(1971) 03 KAR CK 0026

In the Karnataka High Court

Case No : Writ Petition No''s. 3085, 3088 and 3094 of 1970

Harikisandas Gulabdas and Sons and Another — APPELLANT

Vs

The State of Mysore and Another — RESPONDENT

Date of Decision : 05-03-1971

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 165
Madras General Sales Tax Act, 1939 — Section 41 (2), 41 (3)
Mysore Sales Tax Act, 1957 — Section 28, 28 (1)

Citation : (1971) 27 STC 434

Hon'ble Judges : Jagannatha Shetty, J;G.K. Govinda Bhat, J

Bench : Division Bench

Advocate : B.P. Gandhi, for the Appellant; H.K. Vasudeva Reddy, High Court Government Pleader, for the Respondent

Judgement

Jagannatha Shetty, J.—These two petitions under article 226 of the Constitution raise common questions of law and will be dealt with together. We shall give the facts in W.P. No. 3088 of 1970 in order to understand the questions that fall to be decided.

2. The petitioner is an assessee under the Mysore Sales Tax Act, 1957 (hereinafter referred to as the Act). His case was that on 27th December, 1969, the Commercial Tax Officer-II, Intelligence Branch, who is the second respondent, along with his staff raided the business premises of the petitioner and took possession of some books of accounts and other documents by taking a signed statement from one of the partners of the petitioner-firm wherein it was made to appear that those books of accounts and other documents were voluntarily handed over to the second respondent for the purpose of verification and return. This was followed by a show cause notice dated 20th March, 1970, as per annexure B, from the second respondent, which is in these terms :-

"SHOW CAUSE NOTICE :

You are aware that your business premises was inspected by the undersigned on

27-12-1969 and a few katcha books and loose slips of paper were secured for cross verification and these books were verified in your presence on 5-1-1970 and again on 25-1-1970, and, on examination of the books it was revealed that the following items as per the exhibits are not traceable in your books. The details are furnished below separately. Further, you had stock of gold articles, ribbons, one wrist watch, scooter bearing and you have not produced invoices for all these items and yet you argue that they were purchased for use.

In the absence of documentary evidence it is now proposed to treat the entire turnover of Rs. 55,837.28 by way of sales and a sum of Rs. 5,374.40 by way of purchases for the year 1969-70 as clear suppression of turnover. Before taking prosecution proceedings in a court of law, I give you an opportunity for signifying your willingness for departmental composition should you so desire within seven days from the date of receipt of this notice, failing which action as per law will be taken against you.

Sd./- .... (A. M. Abdul Basheer), Commercial Tax Officer-II (Intelligence).

* * * *."

3. The petitioner in its reply letter dated 14th April, 1970, contended that the seizure of books and other documents on 27th December, 1969, was wholly illegal and without jurisdiction and demanded the return of the same by dropping the proceedings against it. It also sent a reminder dated 1st July, 1970, repeating its above requests. When all its attempts failed, these writ petitions were preferred on 30th July, 1970, praying for the issue of a mandamus to the second respondent to produce the books of accounts and documents illegally seized from it and all notes made therefrom to this court and the petitioner also prays that they may be handed over to it. The petitioner has also prayed for a writ of certiorari to quash the entire proceedings before the second respondent, culminating in the issue of the show cause notice dated 20th March, 1970. Besides, there is also a prayer for an injunction restraining the second respondent from disclosing the information gathered from the books of accounts and other documents seized and from making use thereof.

4. We may now turn to the case made out by the second respondent. In his counter-affidavit he states that the petitioner voluntarily made available all the books and documents for him, when he visited the premises on 27th December, 1969, for inspection, with on intention to search and seize the documents. He further states that his said visit was in the exercise of the powers conferred on him u/s 28 of the Act. He also justifies the proceedings taken by him against the petitioner.

5. Since the second respondent sought to support his action u/s 28 of the Act, it would be useful to extract below the relevant portion of it :

"28. Powers to order production of accounts and powers of entry, inspection and seizure. - (1) Any officer empowered by the State Government in this behalf may, for the purpose of this Act, require any dealer carrying on business in any kind of goods to produce before him the accounts and other documents, and to furnish any information relating to the stocks of goods of, or purchases, sales and deliveries of goods by the dealer and also any other information relating to his business.

(2)(i) All accounts and registers maintained by dealers in the ordinary course of their business and documents relating to the stock of goods of, or purchases, sales and deliveries of goods by any dealer, the goods in their possession and their officers, shop, godowns, vessels, receptacles or vehicles, shall be open to inspection at all reasonable times by such officers as may be authorised in this behalf.

(ii) For the purpose of inspection referred to in clause (i), any such officer shall have power to enter and search any office, shop, godown, vessel, receptable, vehicle, or any other place of business or any building or place where such officer has reason to believe that the dealer keeps, or is for the time being keeping, any accounts, registers or documents of his business :

Provided that no residential accommodation (not being a place of business-cum-residence) shall be entered into and searched by such officer except on the authority of a search warrant issued by a Magistrate having jurisdiction over the area, and all searches under this sub-section shall, so far as may be, be made in accordance with the provisions of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898).

* * * *"

6. In sub-section (1), the dealer is required to produce his accounts etc., and furnish any information relating to his business. Sub-section (2) provides that all accounts and registers etc., maintained by dealers shall be open to inspection. This shops, godowns etc., shall also be open for inspection. It also states that the authorised inspecting officers shall have power to enter and search any office, shop, godown, vessel, receptacle, vehicle or any other place of business or any building where such officer has reason to believe that the dealer keeps any accounts etc., of his business. As the power to search the business premises or residential accommodation has been given to officers of the department, it is imperative as the proviso clearly lays down, that all searches under the said sub-section shall be in accordance with the provision of the Code of Criminal Procedure. In other words, the provisions contained in the Code of Criminal Procedure relating to searches and seizures would be applicable mutatis mutandis to searches and seizures made under sub-section (2).

7. We shall now proceed to consider to what extent the second respondent has been able to satisfy the court that he did not search the business premises of the petitioners and seize the accounts and other documents but that they were handed over to him voluntarily by the partner of the petitioner-firm when he

visited the premises for the purpose of inspection and verification of accounts. Except the statement as per annexure A dated 27th December, 1969, there is nothing else to support his case. That statement was not written by its signatory. It was either written by the second respondent or to his dictation. The signatory states in his affidavit that he objected to the illegal search and seizure made by the second respondent but he was coerced and made to sign the said statement. Apart from that, there are many other circumstances in the case which establish that the accounts and other documents were not voluntarily handed over by him. The petitioner was not on the file of the second respondent for the purpose of the assessment proceedings. It was borne on the file of the Commercial Tax Officer, VII Circle, Bangalore-2, who was the jurisdictional officer. The second respondent is an officer in the intelligence branch of the department who of course has been specially empowered to perform the functions under the Act. But he had never called upon the petitioner, as required under sub-section (1) of section 28, to produce before him the accounts and other documents or to furnish any information relating to sales or purchases of its business. If his intention was to inspect and verify the accounts of the petitioner, he would have called for the required accounts and other registers, He did not even inform the petitioner that he would be visiting its premises. He gave a surprise visit along with his staff, and there he searched and seized some accounts and other documents without following the procedure prescribed under the Code of Criminal Procedure. If his intention was only to verify the accounts, it was unnecessary for him to go to the premises of the petitioner. We have no doubt that he went and searched the business premises of the petitioner and illegally seized the accounts and other documents, but made it appear that they were voluntarily given to him.

8. Our conclusion is further strengthened by the subsequent exchange of letters between the parties. The petitioner wrote a letter dated 14th April, 1970, as per annexure C and again on 2nd July, 1970, as per annexure D stating that the second respondent had illegally searched its premises and seized the books and other documents on 27th December, 1969, and demanding the return of the same forthwith. No reply was sent denying those averments. The petitioner thereafter filed the writ petition and obtained an interim order from this court pursuant to which some documents were returned to it by the second respondent.

9. From the above-stated circumstances, we are clearly of the opinion that what the second respondent did on 27th December, 1969, was wholly illegal and unauthorised. We cannot but observe that it is highly unbecoming of the officers of the department to conduct illegal search and seize documents or accounts and make it appear that they are voluntarily handed over to them. The parties against whom search is to be conducted are entitled to the protection given under the provisions contained in Chapter VII and in particular of those in section 165 of the Code of Criminal Procedure. Any attempt to circumvent those provisions by the authorised officers should not be permitted as it is a serious invasion upon the rights, privacy and freedom of the citizens of India. The power of search must be exercised strictly in accordance with law and no deviation

should be tolerated.

10. This takes us to the question as to what order should be passed in these writ petitions. Mr. Gandhi, learned counsel for the petitioners did not press for the relief of injunction restraining the second respondent from disclosing the information gathered by him from the books of accounts and other documents seized and making use thereof. It is therefore, unnecessary for us to consider the necessity of granting that relief. Mr. Gandhi, however, contended that the search and seizure being illegal and unauthorised, the petitioners are entitled to the return of the seized accounts, documents and all notes made therefrom, by the second respondent or any other officials. He also urged that the proceedings taken in pursuance of the illegal search should be quashed.

11. Mr. Vasudeva Reddy, learned High Court Government Pleader, contended that the petitioners are not entitled to the return of the copies and notes made from the seized accounts and documents. According to him, though the search and seizure are illegal, the second respondent is entitled to make copies of the accounts and retain them.

12. We are not inclined to accept this contention. If the search is illegal, anything recovered therefrom must be returned to its owner. In other words, there should be a complete restoration of the property including the copies and notes, if any, made by the second respondent. To permit the second respondent to retain the copies or notes made from the accounts and documents seized under an illegal search, would be an abuse of the process of law. If that is permitted, the officers concerned could resort to illegal searches, make copies of the documents seized and retain them with impunity and return the original when demanded. That would be defeating the very purpose for which the provisions relating to search and seizure are made and the safeguards provided against the illegal searches. We do not think that such a practice should be permitted in our system of law.

13. Mr. Gandhi referred to us the decision of the Madras High Court in Shri Ramkishan Srikishan Jhaver v. Commissioner of Commercial Taxes [1965] 16 STC 708 , where a prayer milar to the one in these cases was granted. In that case, the High Court holding, among other grounds, that the search was illegal, directed that the documents, things and goods covered by the petitions should be returned to the petitioners along with photographs, negatives, translations and notes made by the department from the accounts etc. This final order was affirmed by the Supreme Court in the appeal in Commissioner of Commercial Taxes and Others Vs. Ramkishan Shrikishan Jhaver and Others, though the Supreme Court did not agree with the interpretation of the High Court on sub-section (2) and (3) of section 41 of the Madras General Sales Tax Act.

14. Since the said search and seizure are illegal, the proceedings taken against the petitioners in pursuance of the illegal search must also be quashed.

15. For the reasons stated above, these writ petitions are allowed with costs. We issue a direction to the second respondent to return to the petitioners all

accounts and documents seized by him on 10th December, 1969, and 27th December, 1969, along with the copies and notes, if any, made therefrom. We further issue a writ in the nature of certiorari quashing the entire proceedings which culminated in the issue of the show cause notices against the petitioners dated 2nd February, 1970, and 20th March, 1970 (annexure B to both the petitions). Advocate''s fee Rs. 100 one set.

16. Petitions allowed.