
(1970) 10 MAD CK 0018
In the Madras High Court

M.S.M. Mangudi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 15-10-1970

Acts Referred:

Citation : AIR 1971 Mad 275 : (1971) 2 MLJ 27

Judgement

ORDER

1. The petitioner, a licensee under the Madras Paddy and Rice Dealers" (Licensing and Regulation) Order, 1968 hereinafter referred to as the Order was carrying on business as a wholesaler in rice and paddy in Pallathur, Karaikudi sub-taluk, Ramanathapuram District. The Circle Inspector attached to the Vigilance Cell. C. I. D., and a constable visited the place of business of the petitioner, entered into it and wanted the petitioner to show his accounts. The entry according to the petitioner was at about 4 A.M., but according to the respondents, it was at about 6 A.M. The officers who entered into the premises and began to search the same did not have any warrant to search the premises; nor were they accompanied by two respectable witnesses who are the inhabitants of the locality. It appears that the officers who conducted the raid seized certain account books of the petitioner besides 56 bags of raw rice, which were found inside the business premises.

2. Various contentions were raised by the petitioner in support of the writ of mandamus filed by him. They all relate to the factual situations and concern themselves with the merits of the petition. In the light of the arguments addressed by Mr. V.P. Raman, learned Counsel for the petitioner, it is unnecessary for me to deal with such objections in the affidavits relating to the merits of the case, as they are not raised before me. The only contention of the learned Counsel for the petitioner is that the search is illegal, as there has been a violation of the conditions prescribed for such search and seizure specified in Clause 14 of the Order. The argument proceeds that the officers who conducted the raid, not having followed the statutory provisions of Sections 102 and 103 of the Criminal Procedure Code, the rule nisi has to be made absolute and a

direction issued to the respondents to return the stocks of rice seized by them, consequent upon such illegal search. In the counter-affidavit, the contentions on merits have been met. On the question which is primarily in issue, the respondents' case is that a warrant is not required for checking the accounts and stocks of a dealer functioning under the Order referred to above. It is also contended that the provisions in Sections 102 and 103 of the Criminal Procedure Code, were followed, because the inspection was carried out by the police officers in the presence of the Taluk Supply Officer and also in the presence of the licensee. As already stated, it is unnecessary to go into the merits of the case, because the only point of law raised is whether the search has been conducted in violation of the prescribed statutory conditions.

3. The only question therefore is, whether Clause 14 of the Madras Paddy and Rice Dealers" (Licensing and Regulation) Order, 1968 has been followed. Clause 14 of the said Order vests with the competent officers, powers of entry seizure and search. "Competent Officer" means any officer of the Revenue or Civil Supplies Department not below the rank of Revenue Inspector or any officer of the Police Department not below the rank of head constable. In this case, the raid was conducted by the Sub-Inspector of Police, along with his Constable, but in the presence of the Taluk Supply Officer. Clause 14 enables the competent officer to inspect any book, account or other document in the control of a licensee, seize any such account book or document, enter and search any premises, seize any stock of paddy or rice, in respect of which the competent officer has reason to believe that any provision of this Order has been, is being or about to be contravened. The subjective satisfaction of the competent officer in the matter of the exercise of the power vested in him under this clause appears to be the primary ingredient enabling such competent officer to enter, search and seize. What all is required to be done after such seizure is that the competent officer shall give a receipt for what is seized immediately after the seizure is effected. Sub-clause (3) of Clause 14 of the Order is as follows:

The provisions of Sections 102 and 103 of the Criminal Procedure Code, 1898 (Central Act V of 1898) relating to search and seizure shall so far as may be apply to searches and seizures under this clause.

Therefore, notwithstanding the subjective satisfaction of the competent officer, which prompts him to enter, search and seize in case of present or apprehended violation of the provisions of the order, in matters of such search and seizure, the provisions of Sections 102 and 103 of the Criminal Procedure Code, have to be borne in mind. Section 102 of the Criminal Procedure Code, is only an obligation thrown on the shoulders of the person in charge of the premises, which has to be searched, to allow a search to be conducted by the competent officer. This section provides for a search free from obstruction. Section 103 of the Criminal Procedure Code, on the other hand, lays down certain salient principles which practically would operate as safeguard against the naked, arbitrary and illegal exercise of the power of search contents plated by Clause 14 of the Order. The

order provides that before making a search under Clause 14 of the Order, the competent officer shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situated to attend and witness the search and he may issue an order in writing to them or any of them so to do. This is what is provided for in Section 103 (1) of the Criminal Procedure Code. Subsection (2) of Section 103 of the Criminal Procedure Code, is another safeguard and it provides that the search shall be made in the presence of such two or more respectable inhabitants and a list of all things seized in the course of such search shall be prepared by the searching officer and signed by such witnesses. We are not here concerned with the other limbs of Section 103 of the Criminal Procedure Code. As already stated, the intendment of the Order in having attracted the mandatory procedural prescriptions envisaged in Section 103 of the Criminal Procedure Code, is only to make such searches and seizures beyond controversy and to avoid colourable exercise of such powers by the officers who are enable to do so under the Order.

4. What has happened in this case is, the competent officer, without securing the services of two or more respectable witnesses in the locality, entered into the business premises of the petitioner, searched the same and seized the stock of rice. There has therefore been an open violation of the statutory prescriptions as comprehended in Section 103, Criminal Procedure Code, which in turn is attracted by Sub-clause (3) of Clause 14 of the Order. If this were so, the search as such is irregular and for purposes of discussion in this writ petition is illegal. Whatever may be said of the impact of such irregularity in the supervening trial to which the petitioner may be subjected to, by reason of the other provisions in the Order or by reason of the other provisions of law, it cannot be said that an inchoate search in utter disregard of the mandatory procedural prescriptions in the order would ; amount to a bare irregularity, which can be condoned in the eye of law.

5. What happened in Bai Radha Vs. The State of Gujarat, , to which the learned Government Pleader invited my attention, was that there was a search so effected by the officer without following the procedure prescribed in Section 15 of the Suppression of Immoral Traffic in Women and Girls Act, 1956. But the person involved was later on subjected to a criminal trial. There, a defence was taken that as the search was irregular, the trial could not be proceeded with. In that context, their Lordships observed:

It cannot be held that if a search is not carried out strictly in accordance with the provisions of that section the trial is rendered illegal.

On the other hand, the ratio in the decision of the Supreme Court in The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc., , applies to the facts of this case. There, the learned Judges found that the seizure was in violation of the safeguards provided and prescribed under the Madras General Sales Tax Act, which also provided for entry, search and seizure of goods from licensees functioning under the said Act. In that connection, the

Supreme Court observed at page 67 as follows:

Therefore, as the safeguards provided in Section 165 of the Criminal Procedure Code, were not followed, anything recovered on a defective search of this kind must be returned.

Section 165 undoubtedly attracts Section 103 of the Criminal Procedure Code, as well.

6. It, therefore, follows that in the instant case, the search having been made and the seizure having been effected in contravention of the safeguards indicated in Clause 14 of the Order and in violation of the procedural prescription in Section 163 of the Criminal Procedure Code, which is also applicable to any such search, the stock of the rice seized has to be returned, as such seizure is the result of an irregular and illegal search, in so far as this case is concerned. There is undoubtedly an irregularity in the search. That there has been no illegality is not for the respondents to raise at this stage, because they did not conform to the rule of law and anything done in violation of the rules of law or procedure is normally an illegality. The petitioner is therefore entitled to the rule nisi being made absolute.

7. The writ petition is accordingly allowed. There will be no order as to costs.