

Emperor Vs. Osman Chotani

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Court : Mumbai

Decided On : Apr-15-1942

Reported in : AIR1942Bom289; (1942)44BOMLR618; [1942]10ITR429(Bom)

Judge : John Beaumont, Kt., C.J. and ;Sen, J.

Appeal No. : Criminal Revision No. 120 of 1942

Appellant : Emperor

Respondent : Osman Chotani

Judgement :

Beaumont, C.J.

1. This is a revision application raising a point of some general importance.
2. Three persons are being charged with the offence of cheating, the general nature of the case alleged against them being that accused Nos. 1 and 2 having purchased steel of an inferior quality at a cheap price in the bazaar, resold it through the instrumentality of accused No. 3 to a Government Department at a greatly enhanced price, falsely representing the steel to be of a superior quality.
3. We are told that many of the books of accused No. 1, which might be relevant, are not forthcoming. In order to remedy this defect, the investigating officer served a summons on the Income-tax Commissioner of Bombay, under Section 65 of the

Bombay City Police Act, requiring him to produce certain documents lodged by accused No. 1 with the Income-tax Department in connection with his return for income-tax. The Commissioner of Income-tax declined to produce the documents in question, considering himself precluded from so doing by the provisions of Section 54 of the Indian Income-tax Act, as he clearly was. Thereupon the police authorities proceeded under Section 66 of the Bombay City Police Act to carry out a search of the offices of the Income-tax Commissioner, and seized certain documents, which had been lodged with the Income-tax Department by accused No. 1. One of those documents, exhibit Z44, was tendered in evidence by a police-officer before the Chief Presidency Magistrate, who was hearing the charge. The learned Magistrate held that the document was not admissible in evidence. He took the view that Section 54 of the Indian Income-tax Act constituted an absolute bar to the Court considering any of the documents lodged under the Act, and the question is whether that decision is right.

4. Section 54(1) of the Indian Income-tax Act is in these terms:-

(1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and, notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record) or any part of such record, or to give evidence before it in respect thereof.

5. Then Sub-section (2) provides that if a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment or fine. The section does not in so many words say that the public officer is prohibited from producing any such document as is specified, but it is obvious that, as the production is made punishable as an offence, there is an implied prohibition against its

production by a public servant.

6. In my opinion, there is nothing in Section 54 of the Income-tax Act to justify the extreme view taken by the learned Chief Presidency Magistrate that all the documents referred to in that section are made inadmissible in evidence. The section does not expressly enact that any documents are to be inadmissible in evidence. It provides two things : first of all, that the documents specified shall be treated as confidential; and, secondly, that no Court shall require a public servant to produce them. In providing that the documents are to be treated as confidential, I think the Legislature only mean that they are to be treated by the income-tax authorities as confidential. Sir Jamshedji Kanga has argued that the section means that the documents are confidential in whosoever's hands they may be. I do not think that can be the meaning. I apprehend that there is nothing in the section to prevent an assessee from disclosing the terms of his assessment, or of any accounts on which it is founded to his solicitor or to any friend to whom he chooses to make the disclosure. All that the section means is that the income-tax authorities are to regard communications made to them for the purposes of the Income-tax Act as being confidential, the object, no doubt, being to enable people to feel that they can freely state the facts relating to their income, facts which may often involve confidential matters relating to their business, without fear of the matters being disclosed. But as long as there is no disclosure by a member of the income-tax staff, I do not think the direction to treat them as confidential is infringed.

7. The main operative part of the section, however, is that the Court cannot require any public servant to produce these documents. I see no justification for extending the operation of those words beyond their natural and proper meaning. If a document can be given in evidence, without requiring a public servant to produce it, there seems to be nothing in the section to preclude that from being done. This Court in *Devidatt v. Shriram Narayandas* I.L.R (1931) Bom. 324. 34 Bom. L.R. 236 and a full bench of the Madras Court in *Rama Rao v. Venkataramayya* [1940] Mad. 969. held that Section 54 of the Income-tax Act did not preclude the giving in evidence of the documents referred to, provided proper evidence of them could be given. In those cases the Court was considering primarily whether secondary

evidence could be given of certain income-tax documents. But that question could not have arisen, if the documents themselves had been made inadmissible in evidence by statute, because it is obvious that secondary evidence could not be given of a document made by statute inadmissible. Therefore, taking the language of Section 54 as I find it, I do not think that there is anything to prevent a police officer from producing a document lawfully seized from the income-tax authorities, which those authorities themselves would not be able to produce.

8. It has been argued on behalf of the opponents that the prohibition is directed to a public servant, and it is said that the definition of ' public servant', contained in Section 2(13) of the Income-tax Act and Section 21 of the Indian Penal Code, includes a police officer. But the definition in the Income-tax Act is, like most statutory definitions, made subject to any context to the contrary, and it seems to me clear, on the terms of Section 54 of the Income-tax Act, that the public servant referred to is a public servant to whom disclosure has been made under the Income-tax Act. I have already said that I can see no reason why an assessee himself, if he is able to do so, should not disclose the contents of documents referred to in the section, and it can hardly be suggested that, whereas an ordinary assessee could make such a disclosure, an assessee who chances to be employed by Government, and, therefore, to be a Government servant, is precluded from so doing. In my opinion the public servant referred to in Section 54 is a public servant to whom disclosure has been made under the Income-tax Act.

9. Then it is said that in point of fact the seizure of this document, exhibit Z-44, by the police was illegal, and, that it must be regarded as constructively still in the possession of the income-tax authorities, and, therefore, falls directly within the prohibition in Section 54. That question depends on the construction of Sections 65 and 66 of the Bombay City Police Act. Section 65 enables an officer in charge of a police station to require the production of a document, which he thinks necessary for the purposes of any investigation being made by him. Then Section 66 of the Bombay City Police Act, which corresponds more or less to Section 165 of the Criminal Procedure Code, provides, so far as material, as follows :-

(1) Whenever an officer making an investigation under this chapter considers that the production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that the person in whose possession or power such document or thing is believed to be, will not voluntarily produce the same, on being required so to do by a Police officer, or in compliance with a summons or written order which has been, or might be, issued under section 65, such officer may search, or cause search to be made, for the same in any place within the limits of the City of Bombay.

10. It is to be noticed that the section does not in terms enable the police officer to seize anything ; it only enables him to search. But as the object of the search is to procure production of some thing required in an investigation, I feel no doubt that the police officer conducting the search under the section is entitled to take possession of that for which he is authorized to search. That construction is assisted by a reference to the terms of Section 68 of the Act, under which an officer of another section, who is authorized to search, is required to forward the document or thing found to the officer at whose request the search was made. A similar construction was placed on the corresponding provision of the old Criminal Procedure Code by this Court in *In re Bhanji* (1893) C.C. 677. I think, therefore, that the police are entitled to seize on a search under Section 66 of the Bombay City Police Act.

11. Then Sir Jamshedji Kanga has argued that Section 66 does not apply in this case, because there was no question of the Income-tax Officer voluntarily refusing to produce the document, or to comply with the summons which had been served upon him under Section 65. His argument is that the adverb 'voluntarily' implies that the income-tax authorities can exercise a volition in the matter, and as they are precluded by the Income-tax Act from producing the document, they are not exercising any volition. But that argument involves reading the adverb 'voluntarily' out of its context. What the section provides is, not that something must be done voluntarily, but that the police officer must have reason to believe that the person, in whose possession or power such document or thing is believed to be, will not voluntarily produce the same. If the police officer knows that in point of fact that

person cannot produce it, because by so doing he will be committing an offence, it is easy for him to conclude that the document will not be voluntarily produced. All that the section means is that the police officer must be satisfied that the person in possession of the thing in question will not produce it of his own accord, or under the compulsion of a summons. If he is so satisfied, then he may search. In my opinion, therefore, the police were entitled in this case to make a search under Section 66 of the Bombay City Police Act, and the seizure of Z-44 was legal.

12. It is urged that the effect of holding the police to be entitled to adopt the course they have adopted in this case is to defeat the intention of the Legislature as disclosed in Section 54 of the Income-tax Act. However, we can only gather the intention of Legislature from the language used ; and, if the course of action adopted in this case, on a fair reading of the section, has not been forbidden, there is no occasion for the Court to invent a prohibition. It is to be noticed that Sub-section (3)(a) of Section 54 contains an exception in the case of disclosure of particulars for the purposes of a prosecution under the Indian Penal Code in respect of any statement, return, accounts and documents mentioned, or for the purposes of a prosecution under the Income-tax Act. So that, for the purposes of certain prosecutions, confidential documents may be produced even by the income-tax authorities ; and I see no convincing reason for attributing to the Legislature any greater measure of tenderness for an assessee charged with other offences than the Legislature has chosen to express. To my mind the section does not preclude the course of action which the police have adopted in this case.

13. I think, therefore, that the learned Chief Presidency Magistrate was wrong in rejecting the tendering of this document.

14. Rule made absolute.

Sen, J.

15. I agree.