

State of Kerala

Vs

M. M. Mathew and Another

Criminal Appeal Nos. 178-180 of 1974

(Jaswant Singh, P. S. Kailasam JJ)

18.08.1978

JUDGMENT

JASWANT SINGH, J. -

1. The above noted three appeals by special leave which are directed against the common judgment and order dated August 3, 1973 of the High Court of Kerala at Ernakulam in Criminal Appeals Nos. 241, 244 and 256 of 1972 and R.C. Nos. 3, 4 and 5 of 1972 upholding the acquittal of the respondents [who were partners of the firm called Kullupalam Lad's Jewellery Mart, Kottayam, registered for jewellery business under the provisions of the Kerala General Sales Tax Act, 1963 (hereinafter referred to as 'the Act') and the rules made thereunder] of the charges under Section 46(1)(a) of the Act for submission of untrue returns, under Section 46(1)(c) of the Act for failure to keep true and complete accounts, and under Section 46(2)(c) of the Act for fraudulent evasion of tax must be dismissed as they have no legs to stand upon.

2. It appears that the respondents had submitted returns of their aforesaid firm's sales turnover to the Sales Tax Officer, Kottayam, II Circle for the months of January, February and March, 1969 on February 18, 1969 March 18, 1969 and April 18, 1969 respectively declaring a total sales turnover of Rs. 47,431 during January, 1969, Rs. 25,025.20 paise during February, 1969 and Rs. 35,712.97 paise during March, 1969. On receipt of special information that the turnovers shown in the aforesaid returns were far below the actual turnover, the Kottayam Sales Tax Intelligence Squad and Sales Tax Central Intelligence Squad headed by the Inspecting Assistant Commissioner (Intelligence), Agricultural Income Tax and Sales Tax, Trivandrum, made a surprise entry into the respondents' business premises at the J.B. Road, Kottayam, on February 20, 1970 at 11.30 a.m. for verification of the respondents' firm's accounts and goods. In compliance with the demand made by the Inspecting Assistant Commissioner Who headed the squads, respondent 1 produced before the former certain books of account viz. current note books, bill books, stock register of the sales and purchases, and purchase bills in current use relating to the aforesaid business carried on by his firm and placed the same on a table in a room adjacent to the firm's show-room for inspection. While examining these account books, the Inspecting Party noticed some other account papers in the form of diary size account books, ledger size account book, exercise account books and quarter size papers lying on that very table. The Inspecting Party took hold of the second set account books and started checking and comparing the entries existing therein with the entries in the aforesaid books of account produced by respondent 1 on their demand. Finding that a number of the transactions of sale and purchase of the jewellery entered in the second set of account books, which hereinafter will be referred for the sake of convenience and to avoid confusion as 'the secret books of account' as described by the courts below, were not entered in the books of account produced by respondent 1 on demand by him (which will hereinafter be referred to as 'the account books intended for official

purposes) and that as against the figures declared in the aforesaid returns, the secret books of account revealed a total turnover of Rs. 1,34,899.16 paise for February, 1969, a turnover of Rs. 87,777.39 paise for February, 1969 and a turnover of Rs. 1,11,181.85 paise for March, 1969, the Inspecting Assistant Commissioner directed the Sales Tax Intelligence Officer, Kottayam, who was one of the members of the Inspecting Party led by him, to seize both the sets of account books which was duly done by the latter. On the basis of the result of the aforesaid inspection conducted on February 20, 1970, the Sales Tax Officer, Kottayam, II Circle, filed three complaints in the Court of District Magistrate, Kottayam alleging contravention by the respondents of the aforesaid provisions of the Act. On a consideration of the evidence adduced in the case, the trial court acquitted the respondents of the charge under Section 46(2)(c) of the Act but convicted them under Sections 46(1)(a) and 46(1)(c) of the Act and imposed a fine of Rs. 600 and Rs. 500 respectively on each of the respondents under the aforesaid two counts. On appeal, the Additional Session Judge, Kottayam, set aside the conviction and acquitted the respondents of the charges under Section 46(1)(a) and 46(1)(c) of the Act as well. Aggrieved by the judgment and order of the Additional Sessions Judge, Kottayam, the State preferred an appeal in the High Court but the same proved abortive. Dissatisfied with the order of acquittal passed by the Additional Session Judge and affirmed by the High Court, the State moved this Court for grant of special leave to appeal which was granted vide order dated April 26, 1974.

3. We have heard Mr. K. T. Harindra Nath who has appeared in support of the appeal as also Mr. R. L. Kohli who has appeared for the respondents. It is true that courts of law have to judge the evidence before them by applying the well-recognised test of basic human probabilities and that some of the observations made by the Session Judge especially one to the effect that 'the evidence of officers constituting the Inspection Party is highly interested because they want that the accused are convicted' cannot be accepted as it runs counter to the well-recognised principle that prima facie public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground that being public servants they are interested in the success of their case. It is equally true that we can ill-afford to accept as statement of law the observations of the High Court to the effect that "the mere fact that two sets of account which are conflicting are being maintained, it cannot be taken that the account books evidencing less turnover or profits are false. It may well be that the secret accounts are false and the other accounts are true. It is not unusual to find businessmen keeping two sets of accounts, one the correct one and the other showing exaggerated turnover and profits, the purpose of the latter being only to attract investments in dealing with the business". But these observations do not affect the merits of the case. We strongly feel that the present is not a case in which we justifiably set aside acquittal of the respondents of the aforesaid charges and restore the order of the District Magistrate, Kottayam. The offences with which the respondents were charged have not, in our opinion, been brought home to them. There is absolutely no evidence on the record to prove that the secret books of account, the seizure of which was effected by or under the orders of the Inspecting Assistant Commissioner were recovered from a place which formed part of the business premises of the respondents or was in their exclusive possession and control. The members of the Inspecting Party themselves have admitted that these books were found lying on the table in the room adjacent to the show-room of the respondents and they could not say whether that room belonged to the respondents or not. It is also not denied by the prosecution that the said room is accessible through Kallupalam Auto Stores also. That apart, no cogent and convincing proof has been adduced by the prosecution to establish that the secret books of account were maintained by the respondents or that they had any link of connection with them. No witness on behalf of the prosecution has come forward to testify that the secret books of account did not contain any entry relating to the business

dealings of Kallupalam Auto Stores which stands registered in the name of Marykutty and which also is housed in the same building in which Kallupalam Lad's Jewellery Mart is housed. It is true that there are certain entries in the secret books of account which tally in certain respects with the entries in the books of account intended for official purposes which were produced by the respondents in response to the demand made by the Inspecting Assistant Commissioner which raises a strong suspicion against the respondents but that circumstance alone is not sufficient to warrant their conviction for the aforesaid offences. It is now well settled that strong suspicion, strange coincidences and grave doubts cannot take place of legal proof. To establish the charges against the respondents, it was, in our judgment, essential for the prosecution to establish that the secret books of account related to the business transaction carried on by the respondents and none else. This it could have established in a variety of ways viz. (1) by adducing satisfactory proof to the effect that the place from which the secret books of account were seized formed part of the place of business of the respondents or was in their exclusive possession and control, (2) that the secret books of account were maintained by or under the orders of the respondents, (3) that the said books of account were in the handwriting of either of the respondents or their accountant, or clerk or some other person employed by them. The third method indicated above could have been adopted by following one or more of the ordinary modes provided in the Evidence Act for proving the handwriting i.e. (i) by calling the accountant or clerk or some other employee of the respondents who is supposed to have posted the entries in the account books, (ii) by calling a person in whose presence the account books were written, (iii) by calling a handwriting expert to testify that the entries in the secret books of account tallied with the admitted specimen writing of the respondents or any of their employees, (iv) by calling a person acquainted with the handwriting of the person by whom the secret books of account were supposed to have been written, (v) by having the comparison done in Court of the secret books of account with some admitted writing as provided in Section 73 of the Evidence Act, (vi) by proof of an admission made by any one of the respondents that the secret books of account related to the business transactions carried on by their firm or that any one of them had written the same, (vii) by adducing other unimpeachable circumstantial evidence. No attempt or step seems to have been made or taken in that behalf by the prosecution. The connection of the respondents with the entries in the secret books of account could also have been established by producing some of the customers whose names are admittedly to be found in the secret books of account to testify that the deals evidenced by the entries were transacted by them with the Kallupalam Lad's Jewellery Mart of which the respondents were the proprietors. As the prosecution has failed to resort to any of these methods, they have to thank themselves for the result of the prosecutions upon which it seems to have launched without seeking expert legal assistance. The decision of this Court in *Girdharilal Gupta v. D. N. Mehta, Collector of Customs* ((1971) 3 SCR 748 : (1971) 3 SCC 189 : 1971 SCC (Cri) 279) which is heavily relied upon by the learned counsel for the State of Kerala is of no assistance to the State. In that case, it was established that the account slips were recovered from the premises of the accused which undoubtedly established their connection with them. Accordingly we do not find ourselves in a position to differ from the conclusion arrived at by the Additional Sessions Judge and the High Court.

4. In the result, the appeals fail and are dismissed.

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