(1942) 03 MAD CK 0002

In the Madras High Court

KESARICHAND KAVERLAL — APPELLANT

Vs

S H G NAYUDU AND ANOTHER. — RESPONDENT

Date of Decision : 03-03-1942

Acts Referred:
Government of India Act, 1935 — Section 270

Citation : AIR 1943 Mad 167 : (1942) 10 ITR 413

Hon'ble Judges : Bell, J

Bench : Division Bench

Judgement

BELL, J.-In this case the plaintiff claims damages against two defendants for alleged acts of trespass. The plaint states that the plaintiff is a

businessman whose Income Tax affairs at all material times were being dealt with by the two defendants who were Income Tax Officers, the first

defendant being the superior officer of the second defendant. The plaint goes on to say that the two defendants were investigating the plaintiffs

affairs, that there had been various interviews on the usual Income Tax grounds and that on 30th August, 1939, the second defendant ""alleging and

purporting to act under the ""order of a superior officer (who was at that time the first defendant) entered (the Plaintiffs) premises"" and took away

all the plaintiffs books of accounts against his will and consent. That is in paragraph 7 of the plaint. Paragraph 11 goes on to say that ""the second

defendant when questioned as to the authority by which he trespassed into the said premises of the plaintiff and wrongfully took away the said

account books intimated and represented to the plaintiff that he was, in so acting, acting under the directions and orders of this officer namely the

first defendant."" The defendants in their written statements deny the allegations of the plaintiff and issue was jointed on those pleadings. I have given leave for an additional issue to be framed under the Governments of India Act, 1935, upon which a preliminary point has now been taken by the

defendants.

They contend that the provisions of Section 270 of the Government of India Act of 1935 apply to this case because, being Income Tax Officers

they are servants of the Crown and as such are protected by that section unless the consent of the Governor-General is obtained for proceedings

against them.

NO proceedings civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his

duty as a servant of the Crown in India before the relevant dates except with the consent of the Governor-General.

The relevant date so far as servants of the Crown are concerned is the date of the establishment of the Federation [see Section 270 (3) and

Section 313 (3)].

Mr. Srinivasa Iyengar has argued with considerable force that the section does not apply. But giving all the attention I can to his attractive

reasoning the matter appears to me to be too plain to admit of any doubts. The section appears to have been intended to protect public servants

for acts committed before the relevant date in respect of which proceedings may be started against them. Here the defendants are stated in the

plaint to be Income Tax Officers and to have purported, or the second defendant to have purported, to act as such in seizing the plaintiffs books of

account. That in itself, in my opinion, would be enough to raise the question of the application of this section. Of the many authorities which have

been cited, it is clear that the motive with which the act is done is immaterial. What has to be looked at is that the offence must be in respect of an

act done or purported to be done in execution of a duty i.e., in the discharge of an official duty. In Hori Ram Singh v. The Crown Sulaiman, J.,

observed as follows :-

It must purport to be done in the official capacity with which he pretends to be clothed at the time, that is to say under the cloak of an ostensibly

official act, though, of course, to be done in execution of duty unless the offender professes to be acting in pursuance of his official duty and means

to convey to the mind of another the impression that he is so acting.

This was a Federal Court decision on the construction of the section in question and it is stated at page 437 that for the section to apply""there must

be something in the nature of the act complained of that attaches it to the official character of the person doing it."" It appears to me that the acts

alleged against the defendants here were so closely connected with their position as Income Tax Officers as to make it impossible to say that they

were not the Kind of acts which are comtemplated under this sections.

Mr. Srinivasa Iyengar said, and rightly, that the cases raise tn the main questions of fact. He added that it is impossible to decide the question of

tact without hearing the evidence. But this matter was considered in a case reported in Nand Kumar Sinha v. Rai Bahadur Pashupati Gosh where

at page 423 it is said :

If an act done by a public officer is apparently an official act, its character as such will not be changed by allegations that it was done in bad faith

or that it had not that character which it purports to have. Applicability of the statue depends on what the Act purports to be and is not affected by

allegations that the apparent state of things is not the real one. Were it not so, ingenious allegations could be invented and criminal motives

recklessly attributed in every case so as to nullify the effect of the statute which the Court would be unable to apply until the entire suit had been

heard out and those imputations proved on the facts to be untrue. The suit would in that case fall u/s 270 (2) of the Government of India Act and

the defendant would have no additional protection by reason of the existence of sub-section (1) of this section.

Here as I have said the plaintiff in his plaint specifically sets up what is not the defendants case in alleging that the second defendant trespassed as

an Income Tax Officer in purported execution of his duty as such and acting under the orders of his superior officer and with regard to the first

defendant that he gave directions and others to the second defendant to do what he did. I therefore come to the conclusion that the preliminary

point succeeds and that Section 270 (1) applies. The consent of the Governor-General not having been obtained Order VII rule 11 (d), appears to

apply and the plaint therefore must be rejected with costs.

Plaint rejected.