(1991) 02 KAR CK 0058

In the Karnataka High Court

Case No : W.P. No. 21319/1989

M/s. Sapthagiri Enterprises APPELLANT

Vs

The Commercial Tax Officer and Another RESPONDENT

Date of Decision : 01-02-1991

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 165

Citation : (1991) 1 KarLJ 488

Hon'ble Judges : S. R. Rajasekhara Murthy, J

Judgement

S.R. Rajashekara Murthy, J.-The petitioner is a dealer registered under the Karnataka Sales Tax Act (the ''Act'') and is a manufacturer of rectified spirit. The officers of the intelligence wing of Commercial Tax Department, North Zone, Belgaum conducted inspection and search of the business premises of the petitioner on 12-7-1989 and on being satisfied from the books inspected that the dealer had suppressed the production figures and had evaded payment of tax to the State, seized the books of accounts and other registers by an order made under Section 28(3) of the Act. Amahazar was also drawn and list of documents seized was furnished to the petitioner.

This seizure order is challenged by the petitioner in this writ petition. The main grounds urged in the writ petition are: (i) that no reasons were recorded for searching the petitioner''s premises in accordance with the provisions of Section 165, Cr. P.C; (ii) that no notice under Section 28(1) of the Act was issued to the petitioner to produce the books relating to his business before embarking upon the search; (iii) that no valid reasons for the search have been stated by the First Respondent in the seizure order; (iv) that the Mahazar drawn by the first respondent is contrary to law since it was not drawn up in the presence of the witnesses of the same locality.

A statement of objections is filed on behalf of the respondent justifying the search and seizure. It is stated in paragraph 3 that before embarking upon seizure two officers of the department had conducted preliminary investigation and on being satisfied that the petitioner was not declaring the correct transactions and had maintained double set of accounts, decided to exercise power under Section 28(3) of the Act. It is only thereafter, as stated in the statement of objections, that the inspecting authorities of the department conducted the search in the business premises of 12-7-1989 and on such search and inspection, certain incriminating documents such as duplicate sets of accounts etc., were seized and a seizure order was made under Section 28(3) of the Act.

So far as the allegation made about independent witnesses is concerned, it is stated in the objections that the two witnesses who were present at the time of search and attested the Mahazar are from the village which is close to the petitioner''s factory which is situated in Sameerwadi on the outskirts of Bijapur.

The other point that arises for consideration on the arguments of the learned counsel for the petitioner in this case is, whether the provisions of Section 165, Cr. P.C. have been observed and the search made is violative of the safeguards which are provided under the said provisions?

The first requirement of Section 165 is that reasons must be recorded before embarking upon the search. In this case the original file produced by the learned Govt. Advocate discloses that a preliminary investigation was conducted by two CTOs. attached to the Intelligence Wing, North Zone, Belgaum. It is also seen from the file that one Sri B.N. Sunkad, CTO (Int.), North Zone, Belgaum, has recorded the reasons that the books and registers inspected indicated fishy nature of transactions and the case needed further investigation and inspection. He was accompanied by CTO. (Int. 2), North Zone, Belgaum Sri B. Bommai at the time of preliminary investigation.

It is the case of the department that on being satisfied about the large scale evasion practiced by the petitioner which was detected in the course of the preliminary investigation, that the officers of the Intelligence Wing of the department conducted the search and seized certain documents and books of accounts etc., as per the Mahazar.

I am satisfied on a perusal of the relevant file, that the requirement of Section 165, Cr. P.C. is satisfied in this case and the seizure was preceded by the recording of reasons by the authorised officer.

However, the argument advanced by Sri Shivaram the learned counsel for the petitioner is that the officer who passed order of seizure under Section 28(3) Sri Gopalakrishna, CTO. (Int. 3), North Zone, Belgaum (respondent one), is not the officer who conducted the preliminary investigation. The argument of the learned counsel is, that the officer who conducted the search and seized the books is not the same officer who recorded the reasons and that, therefore, the seizure order is not in accordance with the provisions of Section 165, Crl. P.C. Though an attempt was made to develop this argument it was not shown how it would vitiate the seizure order and the proposition was not substantiated by any decided cases.

In the light of the argument of the learned counsel, it becomes necessary to examine the scope and meaning of the expression ''so far as may be'' used in the proviso to Section 28(2) (ii) of the Act.

It is the case of the department that more than one officer was entrusted with the investigation of this particular case. It is seen from original records that the preliminary investigation was conducted by two CTOs. of the Intelligence Wing and the search party comprised of those two officers and Respondent-1. The seizure order indicates that all the three officers conducted the inspection and gathered necessary material during the inspection which resulted in seizure of certain books. It is only thereafter that an order was made under Section 28(3) which was signed by Respondent-1. Therefore, on a perusal of the records, I am satisfied that there has been a substantial compliance with the requirement of the section. The provisions of Section 165, Crl. P.C. and the contention of the petitioner about the violation of the said provision has to be rejected.

Sri Dattu the learned Govt. Advocate has relied upon the following decision is support of his contention the expression ''so far as may be'' cannot be applied in a rigid manner. Explaining the connotation of the expression ''so far as may be'' in Section 37 of the Foreign Exchange Regulation Act, 1973 in the case of Dr. Pratap Singh and Another v Director of Enforcement, Foreign Exchange Regulation Act and Others, SCC 1985 Crl. 312, it was observed by the Supreme Court that any illegality in search on account of non-compliance with the requirement of Section 165, Cr. P.C. will not vitiate the seizure made pursuant to the search. But the Supreme Court held that where no reasons were recorded, the ''belief of the officer would be open to judicial review.

In so far as the contention of the learned counsel for the petitioner as to the interpretation ''such person'' used in Section 28, Sri Dattu relied upon the following decisions in the case of Srinivas Jhawar and Brothers v The Deputy Commissioner of Commercial Taxes, Hyderabad North Division, Hyderabad, 26 STC 572. The High Court observed that a transferee officer can also order confiscation of goods under the seizure of which was effected by another officer under the Hyderabad General Sales Tax Act. The learned Govt. Advocate also relied upon the observations of the Supreme Court in para 14 in the case of Pooran Mal and Others v Director of Inspector (Investigation) of Income Tax, New Delhi and Others, AIR 1974 SC 348.

It transpires from the original records of seizure that all the three CTOs. attached to the Intelligence Wing of the Department situated in Belgaum, conducted the inspection and searched in the premises. Though the seizure order Annexure-A is signed by only one of them and the recording of reasons was done by the other two CTOs., it can be gathered from the records that all the three intelligence officers of the department were involved in the investigation of this case, inspection of the accounts and other documents in the premises, the physical stock verification etc. That the work involved required the active participation of more than one officer is indicated in the volume of large scale evasion detected as reflected in the proposition notice in which the approximate liability is estimated at Rs. 1,35,00,000/-.

Therefore, on the facts of the present case, there is no reason to hold that there is any contravention of mandatory requirements of any provisions of Section 165, Cr. P.C. Hence, the challenge made to the seizure order fails and the writ petition is dismissed.

