
(1985) 01 PAT CK 0042

In the Patna High Court

Case No : Criminal Miscellaneous Case No"s. 2449 of 1980 and 4135 of 1981

S. L. Rajgarhia and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 29-01-1985

Acts Referred:

Bihar Sales Tax Fifth Ordinance, 1977 — Section 32(1), 44(a)(1)

Citation : (1985) PLJR 465

Hon'ble Judges : P.S. Sahay, J

Bench : Single Bench

Advocate : G.C. Bharuka, Navniti Pd. Singh and Ramesh Kumar Agrawal, for the Appellant; Lala Kailash Behari, for the Respondent

Judgement

P.S. Sahay, J.—Both these applications have been heard together and will be governed by this-common judgment. The petitioners have moved this Court for quashing the order dated 7.5.1979, taking cognizance against the petitioners under sections 32(1) and 44(a)(1) of the Bihar Sales Tax, 5th Ordinance, 1977 (hereinafter referred to as the Ordinance). In order to appreciate the points it will be necessary to refer to some relevant facts. On 5.5.1979 a petition of complaint was filed by the Deputy Commissioner, Commercial Taxes, Intelligence Branch--Opposite party No. 2 stating inter alia that two boxes of motor parts weighing about one quintal 95(sic) were transported by M/s. Tribeni Motors, Delhi vide Rly. receipt No. B 528327 dated 20.2.1978 in the name of the petitioner"s firm and the said consignment was taken on delivery without presenting the permit as required under rule 38(1)(2) of the Commercial Taxes Manual Rules. Prior to that the sanction for prosecution as required u/s 44 sub-clause (5) of the Ordinance was given by the Commissioner, Commercial Taxes, who is the competent authority, against M/s. Progressive Motors Private; Ltd., Umesh Kumar Rajgarhia and Kutub Karamchari, employees of the firm. The learned Magistrate by order dated 7.5.1979 took cognizance as stated above and summoned the petitioners for trial. Being aggrieved by the aforesaid order the petitioners have moved this Court.

2. Mr. G.C. Bharuka, learned counsel appearing on behalf of the petitioners in both the cases has submitted that there is no sanction against the petitioners of Criminal Miscellaneous Case No. 2449 of 1980 and, therefore, the cognizance taken against them is bad in law. In this connection my attention has been drawn to the order of sanction, a copy of which has been filed and marked Annexure 2. Only three persons are mentioned as I have stated earlier and admittedly the name of Shri S.L. Rajgarhia and Shri B.K. Rajgarhia do not find place there. In my opinion the contention raised on behalf of the petitioners is well founded and has to be accepted. Section 44 sub-clause (5) may be usefully quoted in this connection:

(5) No court shall take cognizance of any offence under this Ordinance or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the 1st Class shall try any such offence

It has been repeatedly held by the Supreme Court in a number of decisions that the order of sanction is not an empty formality and it is to safeguard persons from vexatious proceedings. In other words before a person is put on trial it is the duty of the sanctioning authority to ascertain whether any offence has been committed by that person or not and then only sanction is accorded. The names of the petitioners in Criminal Miscellaneous Case No. 2449 of 1980 do not find place in the sanction order and, therefore, in view of the provisions of section 44 sub-clause (5), quoted above, the cognizance must be held to be bad on that score alone.

3. Mr. Lala Kailash Behari Prasad, learned counsel appearing on behalf of the State has contended that those persons are the Directors of the Company and the name of the firm is mentioned in the order of sanction and, therefore, the two Directors can also be put on trial and it will be rule of evidence and it will be for those persons to show that they were not connected with that offence. This contention has absolutely no force and has to be rejected for the simple reason that the firm is not accused in the petition of complaint and unless there is specific sanction against the persons concerned, they cannot be put on trial. Mr. Prasad has then contended that cognizance has been taken of the offence and not of the offenders and, therefore, this point will not be available to the two petitioner. That is a central law but where a sanction is a pre-condition for prosecution then this argument will not be attracted. A similar point came up for consideration in the case of Dr. Guneshwar Singh, District Medical Officer of Health Vs. The State of Bihar, Saguni Sao and Bihari Sao, and that was a case relating to Prevention of Food Adulteration Act in which a sanction is also necessary. The Court had refused to summon some more persons to be put on trial and when this matter came to this Court it was held that the prosecution is started on the report of competent authority and the law as-to sanction in such matter was not an empty formality but was meant to serve a very useful public purpose and the sanction was not only for the offence but for the offenders as

well. This decision fully applies to the instant case. The last portion of the order of sanction clearly states that sanction has been accorded against the above named persons (underlined by me for emphasis). This also fully support the contention of the learned counsel appearing for the petitioners that sanction was accorded against three persons only and not against these petitioners. In that view of the matter cognizance taken against the petitioners in Criminal Miscellaneous Case No. 2442 of 1980 must be held to be bad. Next it has been contended by Mr. Bharuka that the transaction was inter-state transaction and, therefore, rule 38 of the rules will have no application. This rule has been framed u/s 32(1) of the Ordinance and runs as follows:

32(1). No person shall transport from any railway station, steamer station, airport, post office or any other place, whether of similar nature or otherwise, notified in this behalf by the State Government, any consignment of such goods, exceeding such quantity as may be specified in the notification, except in accordance with such conditions as may be prescribed and such conditions shall be made with a view to ensuring that there is no evasion of tax payable under this Ordinance.

Rule 3(sic) states that:--

No person shall transport by road, river-craft or coolie from any railway station, steamer station, airport, post-office or any other place, whether of similar nature or otherwise, notified in this behalf by the State Government" u/s 32, any consignment of such goods, exceeding such quantity, as may be specified in the notification, except in accordance with the following conditions, namely:

* * *

Section 38(2) which is relevant for this case may be usefully quoted:--

38(2). Notwithstanding anything contained in sub-rule (1) a dealer who is in possession of valid certificate of registration in Form VI may apply for Form XXVIII B and, on being satisfied in this behalf, the appropriate authority may grant him such number of Forms as he considers appropriate, and where any such consignment is to be transported by or on behalf of such dealer he shall fill in all the columns of Form XXVIII B supplied to him by the appropriate authority, and--

* * *

A similar provision was in the Sales Tax Act of 1959 and that was rule 31B which was considered in the case of Hansraj Bagrecha Versus State of Bihar and others (27 Sales Tax Gases 4) and it was held that the aforesaid rule will not be attracted in respect of interstate trade. Rule 38 which is being directly considered in the instant case was also the subject matter of consideration in the case of Bhagwan Prasad Versus the officer-in-charge, Hathidah checkpoint & anr. (1980 BBCJ 475 : 1980 BRLJ 110) in which after interpreting the aforesaid rule it was held by their Lordships that rule 38 applies only to intra-State trade and not to

inter-State trade and, therefore, it was not necessary to obtain permission in form No. XXVIII B made under the aforesaid rule. In view of the decision, in my opinion, the petitioners have a good case on the merits as well. Admittedly the goods had come from outside Bihar and in that view of the matter on the ratio of the aforesaid decision rule 38 will not be attracted.

4. Learned counsel for the State then referred to some of the provisions of the Central Sales Tax Act, 1956 namely, section 3 and section 4 and section 9(2) which create liability to pay the central taxes relating to inter-State transaction. I am really surprised as to how this provision will help the prosecution when a case has been lodged by the State Government for violating the State law. "Accused persons can be put on trial on some specific allegations and there be at random enquiry in order to find out whether any offence has been made out under any provision of law. This submission is wholly without substance and must be rejected. Another submission of Mr. Bharuka that the sanctioning authority has not applied his mind while according sanction, is also well founded. This argument has been based on the counter affidavit filed on behalf of the State. As I have said earlier the prosecution was on the allegation that some motor parts were transported from Delhi. Now in the counter affidavit it has been stated that there was some mistake and as a matter of fact the consignment was sent from Hindustan Motors Ltd. Howrah and the railway receipt number is also different. This clearly shows that full facts were not placed before the sanctioning authority and it has been rightly contended that sanction has been given in a routine manner. Learned counsel for the State has also submitted that after this mistake was detected efforts are being made to file a petition before the court below. We are not concerned what will happen in future. We have to see the complaint as it is and on the (Saunter affidavit of the State who is the prosecutor. If wrong facts have been stated in the petition of complaint then the prosecution itself has to suffer and the benefit, if any, will go to the accused persons. Mr. Prasad has also submitted that even if this complaint, fails on some grounds, a second complaint will not be barred. That is not a matter to be decided in the present proceeding and what will happen in future, as I have said earlier, is still to be seen and this aspect of the matter has to be completely kept out of consideration and has no relevancy at all.

5. Thus on a careful consideration of the points raised in these applications the cognizance taken against the petitioner is wholly illegal and unjustified and fit to be quashed. In the result, both the applications are accordingly allowed and the cognizance taken against the petitioner are quashed.