(1991) 01 KL CK 0052

High Court Of Kerala

Case No: O.P. No. 5338 of 1988

N.S. Cyriac		APPELLANT
	Vs	
The Inspecting Assistant Commissioner and Others		RESPONDENT

Date of Decision: Jan. 4, 1991

Acts Referred:

- Kerala General Sales Tax Rules, 1963 - Rule 72

Hon'ble Judges: K. Sukumaran, J

Bench: Single Bench

Advocate: M. Pathrose Mathai, for the Appellant; K. Thankappan, Government Pleader, for the Respondent

Judgement

K. Sukumaran, J.

Kailasapara estate, as the records reveal, created sensation in the media and otherwise. A limited facet of the sensational activities is covered by the Original Petition.

2. N.S. Cyriac, the Petitioner herein, according to the averments, owns only an acre of land cultivated by cardamom, out of the larger area of the former Kailasapara estate. He has sketched the events, though generally and vaguely, as to how a seizable estate almost dwindled to nothingness. Ramanatha Chettiar and others earlier owned the estate. He and his brothers purchased portions thereof. He had purchased, in 1986, an extent of 25.92 acres. He had gifted the lands, according to him, to his children and as the date of the filing of the writ petition, he is having a nominal one acre plot.

3. The complaint voiced in the writ petition relates to the seizure of some records from his house on 11th December 1986. Long thereafter, the Inspecting Assistant Commissioner, Ernakulam issued summons to him under Rule 72 of the Kerala General Sales Tax Rules. The reply is Ext. P-l. He wanted to examine "all the persons

who were present for the alleged inspection". Permission was sought "to inspect all agricultural income tax and sales tax assessment records maintained by the Department and to take copies or extracts therefrom". He was prepared to bear the expenses in that regard. It would appear that the Department had taken proceedings against the brothers of the Petitioner as well. The Petitioner got copy of at least some of them from the brothers. That is referred to in the communication dated 17th May 1988. An attempt was made to project the Petitioner''s explanation about the events and facts. The details thereof are not relevant for the purpose of the original petition. There was a demand for return of the accounts and registers seized at the time of the inspection. Various contentions, legal and factual, were raised in support of that request. The writ petition was filed on 4th July 1988. It was admitted on 6th July 1988. Notice was directed to be served by special messenger and the case was posted for hearing on 12th July 1988. As it generally happens in such cases, even by 13th July 1988, the Liaison Officer could not obtain instructions from the Respondents. The Government officials, quite often, neglect the interest of the Government under which they serve, even when the gravity of a subject matter is indicated by service of notice by special messenger as ordered by the Court. The system, distressing to the Court and damaging to the Government, continues unchecked. So long as salary is received, no one appears to be affected even if larger Governmental interest suffer, and suffer pathetically. A Court, dealing with the pressing plea of a Petitioner who had done all that he could, to alert the Respondents, has to give consideration for the reliefs he seeks for. It is an uncomfortable feeling for the Court, to virtually grope in the dark in the absence of instructions or information from the Respondents. Yet, in the adversary system as it exist today, the callous neglect of a party to the case should not prejudice a consideration of the request of the vigilant party. This Court issued "an interim direction to the Respondents to permit the Petitioner or his authorised representative to take extracts/copies of the documents and records taken away from the Petitioner''s premises and remaining with the first Respondent." The substantial relief was so obtained by the Petitioner. The writ petition was posted for hearing on 1st August 1988.

4. The Governmental machinery did not stir even thereafter. A counter-affidavit, at long last, had been filed on 7th September 1988. The details of the inspection and the obstruction caused to the same are elaborately dealt with in the counter-affidavit. Paragraph 3 enumerates the documents seized: "one estate-war crop register, wages register, cash book captioned as "San Maria", exercise book containing business transactions, hand book of estate inspections, weighment slips 95 in numbers, blank papers with thump impressions 39 in numbers, statements, letters, slips and forms 82 in numbers and a printed cochin sales statement and a pamphlet." It was stated there that the seizure was not from the house but from the business place. The counter-affidavit proceeds on the basis that the Department had decided upon a prosecution against the Petitioner and his brothers for what were

felt to be offences committed by them. It also states that Inspecting Assistant Commissioner (Intelligence), (deponent of the affidavit) "had already made known to the Petitioner and others that the department proposes to initiate prosecution proceedings against them". The retention of the records was justified in that background. Averments were also made about the subsequent events suggesting that the Petitioner rushed to the Court without any bona fides and with a view to scuttle the proceedings proposed by the Department.

5. The Petitioner filed a reply affidavit on 4th October 1988. The assessment order passed by the officer on 18th February 1988, a statement given by the Intelligence Inspector Venugopal, a letter dated 25th June 1988 addressed to the Inspecting Assistant Commissioner, Ernakulam, were, produced along with the same. The statement Ext. P-5 reveals interesting information. At the time of the inspection, Joy, who was present there, told the inspection wing that the Minister had promised them to exempt cardamom plantations from tax and that therefore there was no necessity for an inspection. Mr. Commen, Assistant Commissioner, was leading the inspection party, pointed out that no instructions for exempting cardamom area from tax had been received. A book placed on the table was seized. That was attempted to be forcibly wrested, by another young man. The inspection and seizure were thus obstructed. Other details of such obstructions are also indicated.

6. Additional counter-affidavits were filed on 23rd November 1988 and 23rd February 1989. The reasons for retention of the records were further explained in those affidavits. The sales tax officials had already filed complaints before the Sub Inspector of Police, Nedunkandom which has led to S.T. 555/87 before the Judicial Magistrate of the First Class, Nedunkandom. It was also stated that in the light of the subsequent events, a separate prosecution under the provisions of the Kerala General Sales Tax Act, had already been decided upon. The counter-affidavit averred:

Almost all the proceedings have been completed for launching prosecution against the persons....

It was stated that the proceedings for launching the prosecution would be completed within two weeks. A proposal to appoint a Special Prosecutor in the matter, was indicated.

7. The legal position delineating the extent of the power of the sales tax officials in relation to their retention of books and records seized from a dealer, have been laid down by an authoritative pronouncement of the Bench of this Court in Jacob v. Intelligence Officer (1976) 37 S.T.C. 14. The officials are entitled to retain the documents etc., for an initial period of 30 days, without any external restraint. They can be retained with the permission of the next higher authority for a larger period. An obligation to return the documents would arise when the retention period exceeds 30 days and the sanction of the higher authority for a longer period of

retention is not obtained. The extended period for which the documents could be retained with the sanction of the higher authority, comes to an end within a further period of 30 days. (Apparently, the slow pace with which the departmental machinery moves had not been reckoned in limiting the period of the retention of the records in that way. There is, no doubt, a vital consideration for the preservation of the right of an honest dealer who requires access to his accounts, register and other records. The solution would appear to be in the utmost expedition that has to be shown by the officials of the Department. By and large, that urge and involvement are, quite often, conspicuous by the absence). This is however, subject to a further over-riding proviso; a decision to prosecute which has to be taken within a period of 30 days. So, it has been held in the decision referred to in (1976) 37 S.T.C. 14 supra. The counter-affidavit averred that a decision to prosecute had been taken'' and had been conveyed to the Petitioner. In the reply-affidavit, the Petitioner averred:

The 1st Respondent has never given any notice or intimation to the Petitioner that he was proposing to initiate prosecution proceedings against the Petitioner.

8. No materials had been placed before the Court to indicate that a decision as contemplated by the statutory provision, had been taken within the prescribed period indicated by the statute. In that view of the matter, further retention of the records would not be justified.

9. If prosecution had been already decided upon and if a Special Prosecutor has already been appointed as indicated in the additional counter-affidavit, the prosecuting agency would be in a position to take into custody such of those documents as are relevant and needed for the prosecution. Provisions of the Code of Criminal Procedure could be rightly pressed into service for that purpose. It could be assumed ordinarily that such steps would have been taken by those in charge of the prosecution. If the pendency of the proceedings before this Court has in any way prevented the prosecuting agency to proceed further in the matter, that difficulty can be obviated by allowing the prosecution to make up their minds and take up the further steps within a limited time indicated by this judgment. Having regard to the circumstances, including the fact that the Petitioner had been already permitted to take copies of the accounts and registers seized by the interim order of this Court, I direct that the return of the documents could be deferred for a further period of 30 days from the date of this judgment, by the first Respondent. The writ petition is disposed of by restricting the relief to a direction for the return of the records and documents seized soon after the expiry of the 30 days of the receipt of the judgment by the first Respondent and in any case, within a period of two months from this date.

10. There are other disturbing aspects which would merit mention in the context of the original petition. The counter-affidavit dated 7th September 1988 referred to a criminal case, S.T. 555 of 1987 of the Judicial First Class Magistrate Court,

Nedumkandam, in relation to the obstruction caused to the officers of the inspecting wing in the course of their discharge of duties. The pendency of the criminal case was also referred to as a circumstance justifying the retention of the documents. Records were made available with a view to bring to light the developments therein and the ultimate conclusion thereof. Notwithstanding the evidence given by the Inspecting Assistant Commissioner and the three sales tax officers, who effected the seizure of the documents, the case ended in an acquittal. It would appear that it was the result of a perfunctory investigation conducted by P.W. 5 N.M. Thomas, Assistant Sub-Inspector of Police and P.W. 6 V.K. Gopalan, Circle Inspector of Police. Prosecution had to rely on a decision of the Supreme Court in Baladin v. State of U.P. AIR 1958 S.C. 181, to contend that the evidence of P.Ws. 1 to 4 could be relied on, and that the recording of the evidence by the police was tainted. Another lapse of the Special Prosecutor, however, stood in the way of the Court accepting the principle of the Supreme Court decision. The Court observed:

...the learned Special Prosecutor did not bring out any fact or circumstance during the evidence that P.W. 6 the investigating officer acted or conducted investigation in such a way as to make the record tainted.

11. The State took up the matter in appeal before this Court. By judgment dated 1st June 1990 Criminal Appeal 367 of 1989 was also dismissed. A very serious allegation was made against the manner in which the investigation was conducted. This is evident from the observation of the learned Judge of this Court as contained in paragraph 3 of the judgment:

It is argued that P.Ws. 1 to 4 were not even questioned by the investigating officer and what was recorded by him purporting to be their statements are nothing but fruits of imagination.

As regards this argument the learned Judge observed:

P.Ws. 1 to 4 did not say a word about the perfunctory or dishonest manner in which the investigation was conducted by P.W. 6.

That was a function of the Special Prosecutor who should have given adequate attention to those aspects. His grievous default has been already commented by the trial Court.

12. The matter requires very serious consideration by the Vigilance Department of the Government. If officers risking their very life in an attempt to secure to the State the legitimate dues by way of tax, are denied elementary legal protection and safeguard, it will blast the morale of the honest officers. P.W. 5 was a police officer on the verge of his retirement. Quite often, such officers betray the interests of the State, due to oblique motives. Should such dishonest civil servants be fed by governmental pension was a question which had been directed to be considered by

the Government in various contexts. The distressing sight presented by the evidence of P.W. 5 prima facie would remind the Government of a necessity to have a review of the provisions of the K.S.R. so that grossly dishonest and corrupt officials do not get away with the illegal gratification they had received while retaining an assured pension from the Government. P.W. 6, however, is a person still in service. If he has fabricated records, without actually questioning P.Ws. 1 to 4, that should not be ignored as a mere ignorance or lack of intelligence. A deeper and more meaningful probe would appear to be necessary about that aspect of the case. The Vigilance Department which generally takes up the follow up action systematically, it is to be hoped, will consider this matter with the seriousness it deserves.

13. The records made available also contain a report prepared by S. Gopalan, Member, Board of Revenue on 31st December 1986 on the detention of the officers in the Sales Tax and Agricultural Income Tax Department by Shri. Jose, owner of Kailasapara Estate on 11th/12th December 1986. It is a very exhaustive report, prepared at the earliest point of time by a responsible functionary. The summary is given in paragraph 6. Two of the higher officials of the Sales Tax Department, M.T. Abdurahimankutty and V.P. Abdulrahim were additionally found guilty of dereliction of duty. As regards A.V. Oommen and his staff it was observed as follows:

The conduct of Shri A.V. Oommen, Inspecting Assistant Commissioner (Intelligence), Ernakulam deserves special commendation on account of the sincere efforts he took in the matter of leading the inspections, giving intimation to Nedumkandam Police Station about the initial obstruction and remaining with the detained staff in the estate throughout.

The staff kept under detention also deserve commendation for their disciplined conduct.

It was pointed out that Viswanatha Pillai, Dy. S.P., Kattappana, responded promptly and helpfully. As regards the Circle Inspector (the same person as P.W. 6 before the Criminal Court) the observation is:

The performance of Shri V.K. Gopalan, C.I. of Police, Nedumkandam in the matter of handling the situation of the estate leaves much to be desired. One officer of the department has even gone on record that Shri Gopalan did not stir out of Nedumkandam eventhough he was personally contacted at 4.15 a.m. on 12th of December, 1986.

Similar adverse observations have been made against N.M. Thomas, A.S.I., (P.W. 5 in the criminal case). It was stated:

...his inaction by remaining a mute spectator in the estate casts a very bad reflection on his role as a police officer on the spot.

14. It is doubtful whether any follow up action had been taken on the basis of the report. The Vigilance Department shall advert to these matters as well while

considering further action needed in this matter.

15. Search and seizure is a serious incursion of a trader''s legitimate activities. When circumstances justify the same, those drastic provisions could be legitimately invoked by the State and its agencies. If, however, musclemen and monied might could easily vanquish diligent and honest officials discharging onerous duties, and if the State apparatus leans in favour of those who wantonly violate the law, the results would be extremely tragic. This Court had even earlier pointed out how in interior parts of the State where communications are difficult and the regions inaccessible as in interior plantations, there is no effective supervision of the implementation of laws whether they be the provisions of the Abkari Act or the Arms Act, of the Forest Act or the Wildlife Act. A concerted effort has to be made in that direction as otherwise it would result in extensive islands of illicit and illegitimate transactions. This case strongly demonstrates how urgent action by the State agencies is a matter of great priority. Continued indifference could wreck public interest and promote the growth of the proclaimed enemies of the Rule of Law. Larger public interest would be the casualty of any indolence in this field.