

BOMBAY HIGH COURT

State

Vs.

Nemchand Pashvir Patel

Criminal Ref. No. 59 of 1955

(Shah and Vyas, JJ.)

08.08.1955

JUDGMENT

Shah, J.

1. This is a reference made by the Additional Sessions Judge for Greater Bombay recommending that the committal of the three accused to the Court of Session to stand their trial for offences under Section 471 read with Section 467 and Section 34, Indian Penal Code, and under Section 420 read with Section 34, Indian Penal Code, be quashed.

2. The Presidency Magistrate, 16th Court, Bombay, committed the three accused to the Court of Session for Greater Bombay to stand their trial for two offences. The first offence according to the prosecution was committed by the three accused between 15-09-1953 and 27-11-1953 in that they in furtherance of the common intention of all fraudulently or dishonestly used as genuine a document to wit a declaration in proceedings before a Sales Tax Officer exercising powers of a Collector under the Bombay Sales Tax Act and thereby committed an offence under Section 471 read with Section 467 and Section 34 Indian Penal Code. The second offence, according to the prosecution was that between 15-09-1953 and 27-11-1953 the three accused in furtherance of the common intention of all cheated one Shantikumar R. Modi, Sales Tax Officer, by producing before him false declaration in certain proceedings for assessment of Sales Tax and thereby dishonestly induced the officer to grant a rebate of tax amounting to Rs. 74-7-0, and committed an offence under Section 420 read with Section 34, Indian Penal Code.

3. The three accused claimed to be tried before Sessions Court for Greater Bombay and a common jury was empanelled for their trial. Evidence of the prosecution witnesses was led and the statements of the accused also were recorded. While the public prosecutor was addressing the jury it occurred to the learned judge that the charge framed against the accused was in respect of an offence which fell within the terms of Section 195(1)(c), Criminal Procedure Code, and in the

absence of a complaint from the officer concerned before whom the false document was produced or given in evidence the trial was without jurisdiction. The learned Judge heard the public prosecutor and counsel appearing for the accused on that question and he ultimately made this Reference recommending that the committal order passed by the Presidency Magistrate should be quashed as being without jurisdiction.

4. It is the case of the prosecution that the three accused who are partners of the United Match Corporation were called upon by the Sales Tax Officer, Bombay, to produce their account books in order to satisfy himself and to pass an assessment order about the sales tax payable by the United Match Corporation. The accused produced before the Sales Tax Officer one Udhar Nondh Book among other documents and Ex. H, a bill, along with a declaration under the Sales Tax Act purporting to be signed by a purchaser. The Sales Tax Officer relied upon declaration which accompanied Ex. H and gave rebate of Rs. 74-7-0. It is the case for the prosecution that the declaration was a forged declaration and the accused knowing or having reason to believe that the declaration was a forged declaration dishonestly and fraudulently presented it before the Sales Tax Officer and thereby induced him to give rebate of tax and committed an offence under Section 471 read with Section 467 and Section 34, Indian Penal Code and also an offence under Section 420 read with Section 34, Indian Penal Code.

5. Now, Section 195, Criminal Procedure Code provides in so far as it is material for this Reference in Sub-Section (1) that

"No court shall take cognizance (c) of any offence falling under Section 471, Indian Penal Code when such offence is alleged to have been committed by a party to any proceedings in any court in respect of document produced or given in evidence in such proceedings, except on the complaint in writing of such court, or of some other Court to which such Court is subordinate."

Sub-Section (2) provides that

"in Clauses (b) and (c) of Sub-Section (1) the term "Court" includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877."

Section 195 evidently debars a Court from taking cognizance of certain offences when they are alleged to have been committed by a party to any proceeding in any court in respect of a document produced or given in evidence except on the complaint in writing of such Court. In the present case; a charge for offences under Section 471 read with Section 467 and Section 34, Indian Penal Code was framed against all the three accused, and the gravamen of the charge was that the three accused, who were parties to a proceeding before the Sales Tax Officer, had produced a forged document in that proceeding. The question that falls then to decide is whether

the Sales Tax Officer is a Court within the meaning of Section 195 Sub-Section (1).

6. Evidently a Sales Tax Officer is not a Civil or a Criminal Court. The learned Sessions Judge had held that he is a Revenue Court. The Bombay Sales Tax Act (3 of 1953) authorizes the State Government by Section 3, to appoint a person to be a Collector of Sales Tax for carrying out the purposes of the Act. The powers of the Collector may be delegated to officers appointed under Rules framed under the Act.

It is undisputed that the powers of the Collector of Sales Tax under Section 3 had been, delegated to Mr. S.R. Modi, the Sales Tax Officer before whom the three accused had produced the declaration with Ex. H. Section 13, Sales Tax Act, imposes upon every registered dealer and every other dealer whose turnover of sales or turnover of purchases the Collector has reason to believe exceeds the limits specified in Section 5 of the Act when required by the notice to do so a duty to furnish returns. Section 14 enables the Collector to assess the amount of tax payable by dealers on the returns so made and in the absence of correct returns, he is entitled to make a best judgment assessment. For carrying out his duties, the Collector is by Section 23 of the Act authorized to call upon dealers to produce before him accounts or documents or to furnish information, relating to the stock of goods or purchases, sales and deliveries of goods, by the dealer or other information relating to his business. By Section 28 the Collector has the same powers as vested in Courts in respect of (a) affidavit, (b) summoning and enforcing the attendance of any person and examining him on oath, (c) compelling the production of documents and (d) issuing commission for the examination of witnesses. Against the order of the Collector assessing the amount of tax payable an appeal lies to the prescribed authority.

7. Now, Section 195(2), Criminal Procedure Code defines the expression "Court" as including a Revenue Court. The functions of the Sales Tax Officer are preeminently connected with the assessment and collection of revenue due to the State as sales tax and for that purpose the officer is entitled to exercise powers which are normally exercisable by the Courts. That is expressly so provided by Section 28, Sales Tax Act. In a Full Bench Judgment of this Court *In Re 'Punamchand Maniklal'* it was held that "an Income-tax Collector is a Revenue Court within the meaning of that term as used in Clauses (b) and (c) of Section 195, Criminal Procedure Code, 1898". Scott, C.J. who delivered the judgment of the Full Bench, observed that

"the term "Revenue Court" is not in general use but it has been used occasionally by local Legislatures in this country in connection with the decision of questions relating to revenue by officers specially and exclusively empowered to decide them."

He further pointed out that

"the inquiries' conducted according to the forms of judicial procedure under Chap. IV Income-tax Act and execution proceedings under Chap. V are proceedings in a Revenue Court."

That the Sales Tax Officers under the Bombay Sales Tax Act, 1953 are authorised to decide questions relating to revenue cannot be denied, and the jurisdiction of other Courts to deal with those questions has been expressly excluded by Section 29 of at Act.

It is clear, therefore, that the Sales Tax Officers have jurisdiction to decide questions relating to revenue by officers specially and exclusively empowered which are the normal attributes of a Court or a Tribunal authorized to adjudicate upon a disputed question of law or fact relating to the rights of citizens and must be regarded as a Revenue Court within the meaning of Section 195(1)(c), Criminal Procedure Code. The trial of the three accused for the offence under Section 471 read with Section 467 and Section 34, Indian

¹ AIR 1914 (Bom) 138 (FB)

Penal Code without a complaint in writing by the Sales Tax Officer or by some other Court to which he was subordinate was therefore without jurisdiction and the proceedings taken against the three accused in that behalf must be quashed. The order of commitment for the charge under Section 471 read with Section 467, Indian Penal Code recorded by the learned Presidency Magistrate 16th Court, Bombay must also be quashed.

8. It must however be pointed out that the learned Presidency Magistrate committed the three accused to stand their trial for offences under Section 471 read with Section 467 and Section 34, Indian Penal Code and also under Section 420 read with Section 34, Indian Penal Code. Qua the charge under Section 471 read with Section 467 the proceedings are without jurisdiction. But the committal of the accused for the trial for an offence under Section 420, Indian Penal Code is not without jurisdiction. Section 420 is not one of the sections which is mentioned in Section 195, Criminal Procedure Code. A complaint for an offence under Section 420, Indian Penal Code may be lodged by any person. The offence being cognizable the police may investigate the offence and lodge a charge sheet in a Court competent to enquire and try the offence. The order of committal of the three accused; for the offence under Section 420 read with Section 34, Indian Penal Code, therefore, cannot be interfered with by us. It is unfortunate that neither in the Court of the Presidency Magistrate nor in the Court of Session, objection to the trial of the accused for the offence under Section 471 read with 467, Indian Penal Code was noted before the evidence for the prosecution was led and the accused were examined.

9. As we hold that there has been proper committal of the accused in respect of the offence under Section 420, Indian Penal Code, we have the option of either to direct the learned Judge and jury to proceed with the trial in respect of the offence under Section 420 read with Section 34, Indian Penal Code or to quash the proceedings. As, however, evidence in respect of the charge under Section 471 read with Section 467, Indian Penal Code has already been led before the jury on a substantive charge we think it should be proper to exercise our powers under Section 561A Criminal Procedure Code and to direct that the proceedings from the stage of empanelling the jury before the Additional Sessions Judge, Bombay should be quashed and that the Sessions Court should proceed to try the three accused before a fresh jury for the offence under Section 420 read with Section 34, Indian Penal Code.

Order accordingly. .