(1961) 04 MAD CK 0029

In the Madras High Court

Public Prosecutor APPELLANT

Vs

Syed Rowther and Another RESPONDENT

Date of Decision : 21-04-1961

Acts Referred:
Penal Code, 1860 (IPC) — Section 14, 14(1), 14(2), 14(3), 15(2)(b)

Citation : (1962) 2 MLJ 87

Hon'ble Judges : Anantanarayanan, J

Bench : Single Bench

Judgement

Anantanarayanan, J.—This appeal possesses a considerable degree of interest, from the point of view of the citizen and of the rights of the general public in relation to Departmental Officers, such as officers entrusted with the implementation of the provisions of the Madras General Sales Tax Act (Madras Act IX of 1939). What has actually happened in this case is that the learned Sub-Divisional Magistrate of Dindigul tried the two respondents upon the following charges : that on 21st July, 1958, at Dindigul, they used criminal force to Thangiah (P.W. 1), the Special Assistant Commercial Tax Officer of Dindigul, with intent to prevent or deter him from discharging his duties as a public servant and thereby committed an offence u/s 353 , Indian Penal Code, and that the same accused (the respondents) obstructed the inspection of accounts by the aforesaid Sri Thangian (P.W. 1) and thereby committed an offence punishable u/s 15(2)(b) of the Madras General Sales Tax Act. The learned Sub-Divisional Magistrate dealt with the facts of the evidence in an elaborate judgment. He was of the view that not merely were the offences not established in the evidence for prosecution, which he was not inclined to believe, but that when it was not shown that the respondents were '' dealers '' the entry of the officers into the house was '' nothing short of trespass on a residential house.''

2. The State has filed the appeal from the acquittals of the respondents u/s 353, Indian Penal Code and Section 15(2)(b) of the Madras General Sales Tax Act.

3. I think that this case illustrates, very acutely, the danger of the action of

departmental officers, who imperfectly apprehend their powers and duties. There may be some excuse for a layman to be ignorant concerning the precise demarcation of his rights, in relation to governmental agencies. But there is no such excuse for departmental officers entrusted with the implementation of a comparatively short enactment like the Madras General Sales Tax Act (Madras Act IX of 1939). Democracy cannot function with health and safety, if governmental agencies do not realise that, where they act in exercise of any statutory power, they must strictly keep within the bounds of that power, and respect the rights of the citizen to the extent compatible with the exercise of such powers. In the present case, I do not propose to proceed into the facts or the evidence at any great length. I do not wish to comment upon the appreciation of the evidence by the Magistrate, or upon the grounds assigned by him for holding that the prosecution witnesses were not precisely angels of truth, and that there was a great deal to be said for the testimonies of D. Ws. 1 and 2 to the effect that this was really an intrusion upon domestic premises, with very little justification for it. On the contrary, I shall assume that the officers, and P.Ws. 1 and 2 in particular were satisfied on information received that the two respondents were carrying on business as '' dealers'', were '' burking'' such transactions by not bringing them to the notice of the Commercial Tax Authorities, were escaping assessment altogether, and maintaining secret accounts. Even assuming all this., and assuming that the officers were acting bona fide, I still think it can be easily shown that their behaviour upon the relevant occasion was injudicious and unsupported by law, and hence that the charges against the respondents cannot be successfully sustained.

4. As a glance at Section 15(2)(b) of the Act will show, what is punishable under this sub-section is the prevention or obstruction of an inspection or entry by any officer acting as empowered u/s 14, in contravention of the terms of Section 14. But we must notice that Section 14 does not invest the officers of the department with the powers of Police Officers, or with general and indiscriminate powers of entry into all places, or powers of conducting a search as such. What Section 14(1) states is that the empowered officer might require any dealer carrying on any business to produce before him accounts and other documents, and furnish information relating to such business. The learned Magistrate has held upon the merits of the evidence, that the respondents (accused) were not '' dealers'' as defined in the Act, and that the prosecution failed to prove that they were conducting business as such. I shall assume, for the moment, that the officers (P.Ws. 1 and 2) were under the bona fide relief that the respondents were such '' dealers'', and were engaged in an investigation whether the respondents were escaping assessment under the General Sales Tax Act, Since the Department was not having formal relationship with the respondents, at least for some considerable period prior to this incident, one would have thought that the normal and natural step for the officers should have been to issue a notice u/ s 14(1) of the Act. This was not done. In any event, the officers had a right to inspect the accounts and registers; as enacted u/s 14(2) of the Act. But the

officers did not proceed to the business premises, to inspect such accounts or registers; in fact, there is nothing to prove that any such business premises existed. u/s 14(3), the officers Shall have power to enter for the purposes referred to in sub-section(2) any office shop, godown....or any other place in which business is done." It has to be carefully noticed that the terms of this sub-section are very restricted in scope and effect. The officer does not get a power, by means of this sub-section, to enter domestic premises, merely because he respects that some business is being carried on there. He may enter any place ostensibly used for the conduct of business as such, as an office, shop, godown, etc. But if he is going to enter a private house and to intrude on the privacy of strangers, he must be thoroughly satisfied that he could prove that this was a place in which business was being actually conducted. Unless he was in this position, his entry into a private house will not be authorized u/s 14(3), and may well constitute civil trespass; the learned Magistrate was perfectly correct in pointing this out.

5. In the present case, without any prior formal relationship or history of assessment, preceding the incident, we find these officers forcing an entry into the private house of the first respondent, and attempting to seize some note books, on the allegation that they were accounts of the business. This is totally outside the purview of the powers vesting, in such officers, u/s 14(3) of the Act. If the officers so desired, under circumstances of that kind, they could have moved the police authorities for a search of the premises, or for obtaining a search warrant. The record does not even show either (i) that the respondents really carried, on business as '' dealers '' anywhere, or (ii) that there was no other place where the business was being carried on, as official premises. Since the information was to the effect that business was being carried on in paddy and rice, large-scale business as P.W. 1 has deposed, it is difficult to believe that the business, itself was being transacted in living rooms in a private house. On the whole, there can be no doubt that the entry of these officers into the private house of the respondents was not merely unfortunate, but was unauthorised and illegal, in the absence of evidence to show that this was a place of business. This entry did constitute trespass.

6. Apart from the reliability of the evidence, concerning which I propose to say nothing, since the learned Magistrate, who had the advantage of seeing and hearing the witnesses for prosecution, was not prepared to believe them, it is clear enough that, upon facts of this character, the charge u/s 15(2)(b) could not be sustained. It is equally clear that, as the learned Magistrate has rightly stressed, the charge u/s 353, Indian Penal Code, could not stand. For, once we concede that the entry of these officers was an unwarranted intrusion, the respondents had a perfect right to ask the officers to get out of the house, and the officers could not be held protected by the colour of their duties as public servants. As the learned Magistrate observes:

What is meant by good faith is due care and attention. P.Ws. 1 and 2 entered accused 1''s house on some information. That information was not verified. Nor was any attempt made to find out if it were correct, and if it could be relied upon and acted upon.

7. I hold that there is not the slightest warrant for interference with the acquittals of the respondents, with reference to the charges against them. I further hope that these observations will be duly noted by the concerned authorities, as what happens frequently in these cases is not a wilful abuse or perversion of power, but an insufficient realisation of the fact that Governmental agencies have a special responsibility to determine and verify the ambit of their powers, particularly with regard to private citizens before acting upon them.

