

(1954) 02 MAD CK 0027
In the Madras High Court

CHAPARALA KRISHNA BRAHMAM

APPELLANT

Vs

GUDURU GOVARDHANAIAH. FEBRUARY 3, 1954.

RESPONDENT

Date of Decision : 03-02-1954

Acts Referred:

Penal Code, 1860 (IPC) — Section 467, 471

Citation : (1953) 23 ITR 407 : (1954) 2 MLJ 332

Judgement

The petitioner is the first accused in P. R. C. Nos. 1 and 2 of 1953 and C. C. No. 8 1953 on the file of the Stipendiary 1 Class Magistrate, Guntur. The complainant in all these cases is one Guduru Govardhanaiah who was a partner of the accused in a firm called Chaparala Krishna Brahman & Co., Guntur. The substance of the allegations made by the complainant in P. R. C. No. 1 of 1953 is this. The partners in the firm fell out and there was litigation between them in the civil courts in Guntur. With a view to cause loss to the complainant the accused prepared false accounts. He also filed before the Income Tax Officer a form bearing the date 4th February, 1952, for the renewal of the registration of the firm. That form is a forged one. In order to fasten responsibility for his false accounts and also liability to Income Tax on P. W. 1 and the complainant, the accused probably antedated some renewal form, signatures on which of the complainant and P. W. 1 may have been obtained by the accused in 1949 or 1950 before the partners fell out; he wanted to cheat all concerned. The accused thus committed offences under Sections 467, 471 and 420 of the Indian Penal Code.

In the complaint in P. R. C. No. 2 of 1953 it was alleged inter alia :

"The accused wanted to alter the accounts so that certain amounts representing profits may appear as borrowings from the company, the alleged persons advanced being the kith and kin of the accused."

Besides, taking advantage of the circumstance that the accused happened to be the president of the Marketing Society, he diverted the funds illegally and manipulated the accounts in order to make it appear that the amounts owing to the Marketing Society were due to his relations and others and got the

manipulated accounts filed before the Income Tax Officer.

"Incidentally by making his relations appear as creditors, the accused could deprive the firm partners of their due share of profits and deceive the Income Tax department."

Thus the accused forged and falsified accounts with a view to obtain reduction of the Income Tax payable to Government, to safeguard himself from prosecution by the co-operative department for advancing the moneys of the Marketing Society and, to make it appear that amounts which were really profits were debts owing by the firm. He thus committed offences under Sections 467, 471, 477-A and 420, Indian Penal Code.

The substance of the complaint in C. C. No. 8 of 1953 is that in respect of three cheques which were received by the firm.

"Accused 1 represented that the amount would be credited to the firm account in the Indian Bank and believing the same, complainant endorsed the cheques in blank as desired by accused 1. Accused 1 subsequently in collusion with his clerk accused 2, got all the amounts credited to his personal account and not the firm account..... Thus the accused being merchants, and agents of the firm and being entrusted with cheque amounts to a tune of Rs. 9,178-7-6 for the purpose of crediting the same to the firm account committed criminal breach of trust by getting the same credited to accused 1s personal account..... In collusion with accused 2, accused 1 got certain alterations also made in two cheques."

The first accused also filed a suit - O. S. No. 198 of 1951 - before the Principal Subordinate Judge, Guntur. Thus the accused are liable u/s 409 and 420, Indian Penal Code.

Before the Magistrate the accused took the preliminary objection that the complaints attracted the provisions of Section 195(1)(b) or (c) of the Criminal Procedure Code, and that, in the absence of a complaint by the Income Tax Officer in P. R. C. No. 1 of 1953, by the Income Tax Officer or the Deputy Registrar of Co-operative Societies in P. R. C. No. 2 of 1953 and by the Subordinate Judge, Guntur, in C. C. No. 8 of 1953, the Magistrate had no jurisdiction to proceed with the matter. The learned Magistrate overruled the objections and the first accused now seeks to canvass the correctness of that order in these petitions.

So far as C. C. No. 8 of 1953 is concerned, it is impossible to see why any complaint by the Principal Subordinate Judge was necessary. No doubt it is alleged in the complaint that not being content with having committed criminal breach of trust and cheated the firm in respect of the amounts involved in three cheques, the first accused filed a suit against the complainant, P. W. 1 and the second accused in O. S. No. 198 of 1951, Sub-Court, Guntur, in order to recover Rs. 20,000 from the complainant. That suit was admittedly filed after, according to the complainant, the accused had committed offences u/s 409 and 420, Indian

Penal Code. These offences were not committed in connection with any proceeding in any court, and it is impossible to understand why any complaint by the Sub-Judge is necessary.

So far as P. R. C. Nos. 1 and 2 of 1953 are concerned, the question whether a complaint by the Income Tax Officer is necessary or not depends upon whether he is a Court within the meaning of Section 195, Criminal Procedure Code. In respect of the objection taken before the Magistrate that a complaint by the Deputy Registrar was necessary, no attempt was made to substantiate that objection because it is impossible to say that a Deputy Registrar of Co-operative Societies is a Court within the meaning of Section 195, Criminal Procedure Code.

Mr. Jayarama Aiyar, the learned advocate for the petitioner, argued the question whether an Income Tax Officer is a Court very exhaustively and I shall examine his contentions seriatim. (I am however not taking up his arguments in the same sequence in which he advanced them). Section 195, Criminal Procedure Code, so far as it is now material, enacts,

"(1) No court shall take cognizance -

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(c) of any offence described in Section 463 or punishable u/s 471, Section 475 or Section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such court, or of some other court to which such court is subordinate.

(2) In clauses (b) and (c) of sub-section (1), the term court includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877."

In the Code of 1872 the word "court" was defined as including a civil or criminal court. In the Code of 1882 this was altered and the words "any court" was substituted. In 1898 the term "court" was defined as "meaning" a civil, revenue or criminal court. By the amendment made in 1923 the word "means" was deleted and in its place the word "includes" was substituted. The result of this amendment made in 1923 is said by Mr. Jayarama Aiyar, substantially to restore the position as it stood in 1882. If, therefore, it can be shown, continued Mr. Jayarama Aiyar, that the Income Tax Officer is a Court, even though he may not fall within the conventional categories of a civil court, a revenue court or a criminal court, the prohibition laid down in Section 195(1), Criminal Procedure Code, would be attracted and the present complaints would be incompetent.

In respect of this argument one may agree - without necessarily committing oneself to the position that the amendment made in 1923 restored the position

to what it was in 1882 - that if the Income Tax Officer is a Court a complaint by him is necessary. The question, however, remains whether he is a Court.

Mr. Jayarama Aiyar proceeded : Section 3 of the Evidence Act defines the word "Court" in these terms :

"Court includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence."

Section 37 of the Income Tax Act confers on the Income Tax Officer the powers of a civil court when trying a suit to enforce the attendance of any person and to examine him on oath. He has also the power to compel the production of documents and to issue commissions for the examination of witnesses. An Income Tax Officer is therefore a Court within the meaning of the Evidence Act. The Evidence Act, the Penal Code and the Criminal Procedure Code all form part of one series, and it is perfectly legitimate to transfer to the Criminal Procedure Code the definition of the word "Court" appearing in the Evidence Act.

In *Atchayya v. Gangayya* [1892] 15 Mad. 138 the meaning of the word "Court" was examined. On page 148 Parker, J., observed :

"The word Court in Section 195 is used strictly with reference to offence of fabrication of evidence and of documents used in evidence, and, therefore, it seems not unreasonable to hold that the term is used - like the term evidence - in the same sense as in the Indian Evidence Act."

It seems to me that there is a fallacy in this reasoning of Mr. Jayarama Aiyar. No doubt when we have to ascertain what a particular word used in a statute means, as also the scope of its content, it would be legitimate to examine the sense in which it is used in other enactments. Therefore when we have to construe the word "Court" in the Criminal Procedure Code it would not be improper to look into the Evidence Act and try to find out in what sense the word is used in that Act. And, if the context and the circumstances justify it one may assume that the word is used in the same sense-but not otherwise. I can see no warrant whatsoever for the general assumption that the word "Court" in the Criminal Procedure Code is used in the same sense in which it is used in the Evidence Act. For, after all, the Evidence Act is not the General Clauses Act. I may further observe that the word "Court" is not used in the same sense throughout even in the Criminal Procedure Code. The observations of Parker, J., must be understood in the context in which he made them. He had in mind the giving of false evidence which could only be done before a person legally authorised to take evidence.

Mr. Jayarama Aiyar further argued : "Judicial Proceeding" is defined in Section 4(1)(m) of the Criminal Procedure Code as including "any proceeding in the course of which evidence is or may be legally taken on oath". In respect of the proceeding before him the Income Tax Officer may legally take evidence on oath. The proceeding before him is a judicial proceeding. There can be no judicial

proceeding except in a Court; the Income Tax Officer is therefore a Court.

The argument is dexterous, but none the less fallacious because for one thing it uses the expression "judicial proceeding" in really two different sense; moreover it involves the assumption that evidence cannot be legally taken on oath excepting by a Court; but that is not so. A Tahsildar for instance can take evidence on oath in connection with various enquiries affecting the land revenue and the general administration but it cannot be claimed that when he is making such enquiries he is a Court.

Mr. Jayarama Aiyar next made an exhaustive review of the case law on the subject. He began with the decision in *In re Venkatachala I. L. R.* [1887] Mad. 154, where it was held that a Sub-Registrar acting u/s 41 of the Registration Act is a court within the meaning of Section 195, Criminal Procedure Code. The learned Judges observed :

"Section 6 of the Criminal Procedure Code clearly contemplates the existence of courts constituted under other laws, and the Legislature has seen fit to use the general expression court in preference to the more restricted description court of justice. A Sub-Registrar is legally authorised to take evidence under Part VIII of the Indian Registration Act for the purpose of satisfying himself upon certain points, and he is, therefore, when acting u/s 41, Act III of 1877, a Court within the meaning of the Indian Evidence Act."

On this decision the observation may be made that when acting u/s 41(2) a Registrar has to decide certain questions substantially in the same manner in which an ordinary civil court decides the question. The nature of the duties he performs u/s 41(2) bears a very close analogy to the nature of the duties discharged by an ordinary civil court.

In *Queen Empress v. Subba I. L. R.* [1888] Mad. 3 it was held that a Sub-Registrar acting u/s 34 of the Registration Act of 1877 was not a "court". In *Queen Empress v. Vythilinga I. L. R.* [188] Mad. 500 it was held that the sanction of the Sub-Registrar was not necessary in respect of a prosecution for the forgery of a document presented to him for registration.

In *Queen Empress v. Sobhanadri I. L. R.* [1889] Mad. 201 the decision in *Queen Empress v. Subba I. L. R.* [1888] Mad. 3 was followed and it was held that the sanction of the Sub-Registrar was not necessary for a prosecution for forgery of a document presented to him for registration. In the course of the judgment an attempt was made to reconcile the earlier cases. The case in *Atchayya v. Gangayya I. L. R.* [1892] Mad. 138 has already been referred to. There it was held that a Registrar, acting u/s 72 to 75 of the Registration Act, is a Court for the purposes of Section 195, Criminal Procedure Code. One can have no difficulty in following the reasoning in that decision. When a document is presented for registration, and its execution is denied, the Sub-Registrar is bound to refuse registration. The party affected by the refusal can go to the District Registrar who is empowered to hold an enquiry into the question whether the document was

actually executed by the person by whom it is alleged to have been. The subject matter of the enquiry that he makes, the procedure he adopts and the decision he gives are all in their essential features indistinguishable from those of an ordinary civil court. It is however unnecessary to go further into this aspect of the matter because the last part of Section 195(2) of the Code as it now stands very explicitly states that the word "court" does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.

In *re Nataraja Iyer I. L. R.* [1913] Mad. 72 was a case under the Income Tax Act, 1886. Under that Act an appeal lay to the Revenue Divisional Officer from an assessment to Income Tax and it was held that when he was hearing an appeal against an assessment the Divisional Officer was a "court". To the same effect is the Full Bench decision in *In re Punamchand Maneklal* [1936] 38 Bom. 642 the learned Judge observed :

"He (the Income Tax Officer) is empowered to summon witnesses, to take evidence and under the Oaths Act he consequently may administer an oath. I cannot myself believe that if giving false evidence on oath to an Income Tax Collector is an offence u/s 193. Indian Penal Code, and it is declared to be such an offence by Section 37 of the Income Tax Act, no sanction should be required to prosecute such a person for giving false evidence, whereas sanction is required if the evidence is given, say for example, before a Magistrate or a Sub-Judge. It seems to me that the purpose of these provisions in Section 195 are that when false evidence is alleged to be given on oath, the prosecution shall not proceed without a sanction, and that the Code intends to make no distinction whatever between different cases provided that the oath may properly be administered and that the evidence may be taken."

In *Bashambar Nath v. Amlak Ram & Co.* A. I. R. 1933 Lah. 214, it was held that an Income Tax Officer is a "tribunal" within the meaning of Section 135 (2), Civil Procedure Code, and that a person who was on his way to appear before the Income Tax Officer in compliance with a notice issued to him u/s 23(2) of the Income Tax Act was then exempt from arrest.

In respect of the first two of these decisions I would make two observations; One is that they were given under the Income Tax Act, 1886, and that the scheme of that Act is entirely different from the scheme of the present Act. The other is that even if it can be properly held that an officer belonging to the Income Tax Department is a "court" when he hears appeals against assessments made by a subordinate officer, it does not follow that the officer making the assessment in the first instance is himself a "court". As regards the third of the cases referred to above it seems sufficient to say that the words "tribunal" and "court" are not inter-changeable.

Mr. Jayarama Aiyar next referred to a case reported in *Mahabaleswarappa v. Gopalaswami Mudaliar* [1935] M. W. N. CrL. 25, where it was laid down that an election commissioner is a "court". On page 30 the following passage appears :

"In England too, the question what is a court has been answered, not by reference to any formal definitions or hard-and-fast system of classification but by analysing the functions and procedure of the tribunal under scrutiny. The term is restricted to such tribunals as exercise jurisdiction over persons by reason of the sanction of the law, and not merely by reason of voluntary submission to such jurisdiction..... To summarise the effect of these decisions, it would seem that we have to look not to the source of a tribunals authority or to any peculiarity in the method adopted of creating it, (though it is undoubtedly a consideration that it derives its powers mediately or immediately from the Crown) but to the general character of its powers and activities. If it has power to regulate legal rights by the delivery of definitive judgments, and to enforce its orders by legal sanctions, and if its procedure is judicial in character in such matters as the taking of evidence and the administration of the oath, then it is a court. Not only do the powers and procedure of an election commissioner respond to these tests, but there is no other test applicable to an undoubted court which they fail to satisfy. In all these respects the one court is indistinguishable from the other."

Mr. Jayarama Aiyar then endeavoured to analyse the functions and duties of an Income Tax Officer and went on to point out that the rules framed u/s 26A of the Act require that the application referred to therein shall be in the form of a verified petition. He remarked that an Income Tax Officer has a right to give a decision in respect of a valuable civil right on an application made to him under that section and that in connection therewith he has power to enforce the attendance of witnesses and to examine them on oath, to compel the production of documents and also be power to issue commissions. From the decision of the Income Tax Officer a right of appeal is provided for u/s 30 of the Act. He has therefore not merely the formal trapping but also the real authority and duties of a court.

There are difficulties in this reasoning. To have the power to compel witnesses to appear and to examine them on oath, to have the power to compel the production of documents and to have the power to issue commissions, are not sufficient to constitute the officer on whom such powers are conferred into a "court". Again, the fact that a right of appeal is provided for is not conclusive either. From various orders, which are undoubtedly administrative in their character, appeals are provided for in numerous statutes. That the decision which the officer may give may affect a civil right is again not decisive. One cannot do better than refer to the oft-quoted case reported in *Shell Co. of Australia v. Federal Commissioner of Taxation* [1931] A. C. 275. their Lordships observed :

"In that connection it may be useful to enumerate some negative propositions on this subject : (1) A tribunal is not necessarily a court in this strict sense because it gives a final decisions, (2) Nor because it hears witnesses on oath, (3) Nor because two or more contending parties appear before it between whom it has to decide, (4) Nor because it gives decisions which affect the rights of subjects, (5)

Nor because there is an appeal to a court, (6) Nor because it is a body to which a matter is referred by another body."

When exercising his powers under Chapter IV of the Act, it seems to me, that the Income Tax Officer is acting in a purely administrative capacity. It is his duty to ascertain what the income of the particular individual is and what amount of tax he should be required to pay. There is therefore no lis whatever before him. One circumstance seems to me to be of special importance in this connection. Section 23(4) enables the Income Tax Officer to make an assessment to the best of his judgment if the assessee fails to make a return required by the relevant notice, or fails to comply with the terms of various other notices. The Act provides,

"the Income Tax Officer shall make the assessment to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment, and....."

This is the sort of thing that a court would never think of doing. That the duties of an Income Tax Officer when making an assessment are really administrative in character and not judicial is made clear at page 295 in *Shell Co. of Australia v. Federal Commissioner of Taxation* [1931] A. C. 275. where their Lordships quote from the judgment of Starke, J. :

"Now, the Commissioner causes assessments to be made for the purpose of ascertaining the taxable income upon which Income Tax shall be levied. His function is to ascertain the amount of income, upon which the tax is imposed. That does not, in my opinion, involve any exercise of the judicial power of the Commonwealth; it is an administrative function."

The following passage at page 526 of Vol. VIII, 2nd edn. of Halsburys Laws of England is also of interest :

"Many bodies are not courts, although they have to decide questions, and in so doing have to act judicially, in the sense that the proceedings must be conducted with fairness and impartiality, such that the proceedings must be conducted with fairness and impartiality, such as assessment committees, guardians, committees, the court of referees constituted under the Unemployment Insurance Acts to decide claims made on the insurance funds....."

When dealing with an application for the registration of a firm the Income Tax Officer is merely discharging a duty incidental to his main function of ascertaining what Income Tax the individuals before him are liable to pay and that is clearly an administrative function.

Section 37 of the Income Tax Act concludes with these words : "any proceeding before an Income Tax officer, under this Chapter shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for purposes of Section 196 of the Indian Penal Code."

It would have been needless to enact this provision unless the Legislature

considered that but for such provision the proceedings before the Income Tax Officer would not be judicial proceedings. Even this provision more definitely implies that the proceedings before the Income Tax Officer are not judicial proceedings except for the purposes specified. The effect of the provision is to make it plain that if a person gives false evidence or fabricates false evidence or insults an Income Tax Officer when he is discharging his duties, he is liable to be dealt with in the same way as if he had committed these acts in an ordinary court. It will be noticed that the expression "judicial proceeding" appearing in Section 37 of the Income Tax Act is placed within quotation marks obviously because it was taken from Section 193 of the Indian Penal Code and it was desired to make that manifest.

Reference may now be made to the case in *Lalmohan Poddar v. Emperor* (1928) 55 Cal. 423 the learned Judges say, "As we read Section 37 (of the Income Tax Act) it seems to us to be clear that the Legislature has for the purpose of punishing offences under Sections 193 and 228 of the Indian Penal Code (and under no others) converted proceedings before the officers mentioned therein which are not judicial proceedings ordinarily, into judicial proceedings..... Therefore, having regard to the terms of Section 37, it cannot be said that the proceedings which took place before the Additional Income Tax Officer on the production of the account books on the two dates referred to above were judicial proceedings."

Finally, it remains to refer to the decision given by a Bench of this Court in Writ Petition No. 687 of 1951 on 18th December, 1953, Since reported as *R.M. Seshadri Vs. Second Addl. Income Tax Officer, Salaries Circle, Madras and Another*, . where it was held that the Appellate Income Tax Tribunal is not a court. If that is so it must be even more manifest that an Income Tax Officer cannot be a court.

In the result, I hold that the decision of the learned magistrate is correct. These petitions are therefore dismissed.

Petitions dismissed.