

Mubarak Stores Vs. the Intelligence Officer, Agricultural Income-tax and Sales Tax and anr.

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Court : Kerala

Decided On : Mar-20-1974

Reported in : [1974]33STC526(Ker)

Judge : M.U. Isaac, J.

Appeal No. : O.P. No. 3636 of 1973

Appellant : Mubarak Stores

Respondent : The Intelligence Officer, Agricultural Income-tax and Sales Tax and anr.

Advocate for Def. : Government Pleader

Advocate for Pet/Ap. : P.A. Mohammed (T), Adv.

Disposition : Petition allowed

Judgement :

M.U. Isaac, J.

1. The petitioner is a dealer registered under the Kerala General Sales Tax Act, 1963. The first respondent, the Intelligence Officer, Agricultural Income-tax and

Sales Tax, Cannanore, made a sudden inspection of the petitioner's shop on 8th March, 1973, and seized therefrom a rough daybook for the year 1972-73 written up to 7th March, 1973, and 9 account slips. The petitioner made repeated requests to the first respondent to return the records seized from his custody without any success. On 26th October, 1973, he filed this petition for a writ of mandamus or other appropriate writ or order directing the first respondent to return the said records to him and for incidental reliefs.

2. The Deputy Commissioner (Law) has filed a counter-affidavit on behalf of the first respondent on 6th December, 1973. In paragraph 8 of that counter-affidavit he states as follows:

The petitioner has prayed in this original petition for a writ of mandamus directing the first respondent to return the rough day-book for the year 1972-73 and account slips seized by the first respondent on 8th March, 1973. It is respectfully submitted that the petitioner is not entitled to this relief at all. The rough day-book for 1972-73 was seized for launching the prosecution. If the petitioner had co-operated with the first respondent, the investigation could have been over by this time. The representative who produced the accounts was not in a position to explain regarding the real nature of the transactions involved. Hence, correct and exact turnover of suppression involved in the seized records could not be ascertained. These books are absolutely necessary for launching the prosecution.

In support of the above plea, reliance is naturally placed on clause (a) of Section 28(3) of the Act, which reads:

(3) (a) If any officer not below the rank of an assessing authority has reason to suspect that any dealer is attempting to evade payment of any tax or fee due from him under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers and documents of the dealer as he may consider necessary and shall grant a receipt for the same. The officer who seizes such accounts, registers or documents shall return them within thirty days from the date of seizure unless they are required for a prosecution.

It is clear from the above provision that a seizure is authorised only if the assessing authority has reason to suspect that any dealer is attempting to evade payment of any tax or fee due from him under the Act, and not for launching a prosecution as stated in the counter-affidavit. It may be that, after seizing the records, the authority concerned may find that the dealer has also committed an offence; and then it would be open for him to launch a prosecution. The right to retain the records seized under the above provision is only for a period of 30 days, unless they are required for a prosecution. In other words, the authority is bound to return the records to the dealer after the expiry of 30 days from the date of their seizure, unless he requires them for a prosecution. The question is whether the prosecution for which they are required must be a prosecution in existence or it would include also a prosecution in contemplation. Seizure and retention of a dealer's books of account by an officer are serious inroads into his fundamental rights. But that is permitted by the above statutory provision in the interest of the general public under certain special circumstances. Any such restriction on the fundamental rights can be permitted only to the extent clearly provided by the statute. Construing the above provision in this background, it appears to me that the words 'required for a prosecution' can mean only 'required for an existing prosecution'. It may include a prosecution existing at the time of the seizure and also one which the authority may institute within the period of 30 days for which he is entitled to retain the records. If it were otherwise, it would be giving a blank cheque to the authority concerned for retaining the records for any amount of time. It would be enough if he says that he is contemplating the institution of a prosecution. This is what has happened in this case. Till 6th December, 1973, when the counter-affidavit was filed, no prosecution had been admittedly filed in this case. The learned Government Pleader now submits that, on 13th March, 1974, a prosecution has been instituted; but he is not in a position to say whether the records seized from the petitioner had been produced in the criminal court. The prosecution itself was filed after this original petition came up for final hearing, and the Government Pleader took two or three adjournments in that respect. In view of the fact that a prosecution is said to have been instituted, I do not want to make any comment on the conduct of the first respondent in the matter. I hold that the retention of the records after the period of 30 days from the date of their

seizure in anticipation of a prosecution or a contemplated prosecution is not warranted by Section 28(3)(a) of the Act.

3. In the result, I allow this petition and direct the first respondent to return the records seized from the petitioner within one month from this date. The first respondent will pay the costs of the petitioner.

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