(1989) 05 GAU CK 0011

In the Gauhati High Court

Case No : Criminal Original Application No. 19 of 1989

L.P.Gonmei APPELLANT

Vs

State of Manipur RESPONDENT

Date of Decision : 19-05-1989

Acts Referred:

- Assam Sales Tax Act, 1947 — Section 42, 42
- Criminal Procedure Code, 1973 — Section 91
- Criminal Procedure Code, 1973 (CrPC) — Section 91
- Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 61
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 61

Citation : (1989) 2 GLJ 55 : (1989) 2 GLR 91

Hon'ble Judges : S.N.Phukan, J

Bench : Single Bench

Advocate : Shyamkishor Singh, Ashok Potsangbam, Advocates appearing for Parties

Judgement

1. When the facts of this petition were placed before me at the bar, I was taken aback. Two senior officers of the State Government are fighting on a legal issue and without settling the dispute by obtaining opinion of the Law Department or the learned Government Advocate General, the petitioner has been forced to approach this Court.

2. The petitioner, a member of the Indian Administrative Service is discharging the function of the Commissioner of Taxes and the respondent No 2, a member of the Indian Police Service of the Superintendent of Police, Border Affairs, Imphal. The respondent No.2 asked the Additional Taxation Officer, Moreh to furnish copies of tax returns etc. of six businessmen. The petitioner keeping in view of the legal provision which I shall presently state, directed the said Additional Taxation Officer to allow the respondent No.2 to inspect the relevant records, which are not prohibited by law and further directed to furnish information regarding taxes paid by the said businessmen from 1980 to 1988, as this particular need not be treated as confidential inasmuch as it can be obtained

even from the Treasury Officer. As the respondent No.2 consistently insisted upon for copies of the assessment orders etc, the petitioner took possession of the relevant files presumably to protect the subordinate officer. These informations were required by the respondent No. 2 in connection with the case No. 2 (1) 89 of the Border Affairs Police station registered under sections 21 and 23 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The petitioner also informed the respondent No.2 that information called for cannot be furnished in view of the bar contained in section 42 of the Assam Sales Tax Act, 1947 as extended to the State of Manipur. In spite of legal stand taken by the petitioner, the respondent No.2 directed the petitioner by the impugned notice dated 29th April, 1989 to produce "the assessment forms and the receipt/TR/Challan for the taxes paid by the individuals/firms for necessary scrutiny". Hence, the present petition.

3. I have heard Mr. Ashok Potsangbam, the learned counsel for the petitioner and also Mr. Shyamkishor Singh, the learned Public Prosecutor.

4. According to the learned counsel for the petitioner, in view of section 42 of the Assam Sales Tax Act, 1947 as applicable to Manipur, the petitioner legally cannot supply the said informations and if disclosed he is liable to punishment with imprisonment and fine as per the said section. The learned counsel has also placed reliance on two decisions of the Apex Court. On the other hand, the learned Public Prosecutor has taken the stand that in view of section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and also section 91 Cr.P.C. , the respondent No.2 acted within his jurisdiction by calling for the documents. The learned Public Prosecutor has further urged that as the Code of Criminal Procedure and Narcotic Drugs and Psychotropic Substances Act were" enacted subsequent to the Assam Sales Tax Act, 1947, it shall be deemed that section 42 of the said Tax Law has been repealed.

5. I quote below section 42 of the Assam Sales Tax Act, 1947 :

Disclousure of information by a public servant

(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any evidence given or affidavit or deposition made in the course of any proceedings under this Act other than proceedings before a Criminal Court, or in any record of any proceedings under this Act, shall save as provided in subsection (3), be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, Io72, Act I of 1872 no Court shall save as aforesaid be entitled to require any public servant to produce before it any such statement, return, accounts, document, or records or any part thereof or to give evidence before it in respect thereof.

(2) If, save as provided,, in subsection (3) a public servant discloses any of the particulars referred to in subsection (1) &S, shall be punishable with imprisonment which may extend tq; six .months^, and shall also, be liable to

fine. ;

(3) Nothing in this section shall apply to. the disclosure

(a) of any of the particulars referred to in subsection (1) for the purposes of a prosecution under the Indian Penal Code 1860, in respect of any such statement, return, accounts, documents or evidence, or for the purposes of a prosecution under this Act, or

(b) of such facts; to an officer of the Central Government as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it, or

(c) of such facts to any officer of the State" as may be necessary for the purpose of enabling such ''officer to levy or realise any tax imposed by that Government."

6. Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 runs as follows:

67. Power to call for information, etc.Any officer referred to in section 42 who is authorised in this behalf by the Central or a State , Government may, during the course of any enquiry in connection with the contravention of this Act

(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;

(b) require any person to produce or deliver any document or thing usful or relevant to the enquiry;

(c) examine any person acquainted^ with the facts and circumstances of the case"

7. Regarding the conflict of two provisions of legislation which is the will of the legislature Maxwell has observed in the Interpretation of Statute (I2th Edn 188) as follows :

"Collision may also be avoided by holding that one section, which is ex facie in conflict with another, merely provides for an exception from the general rule contained in that other."

Let me apply the above principle to the present problem. Reading section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and section 91 Cr.P.C., I am of the opinion that the powers given under the aforesaid sections are of general nature and section 42 of the Assam Sales Tax Act, 1947 is an exception to the said general rule. I hold this from harmonious reading of the above sections. That apart, neither section 67 of the aforesaid Act nor section 91 Cr.P.C. starts with a non obstinate clause. Therefore, reading all the sections together, I am of the opinion that return furnished or accounts produced or any evidence given ''during any proceedings under Assam Sales Tax Act, 1947 cannot be disclosed by the Taxing Authority even to police unless the case is covere by sub section (3) of the said section and if any, disclosure is made by the Taxing Officer, he is liable . for prosecution under subsection {2i of the said section. The argument advanced by the learned Public Prosecutor that section 42 of the Taxation Law has been repealed by implication has no substance as the above Act with section 42 is still in the statute book and on the top of that the above two sections namely, section 67 and section 91 do not begin with a non obstinate clause, as stated earlier. That apart, in my opinion all the above three sections can hold the field as there is no conflict for the reasons stated above.

8. A similar provision found place as section 54 in the old Income Tax Act, 1922. The Apex Court in Chara Chandrm Kundo vs. Guru Ghosh, AIR 1962 SO 1119 and Commissioner of Income Tax, Bombay vs. Laxmi Chand Narayan Das, AIR 1962 SC 1121, had occasion to examine the scope and ambit of the said section. The highest Court of the land in the above decisions held that prohibition imposed by the said section 54 is absolute and that section 94 of the old Cr.P.C. cannot override the section 54, the Supreme Court went to the extent that this prohibition is not obliterated by any waiver by the assessee. The above two decisions of the Apex Court squarely cover the case in hand.

9. From what I stated above, I hold that the action of the respondent No. 2 by issuing the notice in question is not tenable in law. As the petitioner has to approach this Court for the impugned notice, I deem fit and proper to issue the following directions to the Chief Secretary, Government of Manipur. As the present petition was moved by a private counsel on behalf of the petitioner, I am not sure if the petitioner has obtained necessary financial assistance from the State.

10. I, therefore, direct the Chief Secretary, Government of Manipur to inquire into the matter and if the petitioner has incurred any expenses from his pocket in presenting the present petition, he shall be reimbursed by the State. The Chief Secretary may ''also issue such instructions as he may deem fit and proper.

With The above direction the petition is accepted and the impugned notice dated 29th April, 1989 issued by the respondent No. 2 at Annexure A/6 tothe petitionis quashed

