(1951) 08 MAD CK 0015

In the Madras High Court

Case No : Criminal Revision Case No. 1370 of 1950 and Criminal Revision Petition No. 1296 of 1950

In Re: Mariyala Venkateswara Rao

Date of Decision : 29-08-1951

Acts Referred:
Madras General Sales Tax Act, 1939 — Section 14(2), 15
Tamil Nadu General Sales Tax Rules, 1959 — Rule 24

Citation : AIR 1952 Mad 72 : (1952) 1 MLJ 14

Hon'ble Judges : Panchapakesa Ayyar, J

Bench : Single Bench

Advocate : Assistant Public Prosecutor, K.S. Jayarama Iyer, for C.K. Venkatanarasimham, for the Appellant;

Judgement

Panchapakesa Ayyar, J.—This is a petition by one Miriyala Venkateswara Rao against his conviction, u/s 15 (c) of the Madras General

Sales tax Act, by the Additional First Class Magistrate, Gannavaram at Vijayawada, and sentence of fine of Rs. 50, for alleged prevention or

obstruction of the Assistant Commercial Tax Officer, Nuzvid, from checking his registers and goods u/s 14 (2) of the Madras General Sales-tax

Act.

2. The facts are briefly these: On 13-1-1950, a Friday and admittedly a shop-closing day for the petitioner''s shop, under the Shops and

Establishments Act, the petitioner was said to have sold a shawl (not controlled article) for Rs. 22-5-6 to P. W. 4 and refused to give him a bill.

Thereupon, at the instigation of P. W. 2, an enemy of the petitioner, P. W. 4 gave a report,. Ex. P-l, to the Assistant Commercial Tax Officer,

Nuzvid. On receipt of the report, P. W. 1 went to the shop of the petitioner at about 2-30 p.m. ''that very day'' with a view to examine the accounts and registers maintained by the petitioner and verify his cash and stock, presumably u/s 14 (2) of the Madras General Sales Tax Act and

in order to see if the petitioner was evading any sales tax by not entering this sale in his bills, book and other accounts, day book and ledger. The

petitioner placed his bill books before the Assistant Commercial Tax Officer for scrutiny. P. W. 1 perused them and initialled in them. When asked

to produce the cash for the sales made that day (P. W. 1 admitted that money was not ''goods'' which could be inspected by him), the petitioner

stated that there were no sales that day, as it was a ''holiday''. Then the petitioner took out some currency notes and red papers from a small

wooden box ''by the side of the cash box'' (it will be noted that he did ''not'' take them from the cash-box) and put them in his pocket. The

Assistant Commercial Tax Officer demanded the production of those papers, and cash, but the petitioner said that they related to his ''personal

matters'' and private affairs, and had nothing to do with the business, and refused to produce them. The Assistant Commercial Tax Officer''s

repeated requests to the petitioner to produce them were in vain. So, P. W. 1 said that he wrote in one of the shop books that the petitioner

refused to produce the cash and some papers which he had removed from the wooden box. He then wrote out himself a statement, Ex. P. 2,

narrating that the petitioner took out some money and notes from a small box and put them in his pocket as they related to promissory notes and

miscellaneous accounts of his. P. W. 1 gave Ex. P. 2 to the petitioner for signing. The petitioner refused to sign that statement in spite of repeated

requests by P. W. 1 to him to do so. At that time P. W. 2, with whom the petitioner had enmity and misunderstandings, went there and suggested

to the Assistant Commercial Tax Officer to search the pocket of the petitioner and seize the papers and cash for verification, but the Assistant

Commercial Tax Officer did not fall in with this perverse suggestion of an enemy. The petitioner and P. W. 2 had a "" scuffle "" in the presence of P.

W. 1 for fifteen minutes. After that, P. W. 1 requested the petitioner again to sign the statement given to him. The petitioner again refused to do so,

even though he wrote in it that P. W. 1 had told him that Government had exempted that day from being a holiday. P. W. 1 took back the

statement and wrote therein that the petitioner refused to sign it. He did not say that the day was ''not'' a holiday. After that, he asked the petitioner to show him the stock of shawls in his shop, and the petitioner is stated to have refused to show the stock and to have asked him to get out of the

shop. The Assistant Commercial Tax Officer, apprehending that the situation might get worse, left the shop peacefully and returned to his own

office where he took statements from three witnesses (Anjayya, who was not examined on the ground that he had turned hostile; P. W. 3, P. W.

1''s own clerk, who admitted that he had bought cloth on credit from the petitioner for Rs. 10-14-9 and paid only Rs. 10 after some delay and

claimed to have been excused Rs. 0-14-9 though expressing readiness to pay it also; if demanded; and P. W. 5). These statements are Exs. P. 3,

P. 4 and P. 5, and they contain not a word about any request of the Assistant Commercial Tax Officer to the petitioner to show his stock of shawls

and his refusal to do so and his asking the Assistant Commercial Tax Officer to clear out of the shop. The Assistant Commercial Tax Officer made

a complaint to the Commercial Tax Officer who, after some enquiry, was responsible for laying this complaint against the petitioner u/s 14 (2) read

with Section 15 (c) of the Madras General Sales Tax Act, for preventing or obstructing the inspection by the Assistant Commercial Tax Officer of

the accounts and registers maintained by the petitioner in the ordinary course of his business and goods in his possession.

3. The learned Additional First Class Magistrate found that there was an omission in the statements, Exs. P. 3 to P. 5, regarding the Assistant

Commercial Tax Officer''s request to the petitioner for showing the stock of shawls and the petitioner''s refusal and direction to him to clear out of

the shop. But he stated that that was only a ''minor incident'', while the ''main offence'' was the refusal of the petitioner ''to produce the cash and

papers, which he had put into his pocket, from the wooden box, and which the Assistant Commercial Tax Officer suspected would contain the

sale proceeds of the shawl sold to P. W. 4. I may add that P. W. 4, the man who started the whole enquiry by the Assistant Commercial Tax

Officer, swore in cross-examination that the petitioner showed the stock of shawls to the Assistant Commercial Tax Officer and did not refuse to

allow him to verily the stock and that four shawls were found in the show case in the petitioner''s shop, and the Assistant Commercial Tax Officer

saw them all. His clumsy attempt, in re-examination and examination by Court, to back out of these admissions, sounded thin and unconvincing especially in view of the omission in the Exs. P. 3 and P. 5.

4. I have perused the records, and heard the learned counsel for the petitioner and the learned Assistant Public Prosecutor ''contra''. This is a very

curious case. The main grievance of the Assistant Commercial Tax Officer has become submerged in the course of the case and some collateral

matters have been relied on and have assumed great importance. The Assistant Commercial Tax Officer''s main object in going to the shop was to

enquire as to why the petitioner did not give a bill for the shawl alleged to have been bought by P. W. 4 that day from him for Rs. 22-5-6, and to

book an omission of sale and evasion of sales tax. But that, is not the subject of the charge and the learned Assistant Public Prosecutor frankly

conceded that there is no proof that P. W. 4 bought that shawl that day from the petitioner or was refused a bill for it, or that the petitioner had

omitted to enter a sale of shawl in his accounts or bill books or evaded any sales tax. Indeed, the evidence showed that P. W. 4 probably bought

the shawl in question from D. W. 3 a dealer in the same premises.

5. The next grievance of the Assistant Commercial Tax Officer was that the petitioner would not sign the statement ''prepared by him'' and said to

contain what the petitioner had told him. That statement is Ex. P. 2. I have looked into this statement. The lower Court was wrong in holding that

Rule 24 of the Madras General Sales Tax Rules, giving P. W. 1 a power to summon persons to ''give evidence before him'', empowered him to go

to the petitioner''s premises and prepare a statement himself incriminating the petitioner and compel him to sign it. The learned Assistant Public,

Prosecutor did not contend that the Assistant Commercial Tax Officer was given power ''under any law'', to prepare such a statement himself and

''compel'' a party to ''sign'' such a statement incriminating him, however slightly, ''against his ''will''. In my opinion, it is ''highly objectionable'' for

officers, like the Assistant Commercial Tax Officer, to ''prepare statements themselves'' and request for signatures from the parties whom they

want to charge-sheet later on relying on such statements as evidence. Even Magistrates authorised to record confessions have to observe many

formalities and administer many warnings and have to ''record what the party states'' and cannot prepare ''statements, themselves and ask the

parties to sign them''. So far as I know, no such power is given to any ''officer in this country'', under our law, least of all to Assistant Commercial

Tax Officers. It will be highly dangerous to the liberty of property of citizens if such statements prepared on the spot by Assistant Commercial Tax

Officers and others have to be signed by them. The misunderstanding that day between the Assistant Commercial Tax Officer and the petitioner

arose from the petitioner''s refusing to sign that statement in spite of repeated (and ''illegal'') requests by the Assistant Commercial Tax Officer. In

my opinion, that was probably even one of the causes for instituting this prosecution, let alone the encouragement of it by P. W. 2, the petitioner''s

enemy. This is the only prosecution u/s 15 (c) instituted by P. W. 1 according to him. Even that is not sustainable in the circumstances.

6. Now I come to the third point, namely, the Assistant Commercial Tax Officer''s requesting the petitioner to produce the cash and currency notes

and stray papers he took out from the wooden box by the side of the cash box (and having nothing to do with the cash box) and put in his pocket

in spite of the petitioner''s assurance that they related to his ''private'' affairs. Ex. P. 2 does not mention any such refusal. Nor would the refusal,

even if true, be culpable. The learned Assistant Public Prosecutor concedes that u/s 14 (2) of the Madras General Sales Tax Act, the Assistant

Commercial Tax Officer was only empowered to inspect ''the accounts and registers maintained by dealers like the petitioner in the ordinary

bourse of their, business'', and ''also the goods'' to their possession, and their offices and shops etc, ''at all reasonable times'', and that they are ''not

empowered to compel the production of private papers and cash'' thus confirming P. W. 1''s own admission in his deposition, ""Money is not goods

which can be inspected by me"". This is not an accidental slip, in Section 14 (2), but a deliberate omission by the legislature, so that the privacy of

the subject may not be infringed unnecessarily by the myrmidons of Government, under the pretence of examining registers and accounts and

goods and shop premises. A man may have private papers which he may not like to show to all and sundry and especially to Government officials.

Thus, letters written by his sweet-heart to him, or some private information of great use to him, like likely names of winning horses or about likely

appreciation or depreciation of shares etc., or even defamatory allegations about him made by some one, which he keeps for reading at leisure and for consideration, for future action, need not be shown to Assistant Commercial Tax Officers u/s 14 (2); nor need promissory notes or private

accounts (which may sometimes show disbursements to concubines or illegitimate children) or currency notes be shown to Assistant Commercial

Tax Officers against the will of the person. Suppose, for instance, a man has got a thousand rupee currency note, which has been demonetized and

for which he cannot account, he is not forced, u/s 14 (2), to show that currency note to the Assistant Commercial Tax Officer and bring himself to

trouble. Nor, if he has got, let us take an extreme example, one or two counterfeit currency notes of five rupees or one rupee denominations is he

bound to reveal them to the Assistant Commercial Tax Officer. Section 14 (2) must be construed ''strictly''. Even a businessman is not bound, to

reveal all his private secrets, much less incriminating secrets, to people who are not authorised under the law to pry into them. It is not alleged by

the Assistant Commercial Tax Officer or his witnesses that the papers were proved to contain a bill about the alleged sale of this shawl or indeed

any accounts relating to the petitioner''s ''business''.

7. I may even say also that u/s 14 (2) the petitioner was ''not bound'' to allow any inspection of his goods or accounts or registers ''at that hour''

and ''on that day'' (''lunch interval'' or a ''holiday'') because Section 14 (2) contains a significant phrase "" ''at all'' reasonable ''times''"" which was

misconstrued by the lower Court, relying on a contention of the petitioner, in Ex. P-2 that P.W. 1 told him that the Government had exempted that

day from being a holiday. P.W. 1 swore, in his deposition, that the day was a holiday. He never alleged that Government had cancelled the

holiday. So, the lower Court was wrong in relying on the note of the petitioner in Ex. P-2 ''against him'' when the note was not held to be true. Nor

can the fact that the petitioner was actually found in his shop then empower P.W. 1 to rush there for ''his inspection''. No sales were going on

admittedly then. Nor will the alleged eagerness of P.W. 1 to discover an omitted entry about a sale and suspected evasion of tax empower him to

insist on inspection during ''lunch hour'' or a ''holiday''. The absurdity becomes all the more ludicrous when P.W. 1 watched the scuffle between

P.W. 2, the enemy of the petitioner, and the petitioner for fifteen minutes there, and even after such wakening of undesirable forces working underground, proceeded with his fussy business.

8. For all these reasons, it is clear to me that the petitioner ought to have been acquitted of this offence; as there was no proof whatever that he had

prevented or obstructed any inspection by the Assistant Commercial Tax Officer ''authorised u/s 14 (2),'' as Section 15 (c), clearly stipulates. The

allegation that the Assistant Commercial Tax Officer was asked peremptorily by the petitioner to clear out of the shop, with an implied threat of

being forcibly pushed out, if he did not clear out by himself, is ''not proved'', and is not found in Exs. P-3 to P-5; and even if it is taken to be true,

will not amount to an offence in the circumstances of this case where the Assistant Commercial Tax Officer went to the petitioner''s shop on a

holiday and"" during the lunch interval, which he had no right to do u/s 14 (2), and also illegally insisted on the petitioner''s showing him some private

papers and cash and signing in an unauthorised statement prepared by himself. Of course, actual use of physical force is not necessary for

obstruction or prevention u/s 14 (2). Words causing an apprehension of violence, or acts preventing or obstructing the inspection, like locking the

premises to prevent inspection, or running away with the goods and registers, will do, in a proper case where there is a right of inspection u/s 14

(2).

9. In the end therefore, the conviction and sentence of the petitioner are set aside, and the petitioner is acquitted. The fine, if paid, will be refunded.

