State Vs. Devsi Dosa

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Court : Mumbai

Decided On : Oct-14-1959

Reported in : (1960)62BOMLR316; 1960CriLJ1317

Judge : Mudholkar and ;Patel, JJ.

Acts : Debt Laws; Bombay Money-lenders' Act, 1947 - Sections 13A; Consttution of India - Article 20(3)

Appeal No. : Criminal Appeal No. 800 of 1959

Appellant : State

Respondent : Devsi Dosa

Advocate for Def. : A.H. Thakar, Adv.

Advocate for Pet/Ap. : Y.V. Candrachud, Govt. Pleader

Judgement :

Petel, J.

(1) This is an appeal by the State against the acquittal recorded by the Presidency Magistrate, 7th Court, Dadar, in favour of the accused in a prosecution under Section 204, Indian Penal Code.

(2) The Inspector of Money Lenders, Bombay City, was once passing by the shop of the accused No. 1 along with a colleague of his. He found that accused no. 1 was exchanging money for some ornaments with some of his customers. Supsecing that that was an illicit money-lending transaction he inspected the shop. A notice was given to him under Section 13-A of the Bombay Money Lenders' Act, 1946, and in response to it the accused No. 1 produced before him certain books of account. Those were three diaries of which he made a list. From these books of accounts he made certain extracts which referred to certain money-lending transactions by the accused. After inspection the books were returned to the accused and his receipt obtained, which is Exd. B in the case. That is dated 29th of June 1955. Thereafter the Inspector served three notices on the accused for the productions of his books of accounts regarding his transactions of money-lending for seven years previous to that date and called upon him to bring those books in his office on the dates given by him. The accused failed to produce his books of account as required by the notices given to him. Thereupon the usual notice was issued to the accused and thereafter the resent prosecution was launched against him under Section 204 of the Indian Penal Code.

(3) The accused contended before the learned Magistrate that there was delay in launching this prosecution and that it had prejudiced his case. He said that the three books of account in question were not traceable, that they were not documents within the term of Section 204 of the Penal Code and lastly that he was not bound under Article 20, clause (3) of the Constitution to produce anyof those books before the complainant. He also contended that th notices were vague.

(4) The learned Magistrate held that the notices were not vague and the accused knew what was expected of him to be produced. He held that the books required from him were documents within the term of the section. He also held that it was clear from the evidence and the conduct of the accused that the accused deliberately did not produce the said books already inspected by the Inspector. He therefore concluded that the accused intentionally did not produce the books of account and had either withheld or secreted them away so that the Registar of Money Lenders may not lay his hands on them as evidence of money lending business without a valid licence. But he held that the accused was not bound to

produce any books under Section 13-A bcause the formalities required by Section 13-A were not complied with. He also upheld the contention of the accused that he could not be compelled to produce any documents which would incriminate him in future under Article 20, clause (3) of the Constitution. In the result, he acquitted the accused. It is against this acquittal that the State has come in appeal to this Court.

(5) The essential ingredients of Section 204 of the Penal Code are that the accused had secreted or destroyed any document, and that he was legally compellable to produce the document as evidence in a proceeding lawfully held before a public servant. The question therefore is whether the respondent could have been lawfully compelled to objections which found favour in the trial Court and which are presssed here are that the formalities of Section 13-A of the Money Lenders' Act were not complied with and the production saved by Article 20, clause (3) of the Constitution.

(6) The learned Magistrate says that the formalities prescribed by Section 13-A were not complied with before he was called upon to produce those documents. He has notnamed those formalities at all. The learned magistrate goes on to say that is is not the function of the Registrar nor the function of the Officers empwered under the Money Lenders' Act to visit a shop of a person and call upon him forthwith to produce books for inspection. It appears that there has been some confusion in the approach of the learned Magistrate to this question. The section is in two parts. The first part authorises any one of the officers therein mentioned to direct the production of books which he requires. The section thereafter proceeds to give power to any of those officers after reasonable notice to take search of any placel where the businessis carried on. It also enables the officers to ask wuch questions as re necessary for interpreting or verifying such record. What is reasonable notice must be determined on the facts of each case. The confusion has been caused because, first the officer inspected the books of account when he visited the shop. But then, the charge is not for non-production of the book on that da or on that occasion. After the books were cursorily examnined by the officer, they were handed back to the accusedand thereafter the accused was called upon to produce them in his office at a given time. Since the accused did not comply with this notice, he is being prosecuted for this offence. Even assuming

that the visit by the Inspector to the shop of the accused was not justified, it cannot have any bearing on the question of non-compliance of the subsequent notices. It must therefore be held that the accused was bound to produce the documents which he was called upon to produce under the provisions of Section 13-A of the Bombay Money Lenders' Act.

(7) The secon contention must now be examined. If the words of Article 20(3) are construed in their ordinary sense, then they could mean only that there cannot be compulsory testimony either by speech or signs. the rule was evolved in times when religious and political persecutions were frequent and suspected persons were compelled to make confessions by persecution. It originated from a desire to protect person accusing themselves as an escape from such persecutions. Gradually, the rule widened. So far as giving evidence by word f mouth or giving a signed statement are concerned, it is no doubt a wholesome rule as it prevents forced confessions. But its extension cannot be reasonably supported in the context of modern society. Even in England where this rule originated and in other ountries where it has been followed in its wider implication, there have been strong protests against the rule. In one fort-noght, we heard it urged before us at least four times - once by a forger contending that he could not be compelled to give specinmen handwriting; then by a drunkard misberhaving in a public place contending that he could not be medically examined; and again by a smuggler that he could not be asked to produce his accounts and lastly by a tax-evader. Some time the argument succeeds. This Court has held in the case of Deoman Shamji Patil v. State : AIR1959 Bom284 , that a person accused of an offence under the Prohibition Act, 1949, cannot be compelled to submit himself to medical examination. There are also cases which hold that a person accused of forgery cannot be compelled to give his specimen handwriting. Looking to the manifest inconvenience and the opportunity that it would afford to unsocial elements for hiding their crimes, we would not, if this question were open, extend the meaning of the words used by the makers of the Constitution. It is indeed difficult to guess what ords other than those that are used in this article the Constituent Assembly could have used if it really indended to give protection against self-incrimination only in the narrow sense indicated by us.

(8) The question however is not open as it has been considered in M. P. sharma v. Satish Chandra : 1978(2)ELT287(SC) . It has been held:

'To be a witness is nothing more than 'to furnish eidence' and such evidence can be furnished through the lips or by production of a thing or of a documjent or in other modes.'

It would therefore appear that the production of books of account would be included within the meaning of the words compelled to be a witness against himself'. The difficulties of the accused however do not end here. There are other conditions which must be satisfied as required under the Article. Article 20 clause (3) says that no person accused of any offence shall be compelled to be a witness against himself. The person therefore who claims privilege under sub-clause (3) must be a person accused of any offence. While considering the provisions of Article 20, clause (2), in Maqubool Hussain v. State of Bombay : 1983ECR1598D(SC) , Mr. Justice Bhagwati delivering the judgment of the Court observed as follows at p; 328:

'The very wording of Art 20 and the owrds used therein 'Convicted', 'Commission of the act charged as an offence', 'be subjected to a penalty', 'commission of the offence', 'prosecuted and punished', 'accused of any offence', would indicate that the proceedings therein contemplated are of the nature of criminal proceedings before a Court of law or a judicial tribunala and theprosecution in this context would mean an initiation or starting of proceedings of a criminal nature before a Vourt of law or a judicial tribunal in accordance with the procedure prescribed in the statute which create the offence and regulates the procedure.'

The ratio of this case would appear to be that the person claiming immunity given by this Article must be accused of an offence in proceedings before a Court of law or a judicial tribunal. In the case of : 1978(2)ELT287(SC) it is observed, at page 303, as follows:

'Analysing the terms in which this right has been declared in our Constitution, it may be said o consist of the following components (1) It is a right pertaining to a person 'accused of an offence'. (2) It is a protection against 'compulsion to be a

witness'; and (3) It is a protection against such compulsion resulting in his giving evidence 'against himself'. The cases with which we are now concewrned have been presented to us on the footing that the persons against whom the search warrants were issued, were all of them persons against whom the First Information Report was lodged and who were included in the caegory of accused therein and that terefore they are 'persons accused of an offence' within the meaning of Article 20(3)'. In M. Suryanarayana v. Vijaya Commercial Bank Ltd. AIR 1958 AP 756, it has been observed.

'The immunity granted by Art. 20(3) does not extend to civil proceedings. the fact that the answers given by a person might tend to subject him to a criminal prosecution at a future date will not attrct the protection envisaged by Art. 20(3). In other words, the fact that the answers might involve a disclosure of crime or that they might form the basis of prosecution in future, would not make any difference. The itendment of this Article was to afford some protection to person involved in a crime, having regard to the predicamen in which he would be placed and that is revealed by the juxtaposition of that clause. The legislative intent was only to give some protection to the person who is accused of a crime To interpret it as applying to all proceedings, civil or criminal, which might at a subsequen period expose the person concerned to prosecution on the basis of answers given by him, is to enlarge the scope of this article and t defeat justice. To stretch this prhibition to civil cases would be to put a premium on dishonesty. This was not the purpose underlying Art. 20 and the intention of the Constitution makders.'

(9) To say the least, thererfore, in order that the protection of this Article should be available which would mean that an information is laid against him before an officer or a Court entitled to take cognizance of the offence and proceed upon the information to investigate into it. We are in agreement with the observations of the learned Judges in the case of AIR 1958 Andh Pra 756, that merely because the vidence might disclose some crime and it might form the subject matter of future prosecution, would not enable the person, who is asked to furnish eidence, to claim protection of Article 20,. sub-clause (3), in any proceedings other than where he is accused of any offence. To enlarge the scope of the Article so as to make it applicable to proceedings whether eivil or administrative would encourage

dishonesty and would afford comfortable nest to criminals. The proceedings in the present case are administrative in nature being under the Money Lenders' Act and the respondent has been accused at any stage of any offence so far. The protection of Art. 20(3) would therefore not be available to him.

(10) The learned counsel has however tried to seek support from the cases in Swarnalingam Chettiar v. Asst. Labour Inspector, Karaikudi, : AIR1954 Mad785 Subedar v. State : AIR1957 All396 and In Re Palani Goundan : AIR1957 Mad546 and Calcutta Motor and Cycle Co. v. Collector of Customs : AIR1956 Cal253 . The first three cases relied upon by the learned counsel do not support the widr proposition for which he contends. In each of these cases the persons who were invoking the protection of the Article were accused of some offence and therefore came within the principle of the decision in : 1978(2)ELT287(SC) . The last of the cases relied upon supports the proposition for which he contends. In that case, proceedings were under Section 171-A of the Sea Customs Act. The learned Judge who heard the case, held that the provisions of Section 171-A, in so far as it enables the authorities to compel a person accused of an offence to give evidence against himself and/or to produce documents for that purpose, offend against Article 20, sub-clause (3) of the Constitution and is bad. It is difficult to agree with the reasoning of the learned Judge in that case. That reasoning, with respect, is inconsistment with the intendment of the Article and carries it much beyond its legitimate scope. It would further render larger number of laws invalid. Having given our most earnest consideration to the reasoning of the learned Judge we are constrained to say that there is no warrant for extending the scope of Article 20, sub-clause (3).

(11) We are of the view, therefore, that Section 13-A of the Money Lenders' Act is not bad and does not offend against the provisions of Article 20, sub-clause (3). We are also of the view that though the production by the Respondent of his books would show that he was carrying on money lending business contrary to the provisions of the Bombay oney Lenders' Act, 1946, he is not entitled to claim protection under the Article because these proceedings are not concerned with any accusation aginst the respondent of any offence.

(12) It was then contended that the notices served upon him were gague and did not call upon him to produce any particular book. As stated earlier, the Inspector had inspected some three books which he had kept and taken rough notes after cursorily going through them. He therefore wanted the accused to produce all the books in which money lending transactions were entered during the period of seven years before the service of the notice. The accused was very well aware of what he was required to produce and he has not been misled in any manner. In answer to the notices he stated that he was not doing any money lending business, but was merely doing the business of a grocer and that he had no books of accounts of any money lending transactions. The diaries which were inpeected on the first ocfcasion were (1) from 15th September 1952 to 15t May 1955, (2) from 8th March 1950 to 11th January 1953 and (3) from 1st January 1955 to 31st December 1955 1955. In his statement which he made before the Court below he said that:

'The three books namely diaries not being regularly kept accounts books, have bnot been traced by me. I submit that it is not possible for me to remember whether such memo books had ben with me.'

We agree with the finding given by the learned trial Magistrate that since the accused knew what books were wanted by the Inspector after him inspection, he could have produced these books even at the time. Even in this Court, we asked Mr. Thakar whether his client was prepared to produce those books and we gave him adjournment for that purpose. We are informed today by him, on the authority of his client and of the learned lawyer who conducted the case in the trial Court, that he was not able to produce them. Whatever possible doubt could have been entertained by anyone has, therefore been removed in this matter since he did not produce these books in spite of several opportunities offered to him. The unavoidable inference must be as found by the learned trial Magistrate that he has eigher withheld them or secreted them so that the Inspector of Money Lenders may not lay his hands on them.

(13) In view of these facts, the case clearly falls within the terms of Section 204, ndian Penal Code. The question is then as to what is the punishment that must be

imposed upon the accused. The money Lenders Act was enacted in order to prevent unscrupulous money-lenders exploiting the needs of the poor. The evil of such exploitation was very rempant and it became absolutely necessary to regulate such transactions and safe-guard the poor and the needy. It is for this purpose that the provisions have been enacted and a breach of these provisions cannot be countenanced. Since however, in this case there has been great delay in launching the prosecution against the accused, we think a sentence of one month's simple imprisonment would meet the ends of justice. We are told that the acused is suffering from heart troubel and that he should not be sent to prison. We are sure that the authoritis concerned will take every care of the accused if he is so fuffering. A sentence of imprisonment, howver, must be imposed since the ends of justice require.

(14) Accordingly, we direct the accused to undergo the sentence of one month's simple imprisonment.

(15) The accused to surrender tomorrow evening.

(16) Appeal allowed.