

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1342 OF 2008
(Arising out of SLP (Crl.) No. 4135 of 2006)

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Goondla Venkateswarlu

...Appellant

Versus

State of A.P. and Anr.

...Respondents

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the judgment of a learned Single Judge of the Andhra Pradesh High Court dismissing the petition filed by the appellant under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.'). The prayer

was to quash the proceedings before learned Additional Judicial Magistrate, First Class, Karimnagar in CC No.356/96.

3. Background facts as projected by the appellant are as follows:

The appellant, at the relevant time in 1994, i.e. 24.10.1994, was working as Assistant Commissioner of Commercial Taxes. He alongwith his subordinate staff went to the business premises belonging to the respondent no.2 for carrying out an inspection during business hours. The premises were registered business premises of M/s. Rajani Fireworks whose proprietor is the son of the respondent no.2. The officials went to the premises at 5 p.m. on 24.10.1994. In the same business premises, the documents and business stocks relating to Kasanagottu Srisailam and Bros. were also noticed. During the inspection, the son of the respondent no.2 alongwith one Sri. Kasanagottu Satyanarayana said to be one of the partners of Sri Kasanagottu Srisailam and Bros. were available.

A statement of inspection was recorded. The statement was recorded by the appellant on a request of the son of the respondent no.2 on his business letter pad. The statement was written by the son of the respondent no.2 on his own, wherein he duly declared that the shop has been inspected that day at 5.30 p.m. and that till the date of such inspection i.e. 24.10.1994, he had not written any of the books of accounts relating to his business and that he did not even give the returns for the year 1993-94 and also that he did not issue any sale bills.

As far as the stocks and documents relating to M/s. Kasanagottu Srisailam and Bros., Mr. Kasanagottu Satyanarayana stated that he was one of the partners and he gave a statement on his letter head in his own hand writing, only declaring that till the date of inspection i.e. 24.10.1994 he did not write any books of accounts relating to his business. He also declared in writing that he is giving 178 slips containing the transactions relating to his business for a detailed examination by the appellant.

The slips were not seized by the appellant but they were submitted on their own by the owners of the business. Since the accounts books were not written by them, these slips were filed before the appellant for a subsequent examination, which was on their own volition.

The stock book was signed and returned. No cash was recovered.

The son of the respondent no.2 visited the office of the appellant and declared that due to ill-health of his grand mother he was seeking extension upto 30.10.1994. This was given in writing by the son of the respondent no.2 who is the proprietor of the business premises in respect of M/s. Rajani Fireworks.

On three dates, i.e. 7.11.1994, 15.11.1994 and 25.11.1994, the son of the respondent no.2 and Kasanagottu Satyanarayan came to the office of the appellant but failed to

give any proper explanation for the business transaction. Thereafter the matter had been taken up and best judgment assessment was completed.

After a period of three months after the inspection, i.e. on 24.1.1995, the respondent no.2 herein filed a complaint for alleged commission of offences punishable under Sections 448, 380, 384 and 506 of the Indian Penal Code, 1860 (in short 'IPC') before the Judicial Magistrate, Ist Class, Karimnagar, stating that the appellant along with his subordinate, have taken away the bill books, cheque books, records and also Indira Vikas Patras (for short 'IVPs') worth Rs.2 lacs forcibly without giving any acknowledgement and without conducting panchanama duly intimidating his son and forcibly taking the signatures of his son on white papers with an intention to extract Rs.3 lacs.

In the complaint it was mentioned that the shop-cum-residence was inspected on 24.10.1994 and the time of inspection was 7 - 9.30 p.m.

In the sworn statement he mentioned it as 3 p.m. as the time of inspection.

It is relevant to point that the complaint was not made by the owner of the business namely the son of the respondent no.2 but by the respondent no.2 alone.

The above complaint was referred by the Magistrate to the police.

After a thorough enquiry the police filed a final report on 18.9.1995 that the complaint itself is a false complaint.

However, the police report was objected to by the complainant as wrong and incorrect and that it is without any proper investigation.

It appears that without giving any reasons whatsoever and without recording any defect in the final report of the

police and without any sufficient additional materials, the said objection was taken into cognizance and the Magistrate has issued notice and process to the appellant and his subordinate in CC No.356/1996 and the officials were asked to appear before the Court for trial of offences u/s 448, 380, 384 and 506 IPC.

The appellant had appeared from time to time before the learned Magistrate and it was pointed out that the said complaint itself is false and in any case process ought not to have been issued since there was specific bar contained under Section 37 of the Andhra Pradesh General Sales Tax Act, 1957 (in short 'the Act') read with Section 197 of the Cr.P.C.

The appellant herein along with the other officials preferred a petition before the learned Magistrate under Section 37 of the Act read with Section 197 Cr.P.C. with a prayer to dismiss the complaint.

A petition under Section 482 Cr.P.C. was filed before the High Court praying for quashing of the proceedings pending in CC. No.356 of 1996. This was numbered as Crl. O.P. No.4006 of 1997. This was admitted on 22.10.1997 and the High Court granted an order of interim stay.

During the course of the hearing it was pointed out to the High Court that Crl.M.P. No.54/1997 has been filed by the appellant and others before the learned Magistrate under Section 37 of the Act read with Section 197 of Cr.P.C. seeking dismissal of the complaint. The High Court disposed of the Crl.O.P. No.4006 of 1997 directing the learned Additional Judicial Ist Class Magistrate, Karimnagar to dispose of the Crl.M.P. No.54 of 1997 within a period of 3 months. Subsequently the mistake of the fact that the application itself has been dismissed for default on 21.4.1997 came to the knowledge of the appellant. The mistake has occurred since there was communication gap between the appellant and his counsel at trial court since the appellant has been transferred to various places subsequent to the filing of the criminal complaint.

Therefore, the appellant herein filed a fresh CrI.O.P. under Section 482 Cr.P.C. before the High Court pointing the aforesaid facts and seeking the quashing of the complaint. This was numbered as CrI. Petition No.5218/2001.

The High Court while taking up the petition stayed all further proceedings in the CC No.356 of 1996.

By the impugned order the High Court dismissed the CrI.O.P.No. 5218 of 2001 filed by the appellant herein. The High Court even after noting down all the provisions relevant under the Act and after noting down the protection under Section 197 Cr.P.C. came to hold that “having regard to the specific allegation that officer who has searched and seized the documents has not issued any receipt to evidence that such seizure was in discharge of official duty or any search warrant was issued by the appellant before searching the business premises and the residence of the complaint, it is for the appellant/accused to lead evidence and establish that acts done by him was in due discharge of the official duties and

non issue of receipt in evidence of seizure was in dereliction of duties, if any. In the absence of the same, it is not possible for this Court to accept the plea taken by the appellant that the acts complained of are done in discharge of official duty or in dereliction of duties for quashing the proceedings at the initial stage unless the complainant is given opportunity to establish his case.”

The petition was resisted by the respondent before the High Court on the ground that Section 37 cannot come to the aid of the appellant as the alleged acts had nothing to do with discharge of official duty.

With reference to sub-sections (3) and (4) of Section 28 it was observed by the High Court that the acts complained of are not encompassed by the said provision to give any protection to the appellant. Accordingly, as noted above, the petition was dismissed.

4. In support of the appeal, learned counsel for the appellant submitted that the scope and ambit of Sections 27, 28 and 37 of the Act as well as Section 197 Cr.P.C. have not been kept in view. It was submitted that the proceedings were nothing but abuse of the process of law and, therefore, the High Court should have interfered in the matter. Learned counsel for respondent No.2 submitted that he has no instructions in the matter and does not want to have any say.

5. In order to appreciate the submissions of the appellant it is necessary to take note of Sections 27, 28 and 37 of the Act. They read as follows:

“Section 27: Possession and submission of certain records by owners, etc. of goods vehicles: - The owner or other person in charge of a goods vehicle shall carry with him – (i) Bill of sale or delivery note (ii) goods vehicle record or trip sheet and (iii) such other documents as may be prescribed relating to the goods under transport and containing such particulars as may be prescribed and shall submit to the Commercial Tax Officer, having jurisdiction over the area in which the goods are delivered, the documents aforesaid or copies

thereof within such time as may be prescribed.

Section 28: Powers to order production of accounts and powers of entry, inspection etc.:-

(1) Any officer not below the rank of an Assistant Commercial Tax officer authorized by the State Government in this behalf may for the purpose of this Act, require any dealer to produce before him the accounts, registers and other documents, and to furnish any other information relating to his business.

(2) All accounts, registers and other documents maintained by a dealer in the course of his business, the goods in his possession, and his officers, shops, godowns, vessels or vehicles shall be open to inspection by such officer any time during the business hours prescribed under the relevant law of the time being in force or where no such hours are prescribed at all reasonable times.

(3) If any such officer has reason to suspect that any dealer is attempting to evade the payment of any tax or other amount due from him under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers or other documents of the dealers as he may consider necessary and shall give the dealer a receipt for the same. The accounts, registers and documents so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act:

Provided that such accounts, registers and documents shall not be retained for more than thirty days at a time except with the permission of the next higher authority.

(4) For the purpose of sub-section (2) or sub-section (3), any such officer shall have power to enter and search at any time during the business hours prescribed under the relevant law for the time being in force, or where such hours are prescribed, at all reasonable times, any officer, shop, godown, vessel, vehicle or any other place of business or any building or place where such officer has reason to believe that the dealer keeps or is, for the time being, keeping any goods, accounts, registers or other documents of his business.

Provided that no residential accommodation not being a shop-cum-residence shall be entered into and searched by any officer below the rank of Deputy Commissioner except on the authority of an order issued by any officer not below the rank of a Deputy Commissioner having jurisdiction over the area; or an officer not below the rank of Deputy Commissioner of Commercial Taxes Department working in Vigilance and Enforcement Department having jurisdiction over the entire State of Andhra Pradesh.

And all searches under this sub-section shall so far as may be, made in accordance with the provisions of the Code of Criminal Procedure, 1973 subject to the rules, if any, made in this behalf.

(5) The power conferred by sub-section (4) shall include the power to break open and box or receptacle in which any goods accounts, registers or other documents of the dealer may be contained, or to break open the door of any premises, or other documents may be kept:

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, fails or refuses to open the door on being called upon to do so.

Section 37 Protection of acts done in good faith:

(1) No suit, prosecution or other proceeding shall lie against any officer or servant of the State Government for any act done or purporting to be done under this Act without the previous sanction of the State Government, and no such suit, prosecution or other proceeding shall be instituted after the expiry of six months from the date of the act complained of.

(2) No officer or servant of the State 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 imposed on him or the discharge of functions entrusted to him by or under this Act.

6. Section 37 like Section 197 Cr.P.C. aims at preventing vexatious prosecution and proceedings against public servants.

7. Section 37 puts embargo on institution of suits, prosecution or other proceedings against any officer or any servant of the State Government for any act done or purported to be done under the Act without previous sanction of the State Government. There is a further embargo i.e. no such suit, prosecution or proceeding shall be instituted after the expiry of six months from the date of the act complained of. Sub-section (2) affords protection to the officer referred to above in respect of an act if the same was done in good faith in the course of execution of duties imposed or the discharge of functions entrusted by or under the Act.

8. “Good faith” according to the definition in General Clauses Act means a thing, which is in fact done honestly whether it is done negligently or not (See H.H.

Maharajadhiraja Madhav Rao Jivaji Rao Scinida Bahadur of Gwalior etc. v. Union of India and Anr. 1971 (1) SCC 85).

9. Anything done with due care and attention which is not malafide is presumed to have been done in “good faith” (See Madhavrao Narayanrao Patwardhan v. Ram Krishan Govind Bhanu and Ors. (1959 SCR 564)

10. Section 197 Cr.P.C. provides for protection to public servants in discharge of official duties. There is a need to balance between protection to officers and protection to citizens.

11. In Rakesh Kumar Mishra v. State of Bihar and Ors. (2006 (1) SCC 557) it was observed as follows:

“The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that

they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection

between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.”

12. In State of Haryana and Ors. v Bhajan Lal and Ors. (1992 Supp. (1) SCC 335), it was observed as follow:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly

defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that

there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

13. As the factual scenario goes to show the proceedings were nothing but abuse of the process of law.

14. In view of what is stated in Section 37 of the Act and the ratio in Bhajan Lal's case (supra) the appeal deserves to be allowed which we direct. The proceedings in CC No.356/96 pending before learned Additional Judicial Magistrate, First Class, Karimnagar stand quashed.

The appeal is allowed.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi:
August 25, 2008