

Andhra High Court

M. Hanumantha Rao vs Sajja Venugopal Rao on 9 August, 1989

Equivalent citations: 1990 CriLJ 1547

Author: B Rao

Bench: B Rao

JUDGMENT Bhaskar Rao, J.

1. This petition is filed by the Deputy Commercial Tax Officer, Chirala, to quash all further proceedings in C.C. No. 14 of 1989 on the file of the III additional Munsif-Magistrate, Chirala, Prakasam District.

2. The facts of the case are that the 1st respondent herein filed a complaint stating therein that he is the managing partner of the "Jayalakshmi Talkies, Vetapalem" doing business in exhibiting cinemas; that the petitioner herein was the Deputy Commercial Tax Officer having his office at Chirala and collecting entertainments tax over all the cinema theatres at Chirala and Vetapalem; that the 1st respondent herein fell in arrears pertaining to the year 1986-87 of the entertainments tax to the Government; that for the non-payment of the tax, the petitioner herein filed a complaint in S.T.C. No. 81 of 1986 against the 1st respondent (A-3) and two others (A-1 and A-2) on the file of the III Additional Munsif-Magistrate, Chirala; that in that case, A-1 was acquitted and A-2 and A-3 were convicted directing to pay a fine of Rs. 1,000 each and in default to suffer simple imprisonment for six months and further directing to pay the tax that remained unpaid; that against that judgment, the 1st respondent herein preferred Crl. A. No. 130 of 1988 and also Crl. M.P. No. 1133 of 1988 before the Sessions Judge, Ongole and the learned Sessions Judge by his order in Crl. M.P. No. 1133 of 1988 dated 4th October, 1988, suspended the order of the Magistrate pending disposal of the appeal; that later, the petitioner herein entered into the premises of the respondent on 14th December, 1988 and seized lenses, wooden benches and folding chairs of the theater. This act is alleged to have been done with ulterior motive to harass the respondent without any manner of right by disobeying the order of the court. Therefore, the respondent filed a complaint, which was taken on file by the court below and on an application filed by the respondent herein, appointed a commissioner for search and seizure of the said articles from the petitioner's office. Against that, the petitioner filed an application for return of the articles contending that the articles were seized as the respondent did not pay the arrears and that the seizure was made in the course of discharge of his official duty. But the court below dismissed the application. Hence, this petition is filed to quash the main proceedings, as continuing the same amounts to abuse of the process of the court.

3. The learned counsel for the petitioner contended that the petitioner is a Deputy Commercial Tax Officer appointed under the Revenue Recovery Act by virtue of the Notification in Rc. E1. 7869/84 dated 28th August, 1984, issued by the collector and District Magistrate, Ongole. Therefore, he was authorised to recover the taxes by attaching and seizing the articles of the defaulters as per the provisions of the Revenue Recovery Act. In pursuance of such power, the petitioner went and seized the articles from the theatre, as admittedly, the arrears of tax were not paid by the respondent. The seizure was made in the course of discharging his official duty. Therefore, without obtaining sanction under section 17(1) of the Andhra Pradesh Entertainments Tax Act, the court cannot take cognizance of the offence. On that ground alone, the proceedings are liable to be quashed.

4. The learned counsel for the respondent, on the other hand, contended that when the judgment of the trial court is suspended by the appellate court, the direction to pay the amount shall be deemed to have been stayed. Therefore, the petitioner's entering into the theatre and seizing of the articles are unauthorised acts and the same not made in the course of discharging his official duties. Therefore, no sanction is necessary for taking cognizance of the offence.

5. In view of the above contentions, the point to be decided is whether sanction under section 17(1) of the Entertainments Act is essential for taking cognizance of the offence.

6. It is relevant to extract 17 of the Entertainments Tax Act hereunder :

"17. Bar of certain proceedings. - (1) No suit, prosecution or other proceedings 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.

(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 or the discharge of functions imposed by or under this Act."

7. As per the above section, without obtaining sanction from the Government, no prosecution can be launched against a Government servant for any act done by him. It is a fact that the respondent is an assessee under the entertainments tax and assessment has been finalised and against that, he has not filed any appeal. When he failed to pay the arrears, the department has proceeded to prosecute him. It must be noted that there are two courses open to the department. One course is to recover the amount by enforcing the provisions of the Revenue Recovery Act. That is an independent course. Even after pursuing that course under the Revenue Recovery Act, the department can pursue the other course of prosecuting the defaulter for non-payment of the arrears of tax. Therefore, there is no bar for the department to take proceedings under the Revenue Recovery Act for recovering the arrears. The duty to recover the arrears of tax is an official duty as per the powers conferred under the Entertainments Tax Act. Therefore, the act of the petitioner entering into the premises of the theatre and seizing of the articles was done in pursuance of the statutory powers conferred on him and the same is an official duty. If there is any infraction in the discharge of such duty and for which any prosecution has to be launched against him, the sanction of the State Government as mentioned under section 17 is essential. Admittedly, there is no such sanction in this case. Therefore, the impugned proceedings are liable to be quashed on that ground alone.

8. It may also be noted that questioning the seizure of the articles, the respondent herein filed W.P. No. 19165 of 1988 and the same was dismissed by a Division Bench of this Court on 26th December, 1988. Thereafter, suppressing the facts, the respondent filed the present complaint.

9. It is also contended by the learned counsel for the petitioner that if the impugned proceedings are continued against the petitioner, the same will amount to abuse of the process of the court. Therefore, they have to be quashed.

10. The petitioner is admittedly a Government officer. He entered into the theatre and seized the articles in the course of discharging his official duty, i.e., to recover the arrears of tax. Therefore, continuance of prosecution against him amounts to the abuse of process of the court; because, no officer, who is discharging his official duty, can be prosecuted without obtaining proper sanction and without following the procedure laid down under law. If the officers are prosecuted for their every official act, it is difficult for them to function and implement the statutory duties conferred on them under various enactments.

11. It is also contended by the learned counsel for the respondent that there is an allegation in the complaint that the acts of the petitioner entering into the theatre and seizing the articles are without any manner of right and are done disobeying the directions of the court and that the same amount to trespass into the theatre and theft of the property.

12. It must be noted that there is a right conferred on the officers to enter into the premises to attach and seize properties of the defaulters in the course of recovery of arrears of commercial taxes. Therefore, the same will not amount to trespass. Further, they are also empowered to attach and seize the articles. So, the same also will not amount to theft. It is a fact that the appellate court suspended the judgment of the trial court. But that does not bar the department from recovering the arrears by invoking the steps under the Revenue Recovery Act. Therefore, the action of the petitioner cannot be said to be illegal or unauthorised in law.

13. It is pertinent to refer to the decision of the Supreme Court in *State of Karnataka v. L. Muniswamy*, wherein it was held :

"In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

14. In *M. B. A. Khan v. S. S. Ahmed* 1973 (1) APLJ 205, a Division Bench of this Court also held that the High Court is not only empowered but has also a statutory duty and obligation to invoke its inherent jurisdiction and prevent fallacious and spiteful criminal prosecutions for actions of civil nature, as continuation of such proceedings would amount to abuse of the process of the court.

15. Having regard to the aforesaid decisions and taking into consideration the facts and circumstances of the present case, I quash the impugned proceedings. The petition is accordingly allowed.

16. Petition allowed.