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In Re: P.K. Adimoolam Chettiar,

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Court : Chennai

Decided On : Apr-16-1957

Reported in : [1957]8STC741(Mad)

Judge : Ramaswami, J.

Appeal No. : Criminal Revision Case Nos. 1004 and 1005 of 1956 and Crl. Rev. Petition Nos. 939 and 940 of 1956

Appellant : In Re: P.K. Adimoolam Chettiar,

Advocate for Def. : V.V. Radhakrishnan, Adv. for P.S. Kailasam, Public Prosecutor, ;V.V. Radhakrishnan ;and K. Veeraswami, Assistant Government Pleader

Advocate for Pet/Ap. : P.K. Janakiram, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

Ramaswami, J

1. These are two connected revision cases which are preferred against the convictions and sentences by the learned Additional First Class Magistrate, Vellore, in C. C. Nos. 177 and 178 of 1955, and which were confirmed by the

learned Sessions Judge of North Arcot at Vellore in C. A. Nos. 178 and 179 of 1956.

2. The short facts are :-The revision petitioner, P.K. Adimoolam Chettiar, is a registered dealer. He is doing business in rice, paddy and groundnut in Polur on his own account and besides this he is a partner in the Gajendra Rice Mills at Kommandal, which is about four miles from Polur. On the 14th February, 1953, the Special Assistant Commercial Tax Officer visited the Gajendra Rice Mills. Natesa Pillai, the clerk of this Adimoolam Chettiar for his individual business, was writing some accounts. The accused was not there. The clerk produced seven account books and gave a statement. In that statement Natesa Pillai has mentioned that he was the clerk of Adimoolam Chettiar for his individual business, that since Adimoolam Chettiar became a partner of the Gajendra Rice Mills in May, 1952, he was doing most of his business in rice in the premises of the Gajendra Rice Mills and that the account books produced by him related to the individual business of Adimoolam Chettiar and recorded the real transactions. Adimoolam Chettiar turned up before this officer on I5th March, 1953. He furnished similar information reduced into writing to this officer and also produced one more ledger relating to the period from 14th January, 1952, to 18th July, 1952. He also furnished information that he was maintaining two sets of accounts, viz., one set regarding real transactions and the other set regarding transactions for official consumption. He also gave information that the account books produced on the previous day by his clerk Natesa Pillai, as well as the additional account book furnished by him on that day, related to his business and that in particular those account books besides the two books kept officially contained his real transactions; and he gave details of the amount of turnover which had been omitted in the accounts intended for official consumption. There can be no dispute that several entries found in the case of real transaction accounts are not to be found in the accounts maintained for official consumption and on the foot of which apparently returns were to be submitted to the authorities.

3. On the foot of these facts Adimoolarn Chettiar was prosecuted by the Sales Tax Authorities, viz., that the account books maintained by him for official consumption and the returns submitted by him showing that his turnover on the basis of those

official accounts were not correct and that he was not keeping correct accounts of turnover as required by the Rules.

4. In C. C. No. 177 of 1955 the accused was charged with an offence under Sections 15(a) and 15(b) of the Madras General Sales Tax Act in that for 1951-52 he maintained incorrect accounts and wilfully submitted an untrue return of the turnover in his business in rice, paddy and groundnut carried on by him as a registered dealer in Polur. In this case he was found guilty under Section 15 (a) and fined Rs. 300. On appeal the conviction and sentence were confirmed by the learned Sessions Judge.

5. In C. C. No. 178 of 1955 the accused was charged with an offence under Section I5(h) of the Madras General Sales Tax Act and this case relates to the year of assessment 1952-53. The accused was found guilty under Section 15(a) of the Act and fined Rs. 200. In appeal to the learned Sessions Judge the conviction was altered into one under Section 15 (h) or Section 15 (a) in the alternative and the sentence of fine was confirmed.

6. The common points of law taken in the revision are that the courts below have failed to notice that the Commercial Tax Authorities have no power or authority under the Madras General Sales Tax Act or the Rules made thereunder, (i) to enter into any business premises at odd hours; (ii)to seize and carry any account books or papers from any business place ; (iii) to record any statement from any persons much less to themselves prepare statements and obtain signatures thereto of persons whom they want to charge-sheet later on relying on such statements as evidence ; (iv) that such signature was obtained from accused under threat of proSecution on a Sunday (15th February, 1953); and (v) that the Gajendra Rice Mills where the books were seized is not the place of business of the accused. I shall now consider these points one by one.

7. Point 1:-There is no substance in this contention. Section 14 (2) empowers the officer concerned to have inspection at all reasonable times of all accounts and registers maintained by the dealer in the ordinary course of the business, the goods in their possession and their offices, stocks, godowns, vessels or vehicles. 'It means that he should not enter the premises at odd and unearthly hours, as, for

instance, at dead of night or at inconvenient times, such as dinner time, or other intervals when the dealer is expected to be away from the premises. While the officer must have full scope for his exploratory attempts to find out the truth by sudden and surprise visits or inspections, it should not be allowed to degenerate into mala fide encroachments on the freedom'and liberty of the subjects so as to reduce them to the position of helpless victims of executive tyranny and inquisitions. The purpose of inspection can be achieved only if there is a facility afforded for entering any premises for such inspection, such as an office etc., in which business is done and this is what is provided for in Section 14(3). While the officer has got the power to enter for effectuating the inspection mentioned in the section, the power should be exercised with due regard to the bona fide convenience of the dealer so that the sanctity of his home and the necessity of his leisure are not violated or encroached upon. While it is difficult to lay down any hard and fast Rule in this regard, it is at the same time desirable and proper to postulate that the officer should so arrange the inspections that while they facilitate the effective availability of the necessary information or material sought, they would not entail undue hardship or inconvenience on the dealers concerned.' Per the excellent Commentary published by the Law Weekly, Madras, Shri N. R. Raghavachariar's Sales Tax in Madras, pages 207-208. In fact this section was criticised in the Legislative Council as giving almost 'inquisitorial powers' to the officers under the Act and in order to safeguard misuse of power under the section, an amendment was moved that the officer so empowered should not be below the rank of a Revenue Divisional Officer. On the assurance of the Premier that the Government would pay attention to the matter in choosing officers the amendment was withdrawn, because at that time unlike the Income-tax Act this Act conferred power of entry for inspection and while the Income-tax Officer entering the premises of an assessee for inspection would be committing the offence of trespass, AchhruRam v. Emperor I.L.R.(1925) Lah. 104; A.I.R. 1926 Lah 326, an officer entering premises under this Act commits no offence: see page 130 of the Madras General Sales Tax Act by Sundara Vyas (2nd Edn.). Therefore, we have to steer clear of the two extremes and decide upon the circumstances of each case as to what constitutes reasonable time. In this case the time of inspection though it might have proved unpalatable and unwelcome to this

registered dealer, who had something to hide, can hardly be described as unreasonable. On the other hand, the premises were open and the clerk Natesa Pillai was attending to the business of writing the individual accounts of this registered dealer. Therefore, point 1 fails.

8. Point 2 :-Section 14 gives certain wide powers to the authorities empowered by the State Government. For the purposes of this Act, any dealer can be required to produce his accounts. Production may be required not merely with reference to the producer's own assessment but for any purpose of the Act. The authorities can require production of accounts and other documents. The words 'other documents' in the section are vague and indefinite. Under the Rules of construction of statutes, where general words follow particular words, the general words will have to be construed in the light of particular words. This is what is known as the ejusdem generis Rule. Therefore, 'other documents' will be in the nature of account books, bill books etc., that have some relation to the accounts and not any correspondence etc.: Per Sethuraman's Law of Sales Tax in India, page 90. In the present case, the officer has done nothing more than ask Natesa Pillai to produce before him the accounts and this had been done, in the shape of seven account books. There is nothing in the Act which says that as soon as the books are produced the officer cannot take them with him and inspect them and that this production and inspection must get itself exhausted in the business premises. In fact all that can be legitimately expected is that the officer, if necessary, should pass a receipt for the account books so produced so that there might not be any dispute later regarding the number and extent of the accounts and other documents produced before him. Point 2 also fails.

9. Point 3 :-There is a good deal of misconception in regard to statements furnished by Natesa Pillai now deceased and the registered dealer, viz., the accused, the next day. Section 14 (1) states that 'Any officer empowered by the State Government in this behalf may, for the purposes of this Act, require any dealer carrying on business in any kind of goods...to furnish any other information relating to such business.' That information can be furnished either in writing or orally and if that information is furnished orally, it has got to be reduced into writing by the officer concerned. This is precisely what happened here on the first day by

Natesa Pillai and on the second day by the registered dealer going to the Sales Tax Officer with the additional account books and furnishing all such information relating to the business required and which was in his possession and which he was naturally anxious to impart to explain the accounts. The powers exercisableunder this Section came in for the review of this Court in Mariyala Venkateswara Rao, In re (1952) 1 M.L.J. 14. Acting on a report that the assessee in that case sold a shawl on a holiday, the Assistant Commercial Tax Officer entered, the shop during lunch interval on that day. He prepared a statement and required the assessee to sign that statement. The assessee complained of this to the Commercial Tax Officer and did not sign the statement. The Assistant Commercial Tax Officer filed a complaint against the assessee under Section 14 (2) read with Section 15 (c) of the Act. The assessee was convicted of the offence. On revision, this Court held the conviction to be wrong. The following propositions are laid down in that case, viz., (1) Rule 24 of the Madras General Sales Tax Rules does not empower an Assistant Commercial Tax Officer to go to the premises of the assessee, prepare an incriminating statement and compel him to sign it; and (2) Section 14(2) of the Act must be construed strictly and the Assistant Commercial Tax Officer is not empowered to compel the production of private papers and cash nor does he have a right to inspect goods or accounts, or registers on a holiday during lunch interval and the assessee was not bound to allow inspection of the premises. This is not the case here. The furnishing of information in this case falls directly under Section 14 (1). Point 3 fails.

10. Point 4:-Statements recorded on a Sunday do not become ipso facto invalid. In Satyah v. King : (1948)2MLJ114 , an order of acquittal was pronounced on a Sunday which was in contravention of Rule 1 of the Criminal Rules of Practice and it was argued that the judgment was invalid. But this argument was repelled by Govinda Menon, J. In fact the revised Criminal Rules of Practice, which is going to be published, has been suitably amended to be in conformity with this judgment. Therefore, statements can be recorded on a Sunday, though it is not desirable to do so, because all persons are entitled to cease work on a Sunday. But suppose Sunday suited both the parties and the officer was equally willing to forego his leisure and rest and attend to the work to oblige the registered dealer and polish off the arrears of work, the objection would certainly be meaningless. On the other

hand, we must congratulate both the officer and the dealer in avoiding arrears of work as much as possible.

11. The statement in this case was certainly a voluntary statement given by both the deceased Natesa Pillai as well as this registered dealer. It is idle to contend that the officer had any motive to foist untrue statements by compulsion on those persons. On the other hand, inasmuch as these two statements constitute the sheet anchor of the prosecution case and are very unpalatable now to this registered dealer,there is every incentive on his part to come forward with the false tale that he was threatened with prosecution and therefore he signed the statement. This is true of every Madras criminal who as the day of judgment draws nearer starts disowning more and more frantically statements made by him voluntarily in the first instance and in which he finds that he is tightening the noose round his neck, or liberty or property later. In fact no suggestion has been made to P. W. 3 in cross-examination about this intimidation. Inasmuch as the account books were seized on the spot from Natesa Pillai there was no surprise in his giving a voluntary statement and in view of the seizure of the account books and the giving of the voluntary statement by Natesa Pillai, the accused feeling that there was no escape has produced the other account books and given a statement voluntarily. This accused has not complained at any stage of his signature being extorted from him. I entirely agree with the Courts below that these statements have been made voluntarily. For admission of evidence no express decision is necessary: Navanithammal, In re : AIR1939 Mad3 . No formal proof by prosecution as to voluntary nature is necessary: Boya Chinna, In re : AIR1942 Mad49 . The Rule which excludes confessions not having been made voluntarily is a Rule of policy; the reason is not because the law is afraid of having the truth elicited but because the law is jealous of not having the truth: Ebrahim v. Emperor A.I.R. 1914 P.C. 155; 15 Cri. L.J. 326 : Per Williams R. v. Mansfield (1861) 14 Cox C C. 639. The learned Sessions Judge has in this connection posed the pertinent question and answered it well. He writes:

'...Whether the statement (Ex. P. II) which the accused voluntarily made to P. W. 3...and the statement which his clerk voluntarily made would become inadmissible merely because P. W. 3 could not have compelled the appellant or his clerk to

make such a statement. In my opinion, there is no provision or principle of law which would render such statements of the appellant and his clerk inadmissible per se. For instance, there is no prohibition to their reception such as is contained in Section 25 of the Evidence Act in respect of a confessional statement made by an accused to a police officer. Such statements would be admissible as, admission either of the appellant or his agent under Sections 17, 18 and 21 of the Evidence Act. Even if they are to be treated as confessions, they would be admissible unless they were taken under circumstances referred to in Section 24.' This is not the case here. Point 4 fails.

12. Point 5 :-Section 14(3) gives power to enter premises for purposes of Sub-section (2). The office, shop etc., can only mean that of a dealer and not, of a person who is not a dealer under the Act, since the power to enter is only auxiliary to the power of inspection of a dealer's accounts. As already stated, the purpose of inspection can be achieved only if there is a facility afforded for entering any premises for such inspection, such as an office, shop, godown, vessel, vehicles or any other place in which business is done and this is what is provided for in Section 14(3). This cannot be evaded by the dealer doing his business in a secret place and with an ostensibly namke vasthe place of business where the real and effective business is not done. In this case though this registered dealer was doing his business in rice, paddy and groundnuts at Polur he was also carrying on business in another place, viz., at Kommandal, four miles away from Polur, by reason of his partnership in the Gajendra Rice Mills. In order that his account books etc. may not be suddenly seized and expose the double set of accounts which he was maintaining, this registered dealer has installed his own personal clerk to attend to his individual business in the Gajendra Rice Mills premises. The surprise visit of the officer exposed the secret place of business of this registered dealer. The language of Section 14(3) is wide enough to take in both the real and the namke vasthe places in which the business is done. The Legislature has guardedly used the word 'any' preceding 'office, shop' etc., before the words 'any other place in which business is done.' Point 5 fails.

13. The convictions and sentences are irreproachable and they are confirmed and these revisions are dismissed.

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