil and sunflower oil as also the phenyl. He further submitted that he committed grave error in relying on the maximum price printed on the tin in order to determine the liability of the petitioner.

5. I am of the opinion that in the facts and circumstances of the case no case for interference has been made out in our writ jurisdiction. Firstly the petitioner was ill advised, to label this application as Criminal Writ Jurisdiction case. The petitioner complains that the penalty proceeding and seizure was illegal. If at all the petitioner's rights have been infringed it can not be contended that this would attract Criminal Jurisdiction of this Court. Shri Gadodia has submitted that Criminal Jurisdiction of this Court is very much attracted because seizure and penalty proceeding has been held by the Supreme Court to be a quash-criminal in nature. Shri Gadodia has placed reliance on 1967 STC 299 (SC) The Madras High Court has declared Section 41(2) of the Madras Mineral Sales Tax Act which provided for such a seizure to be unconstitutional. On appeal the Supreme Court held that Section 41 was constitutionally valid. The Madras Act provided for application of Cr. P.C. in respect of search and seizure. These decisions can not be considered to be a authority for the prosecution that every search and seizure have colour of a Criminal proceeding.

6. In Union of India v. Kuldip Singh 1962 Punjab 484 a Full Bench of the Punjab High Court held that just because grievance of the petitioner was against the imposition of penalty (under Section" 167(a) of the Sea Custom Act) proceeding before the High Court in writ jurisdiction became criminal in nature. Civil and Criminal jurisdiction of this Court is exercised by virtue of Article 225 of the Constitution of India. Article 226 gives additional power to the High Court which is exercised by virtue of this provision under the Constitution and not by virtue of the High Court being either a criminal or a civil court.

7. Shri Gadodia relying on Mewalal Kapildeo Prasad v. State of Bihar 1978 BBCJ 237 and Shiv Parwati Rice Mills v. Commissioner 1978 BBCJ 755 contended that

in these cases the order of confiscation u/s 6-A of the E.C. Act was successfully impugned by filing criminal writ application under Article 226 of the Constitution of India and hence there is no reason why a penalty proceeding u/s 33 of the Bihar Finance Act can not be treated to be criminal proceeding, giving jurisdiction to this Court to examine validity of the proceeding order in criminal writ jurisdiction. This contention has no merit. The two decisions reported in 1978 BBCJ 237 do not decide the question whether criminal writ would be maintainable to challenge the order of confiscation u/s 6-A of the E.C. Act.

8. Chapter XXI-C (Part V) of the Patna High Court Rules 1916 lays down procedure for disposal of an application under Articles 226 and 227 of the Constitution of India. Rule 1 of Chapter XXI enjoins the petitioner to state, "description of address of the applicant and of the parties against whom the relief is sought". Rule 1-A provides that every application under Articles 226 and 227 of the Constitution for quashing of the investigation with prayer for stay of arrest during pendency of such application or grant of bail or anticipatory bail shall state if the petitioner had previously filed any petition for bail for anticipatory bail. Rule 3 which is relevant for our purpose reads as follows:

An application under Article 226 of the Constitution shall be registered as Civil Writ application (CWJC) or Criminal Writ Jurisdiction (Cr. WJC) as the case may be.

9. In my view Rule 3 should have been more clearly worded thereby preventing a party the choice of filing either Cr. WJC or CWJC as has been done in the instant case and numerous other cases. The best example is the two decisions reported in 1978 BBCJ referred to above. We have come across a large number of cases where cancellation or suspension of licence under the Arms Act suspension or cancellation of licence under the E. C. Act, seizure of vehicles under the Indian Forest Act or Excise Act have been challenged by filing criminal writ jurisdiction cases although such cases do not attract the criminal jurisdiction of this Court. In my view C.R.W.J.C. will be maintainable mostly in those cases, in which the order can be challenged in revisional jurisdiction of this Court/or u/s 482 Cr. P.C. or preventive detention case.

10. In *Narayan Roy v. Ishwar Lal* 1965 SC 1818 there is authorative pronouncement of the Supreme Court laying down the distinction between the various proceedings instituted in the High Court in respect of original or appellate jurisdiction. This may properly be classified into (1) proceedings civil (2) proceeding criminal and (3) proceeding revenue. This distinction no doubt was laid down while interpreting A (sic) 133(1)(c) and Article 132(1) of the Constitution of India. The decision of the Supreme Court however is very important in understanding the clear cut distinction between civil, criminal and revenue proceedings. Shah J, speaking for the Constitution of Bench observed:

The expression "civil proceeding" is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in

which a party asserts the existence of a civil right conferred by the civil law or by statute and claims relief for breach thereof. A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentence such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order or orders aimed at preventing vagrancy are contemplated to be passed. But the whole are of proceedings, which reach the High Court is not exhausted by classifying the proceedings as civil and criminal. There are certain proceedings which may be regarded as neither civil nor criminal. For instance, proceeding for contempt of Court, and for exercise of disciplinary jurisdiction against lawyers or other professionals, such as Chartered Accountants may not fall within the classification of proceedings, civil or criminal. But there is no warrant for the view that from the category of civil proceedings, it was intended to exclude proceedings relating to or which seek relief against enforcement of taxation statute is to collect revenue for the governance of the State or for providing specific services and such laws directly affect the civil rights of the tax-payer. If a person is called upon to pay tax which the State is not competent to levy, or which is not imposed in accordance with the law which permits imposition of the tax, or in the levy, assessment and collection of which rights of tax payer are infringed in a manner not warranted by the statute, a proceeding to obtain relief whether it is from the tribunal set up by the taxing statute, or from the civil court would be regarded as a civil proceeding. The character of the proceeding, in our judgment, depends not upon the nature of the tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed. A civil proceeding is therefore one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State and which if the claim is proved would result in the declaration express or implied of the right claimed and relief such as payment of debt, damages, compensation, delivery of specify property, enforcement of personal rights, determination of statutes etc.

11. By a petition for a writ under Art.226 of the Constitution the extraordinary jurisdiction of the High Court to issue high prerogative writs for grant of relief in special cases, to persons aggrieved by an action of authorities statutory of public officers is invoked. This jurisdiction is undoubtedly special and exclusive, but on that account the nature of the proceeding in which it is exercised is not altered. Where a revenue authority seeks to levy tax or threatens action in purported exercise of powers conferred by an Act relating to revenue, the primary impact of such an act or threat is on the civil rights of the party aggrieved and when relief is claimed in that behalf it is a civil proceeding, even if the relief is claimed not in a suit but be resort to the extraordinary jurisdiction of the High Court to issue writs.

12. In *Arbind Kumar Singh Vs. Nand Kishore Prasad and Others*, it was held that

civil proceedings are all proceedings which directly affect civil rights.

13. On the merits of the case the learned Counsel the petitioner has not been able to show that the impugned order was passed without jurisdiction. Learned Counsel only challenges, imposition of penalty on the ground that there was no sufficient material before the third respondent to reject the documents filed by the petitioner at the time of inspection. In other words the petitioner has challenged the conclusion of the authority in imposing penalty. It is well settled that in such a situation writ court will not exercise its jurisdiction to interfere with the order of the taxing authority against which the assessee has right of appeal as in the instant case. In *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, relied upon by learned Government Advocate it was held by the Hon"ble Supreme Court in a case more or less of the present nature that Orissa Sales Tax Act provided adequate safeguard against arbitrary and unjust assessment. The petitioner had a right to prefer an appeal subject to payment of admitted amount of tax. The petitioner had also remedy to apply for stay of recovery to the Commissioner of Sales Tax. The Bihar Finance Act similarly provided for a complete machinery to challenge the order of imposition of penalty and the impugned orders can only be challenged by the mode prescribed under the Act and not by petition under Article 226 of the Constitution of India. It is now well recognised where rights or liability created by statute gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. It is no doubt true that in the exceptional cases order of imposition of penalty can be attacked without availing the alternative remedy and this case, in my opinion, is not of that category.

14. This application is accordingly dismissed in limine. Let a copy of this order be sent to the Registrar of High Court to be placed before the Hon"ble Chief Justice for consideration whether Rule III of Chapter XXI-C of the Patna High Court should be amended in the light of the decision of the Supreme Court.

Surinder Sarup, J.

15. I agree.