Ashok Kumar JaIn Vs. State of Tamil Nadu and Others

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Court : Chennai

Decided On : Jul-13-1990

Reported in : [1992]85STC16(Mad)

Judge : Mishra, J.

Appeal No. : Writ Petition No. 1367 of 1989

Appellant : Ashok Kumar Jain

Respondent : State of Tamil Nadu and Others

Advocate for Def. : Haja Najimuddhin, Additional Government Pleader

Advocate for Pet/Ap. : Miss Nandha Rajagopalan, Adv.

Judgement :

Mishra, J.

1. Heard. Petitioner's place of business as well as his residence was inspected on October 17, 1987 and certain documents/records were seized. Twelve items were seized from the residence of the petitioner and twenty-two from his sales depot. Search of the residence of the petitioner, however, was conducted under a warrant issued by the Chief Metropolitan Magistrate. It appears and it is so stated in the counter-affidavit filed on behalf of the respondents that, records seized from the residence of the petitioner were deposited in the Court of the Chief Metropolitan

Magistrate. Petitioner applied to the said Magistrate for the release of the seized documents. The Magistrate ordered that 'the petitioner can apply for return of documents 1 to 12 for which M.P. has been restricted except item 11(b) under mahazar and 'XX' book under D7 slip after March 31, 1989 or after the appeal, if any, to be preferred by the petitioner is disposed of, whichever is later. With regard to those two documents, he can apply for return after the investigation by the police is over and after the trial of the criminal case, if any, filed by the police is over'. In other words, the learned Chief Metropolitan Magistrate ordered for the release of the documents except item 11(b) under mahazar and 'XX' book under D7 slip with respect to which he directed separately, 'with regard to those two documents, he can apply for return after the investigation by the police is over and after the trial of the criminal case, if any, filed by the police is over. Anyhow, if the petitioner wants return of all the documents after March 31, 1989, he can renew the application on giving an undertaking that he is not preferring any appeal'. It appears that in so far as item 11(b) under mahazar and 'XX' book under D7 slip were concerned he had reasons to say that they would be returned only after the conclusion of the investigation of the case and trial. It appears thus that the two documents, item 11(b) under mahazar and 'XX' book under D7 slip, were required for the investigation and trial of the case. So far as other documents with respect to which he passed orders are concerned to be released in accordance with the provisions in section 41(3) of the Tamil Nadu General Sales Tax Act, hereinafter referred to as 'the Act' which by virtue of an amendment by Act 51 of 1987 provides that records and documents of a dealer seized in connection with any search or suspicion that he was attempting to evade the payment of any tax, fee or other amount due from him under the Act are to be returned after the expiry of thirty days and in case permission of the next higher authorities is obtained, returned after the expiry of ninety days. However, there does not appear to be any justification to allow retention of the documents seized from the custody of the petitioner by the respondents beyond the period of ninety days as contemplated by the proviso to sub-section (3) of section 41 of the Act. Learned counsel for the petitioner states that the petitioner would not insist for the release of documents, item 11(b) under mahazar and 'XX' book under D7 slip, with respect to which the petitioner shall abide by the direction given by the learned Chief Metropolitan

Magistrate. Since I find that the respondents have no reason whatever to retain the other seized documents from the custody of the petitioner beyond a period of ninety days at a time as contemplated under the aforementioned provision of law, I hereby direct the respondents to release all seized documents except the aforementioned two documents to the petitioner forthwith. Let a direction accordingly issue. No costs.

2. Writ petition allowed.