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Court : Kerala

Decided On : Feb-28-1978

Reported in : (1978)6CTR(Ker)189

Appeal No. : Crl. M.P. No. 297 of 1977

Appellant : Pavithran and Five ors.

Respondent : Poullose.

Judgement :

T. Kochu Thommen J. - This is a petition under S. 412 Cr.P.C. The petitioners are the accused in C.C. No. 411 of 1977 on the file of the Judicial Magistrate of the Second Class, Alwaye. The prosecution was launched by the complainant who is the respondent here. The case of the complainant is that an offence was committed by the accused under S. 347 I.P.C. read with S. 34 I.P.C. The complaint was filed on 7-3-1977 on which day process was issued to the accused. Immediately upon receipt of the summons the accused approached this Court with the present petition. Accused 1 to 3 are Sales-tax Officers. Accused 5 is the Sales-tax Inspector. Accused 4 and 6 are peons in the sales-tax department.

2. The complaint of the present petitioners (the accused) is that the prosecution was launched by the respondent in contravention of the requirement of S. 51 of the Kerala General Sales-tax Act. 1953 (the Act). This sections says :

'51. Bar of certain proceedings. -

(1) No suit, prosecution or other proceedings shall lie against any officer or servant of the Government of any act done or purporting to be done under this Act, without the previous sanction of the Government.

(2) No officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceeding, if the act was done in good faith in the course of the execution of duties or the discharge of functions imposed by or under this Act.'

It is accordingly submitted by the petitioners here that in so far as the sanction of the Government was not sought or obtained, the prosecution is unsustainable and that it is an abuse of the process of the court.

3. According to the respondent, the facts are the following : The respondent was carrying goods in a lorry on 18-12-1976. As he approached Angamally he was stopped by the petitioners who were travelling in a jeep. The respondent was asked to produce the documents required under S. 29(2) of the Act, which he did. He, was however, forced to enter the jeep and they tore off two pages of the bill book which was in his possession. The pages related to sales alleged to have dealers in Kalady. The petitioners then took the respondent in their jeep to Kalady purportedly for the purpose of verifying the entries in the two pages with the dealers. After the bills were verified, the respondent was left high and dry at Kalady and the petitioners went away in their jeep.

4. It is not disputed by the respondent that the petitioners 1, 2 and 3 were fully authorised under S. 29A of the Act. This section says :

'29A. Procedure for inspection of goods in transit through notified areas.- (1) The driver or other person in charge of a vehicle at or vessel shall stop the vehicle or vessel at any place within a notified area when so required by the officer in charge of that notified area, or at any other place when so required by any officer empowered by the Government in that behalf, for the purpose of enabling such officer to verify the documents required by sub-S. (2) of S. 29 to be in the possession of the person transporting the goods and to satisfy himself that there is no evasion of tax..... '

Counsel for the respondent Shri Joseph Augustine submits that the petitioners did not act or purport to act in the course of their official duties. It is, therefore, submitted that in so far as the petitioners did not act in exercise of their power, the bar under S. 51 did not supply to the present proceeding.

5. Counsel for the petitioners Shri Sukumaran Nair submits that there was sufficient nexus between the act done by the petitioners and their official duty under the Act, and it cannot therefore be contended that the petitioners were not validly exercising their power. However, the petitioner was not in exercise of the power under the Act, they in any case purported to have acted by virtue of that power. It may be that in the exercise of their power, they acted excessively. Even so, no prosecution can be launched against them without obtaining the previous sanction of the Government as required under S. 51. He therefore submits that the prosecution is unsustainable and that being so, on the basis of various authorities, it is unnecessary for the petitioners to raise a preliminary objection before the trial court, and wait until a decision is rendered on that point, before they come to this Court. The procedure under S. 482 Cr.P.C. applies fairly and squarely that section in the prevention of miscarriage of justice and of the abuse of the process of court.

6. Counsel draws my attention to Matajog Robey vs. H. C. Bhari. I shall extract the relevant portion of para 17 of that judgment :

'The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under S. 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits.

That we must find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation.'

7. The position appears to be clear that if there is sufficient and reasonable connection between the act and the official duty, the bar of S. 51 squarely applies. The question is whether the petitioners acted in accordance with the power given to them under S. 29A read with S. 29(2) or purported to have so acted. S. 29 (2) requires certain documents to be carried by the carrier of goods. Failure to carry those documents is an offence S. 29A which is a procedural provision for inspection of goods in transit through notified areas gives the power to the officers under the Act to verify the documents required under S. 29(2) and to satisfy themselves that there is no evasion of tax.

8. Counsel for the respondent submits that this power of verification applies to goods in the possession of the carrier at the relevant time and not to goods the possession of which was no longer with the carrier. He says that it is true that the goods were carried and the documents regarding their sale were in the possession of the respondent, but the power under S. 29-A does not extend to goods which were no longer in the possession of the carrier. In the present case the bill book indicated that the goods were sold to parties in Kalady, and, that being so, the power to verify the documents did not apply to such goods. He further submits that in any case, assuming that the power to verify the documents extended to such goods, the officers have no power to detain a person or to take him by force to any other place. In the present case the respondent allowed the officers to verify the documents and there is no reason to suspect the bona fides of the respondent. That being the case the power under S. 29A did not enable the officers to obtain or take him by force to Kalady. Even to claim that the officers purportedly acted under S. 29A, it is their duty to show that there is a reasonable connection between their act and their duty. The petitioners have not been able to do that. In the circumstances, counsel contends that the prosecution cannot be stopped and evidence should be allowed to be rendered by both sides in order to find out the truth of the matter.

I am not in a position to agree with counsel for the respondent in the interpretation sought to be put on Ss. 29 and 29A. S. 29 prohibits the transport of goods without the required documents. Any transportation without the necessary power to verify the documents under S. 29A is to ascertain whether S. 29(2) was in terms

satisfied and whether there was any evasion of tax. It is necessary to ascertain the manner in which the goods are being carried or had been carried by the vehicle. In the case of goods which were sold and moved from the vehicle, the carrier has a duty to satisfy the officers that such goods had been carried in the lorry under proper documents and there was no evasion of tax. In regard to goods remaining in the lorry, the carrier has a similar duty to satisfy the officers that the goods are being carried under necessary documents and that no tax is evaded. The officers under S. 29A have not only the power but also the duty to verify the documents with a view to finding out whether tax has been evaded.

10. What was done by the officers was to ascertain that fact. If they failed to do so, they would have failed to discharge their statutory duties. Verification can be done in various ways. It can be done at the spot and the vehicle can be released immediately. This is particularly so in the case of goods which are in the vehicle at the time of the inspection. In respect of goods which are not in the vehicle, but are alleged to have been sold and removed in the course of the transit, verification may have to be done (unless of course the entries in the bill books are accepted by the officers without question with alleged of the goods).

11. It is in fact a verification of that type which was done by the officers in the discharge of their official duties. That being the position, there is no doubt in my mind that the act and the duty were so interconnected (whether or not the petitioners acted in excess of the powers under the Act) that the previous sanction of the Government in terms of S. 51 was undoubtedly required. This was not done.

12. Accordingly the present petition is allowed, and the proceeding in C.C. No. 411 of 1977 on the file of the Judicial Magistrate of the Second Class, Alwaye, stands quashed.