

**Krishna and Co. Vs. State of Karnataka**

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**SooperKanoon Citation :** [sooperkanoon.com/387163](http://sooperkanoon.com/387163)

**Court :** Karnataka

**Decided On :** Mar-15-2001

**Reported in :** [2001]124STC423(Kar)

**Judge :** M.F. Saldanha and ;R. Gururajan, JJ.

**Acts :** [Karnataka Sales Tax Act, 1957](#)

**Appeal No. :** S.T.R.P. No. 87 of 1999

**Appellant :** Krishna and Co.

**Respondent :** State of Karnataka

**Advocate for Def. :** B. Anand, Additional Government Adv.

**Advocate for Pet/Ap. :** Kamath & Kamath

**Disposition :** Petition allowed

**Judgement :**

ORDER

**M.F. Saldanha, J.**

1. We have heard the petitioners learned counsel as well as the learned Government Advocate on merits. The learned Government Advocate to file his memo of appearance within two weeks.

2. We do not propose to deal with either the facts or the merits of the case because of the fact that after hearing the learned Advocates on both sides, we are of the view that it is necessary to remand the proceedings to the Karnataka Appellate Tribunal for the reasons set out. We need to clarify that at the admission stage itself, this petition was heard for some time by the earlier Bench. Pursuant to the change of assignment, the present Bench has reheard the learned Advocates on both sides once again on merits. Since this petition was only for admission, the rule of this case being part heard, does not strictly apply. In any case, no prejudice has been caused to either of the parties.

3. The two-fold reasons canvassed before us was to the effect that in the first instance, since there are references to the intelligence reports wherein some adverse material/observations were obviously contained that the petitioner requested for a copy of the same. In so far as according to the learned advocate, it was necessary for them to deal with that material and secondly to overcome whatever bias that report might have caused. This is not a secret or any confidential document. It is a routine report filed by the inspecting authority and in this background, we are of the view that the copy of the same ought to have been made available to the petitioners when they asked for it. The non-furnishing of the copy in question is alleged to have created certain prejudice to the petitioners. We have not really examined the question as to whether the prejudice was real or imaginary but the fact remains that the rules of natural justice would require that all material on which the department places reliance is made available to the affected party and to this extent therefore, we direct that a copy of the report in question be made available to the petitioners prior to the arguments being reheard. The learned Government Advocate submitted that this is a case in which the intelligence report was totally irrelevant because the petitioners have themselves accepted the position that the stock statements were in-correct ; that they have asked for compounding and they have even paid the damages. A statement was made at the Bar that this was done under duress and that it will not preclude the petitioners from challenging the orders passed against them. Since the petitioners have decided to appeal, in our considered view, they are entitled to a fair procedure irrespective of whether they had a case on merits or not.

4. The petitioners learned Advocate also points out to us that after the case was adjourned for judgment it was listed once again on November 30, 1998 on which date the petitioners and the learned Advocate had no notice of the fact that the case was listed and the original order sheet shows that the direction to issue notice to both parties have also been scored off. The grievance canvassed is that some hearing took place behind the back of the petitioners and their learned Advocate and irrespective of what the nature of that hearing was that this is an improper and incorrect procedure and that on this ground alone, the impugned order is vitiated.

5. We need to record here that there are well-defined principles that apply to all judicial proceedings and it is most elementary that courts and Tribunals should not list a case for hearing behind the back of the opposite party, that alterations in the order sheet should never be made and more importantly that one sided or ex parte hearings are not only impermissible but are deprecated. This will apply more so when the case was reserved for judgment because it does create an apprehension of unfairness and the possibility of bias in the mind of the opposite party and irrespective of what were the reasons or how so ever innocuous the entire situation might have been, any breach of the aforesaid principles would be sufficient to vitiate the order that is ultimately passed.

6. For the aforesaid reasons, we have no option except to set aside the impugned order. The Tribunal is directed to furnish the copy of the intelligence report as asked for by the petitioners, to give them reasonable time to deal with it and thereafter hear the arguments de novo after notice to the petitioners, The Tribunal shall thereafter re-decide the case on merits and shall ensure that the procedure prescribed by law is strictly complied with. The petition succeeds to this extent and stands disposed of. No order as to costs.