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MANGAT RAI

v.

STATE OF MADHYA PRADESH

September 1, 1969

B [S. M. SIKRI, G. K. MITTER AND P. JAGANMOHAN REDDY, JJ.]

Madhya Pradesh General Sales Tax Act 1958 (2 *of* 1959)—*Ss.* 29(2), (3) *and* (4)—*Power of search and inspection of account books—If Sales Tax Inspector entitled to remove obstruction—If amounts to "seizure"—Meaning of "seizure" in s.* 29(3).

C Section 29 sub-section (2) of the Madhya Pradesh General Sales Tax Act provides in part that all accounts relating to the stock-in-trade of any dealer shall be open to inspection by the Commissioner; and for this purpose sub-section (4) empowers the Commissioner to search any place of business of the dealer. The Sales Tax Inspector visited the shop of the appellant for a surprise check and wanted to inspect his account books. When the Inspector tried to prevent removal of the books in a clandestine manner by forcibly taking possession of them, the appellant used criminal D force and was subsequently convicted under ss. 353 and 506(1) I.P.C. In appeal to this Court it was contended that the Act did not authorise forcible inspection of accounts and that the Inspector was exercising powers of seizure under s. 29(3) of the Act which he did not have.

HELD : Dismissing the appeal,

If the powers under sub-section (2) and (4) are read together, it E would mean that the Commissioner is entitled to search and take hold of the account books even if the assessee does not place the account books before him. If the Commissioner does so, he cannot be said to seize the account books. In the Act "seizure" means that the Commissioner should take into possession the account books and take them outside the possession of the assessee. [156 E—G]

In the present case the Sales Tax Inspector having seen the account F books in the hands of the assessee was entitled to demand that the account books be shown to him and if he did forcibly try to take possession of them, he was only attempting to enforce his right of inspection. He cannot be said to have attempted to seize the account books within the meaning of s. 29(3), for, the object was not to dispossess the trader but to hold the books for a temporary period for the purpose of inspection. [157 E—F]

The observation *contra* in ***Hazari Lal*** v. ***State of Bihar*** [1962] Supp. G S.C.R. 419 at 425, held *obiter,*

Commissioner of Commercial Taxes v. *Ramkishan Shrikishan Jhovar* 56 I.T.R. 664, 671 and *N. P. Sharma* v. *Satish Chandra* [1954] S.C.R. 1077; 1096 referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 189 of 1967.

H Appeal by special leave from the judgment and order dated September 4, 1967 of the Madhya Pradesh High Court in Criminal Appeal No. 492 of 1964.

A. S. R. Chari, B. P. Maheshwari and *Sobhag Mal Jain*, for the appellant. A

I. N. Shroff, for the respondent.

The Judgment of the Court was delivered by

Sikri, J. In this appeal by special leave the principal question which arises is whether a Sales Tax Inspector inspecting the accounts under the Madhya Pradesh General Sales-Tax Act, 1958 (No. 2 of 1959) hereinafter referred to as the Act is entitled to remove obstruction to the inspection of account books; in other words, if he attempts to remove the obstruction is he acting in the execution of his duties as such. B C

The facts are not in dispute. On October 24, 1959, Krishan Sahai, Sales Tax Inspector, P.W. 1, alongwith Shri N. J. Warudkar, P.W. 5, and Shri Harikishan Gupta, P.W. 2, went to the shop of the appellant Mangat Rai, run under the name and style "Mangat Rai Ram Kumar". The officer visited the shop for a surprise check. He informed the appellant that he wanted to inspect his account books. At that time they were in the verandah which is common to the shop of the appellant and the neighbouring shop of Munshiram. It is perhaps best to describe what happened in the words of the Inspector: D

> "I entered the shop of the accused for inspection and Shri Warudkar entered the shop of Munshiram. The accused, Harikishan and myself all three entered the shop of the accused. E
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> I and Harikishan sat on the Gadi of the accused and the accused Mangat Ram sat near the iron-safe. I asked the accused person to show his account-books for inspection. Many account-books were kept there. He took out 3 note-books of the size of exercise-note-books out of them. I thought he was taking out them for showing the same to me for inspection. In the meantime Dayakishan who is the son of the accused also came into the shop. The accused kept one note-book as it was and he handed over the remaining two note-books to his son and asked him to run away for keeping the same at his house. F G
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> When the accused was turning the pages of the note-book I noticed that it contained accounts. therefore, suspicion came to my mind and I demanded these note-books from that boy for inspection. That boy had the exercise-book in his right hand. I tried to snatch away the exercise book by catching hold of H

A his left hand. When I had caught hold of that boy with my left hand the accused caught hold of my right hand and pulled me to the back side by giving me a jerk as a result of which my shirt got torn and the boy ran away. I tried to get separated from the grip of the accused so that I would be able to catch the boy B but in the mean-time the accused caught hold of my waist with his both the hands and said, "Do not touch the exercise-books. It would be dangerous."

In cross-examination it is stated:

"When the accused was turning the pages of both the account-books with which the boy was runing away C "I noticed that 'Business transaction' was written therein."

The Magistrate who tried the case convicted the appellant under s. 353 and under s. 506(1) of the Indian Penal Code.

The learned Sessions Judge held that the Sales Tax Inspector D "had not required the accused to produce those copy books for checking and inspection and as he was not authorised to seize them, his attempt to hold the boy and relieve him of the copy books was not in the discharge of his public duty and therefore the accused cannot without doubt be held guilty of an offence under section 353 Indian Penal Code or even 352 Indian Penal Code." E

The State filed an appeal under s. 417 of the Criminal Procedure Code. The High Court came to the conclusion that the Sales Tax Inspector was certainly within his statutory authority to demand inspection of the copy books kept in the shop and if some of the books were sought to be removed in such clandestine manner, it would be idle to contend that the Sales Tax Inspector F would have no power to prevent evasion of inspection and commission of an offence in his very presence. In the result the High Court allowed the appeal and convicted Mangat Rai under s. 353 and s. 506(1) and sentenced him to rigorous imprisonment for four months on each count, the sentences to run concurrently.

G The learned counsel for the appellant, Mr. Chari, contends that the Act contemplates voluntary submission to inspection and that there cannot be any forcible inspection of accounts. He says that if there is any obstruction to inspection it may be punishable under s. 46(h) of the Act, but the Sales Tax Inspector cannot do anything to forcibly inspect the accounts. He urges that what H has happened in this case is an attempt on the part of the Sales Tax Inspector to exercise the powers under s. 29(3) of the Act, and it is common ground that the Sales Tax Inspector did not have power to act under s. 29(3).

In order to appreciate the arguments of the learned counsel it is necessary to set out the relevant provisions of the Act and the Rules.

"*Madhya Pradesh General Sales Tax Act*

S. 29. Production and inspection of accounts and documents and search of premises.

(1) The Commissioner may, subject to such conditions as may be prescribed, require any dealer to produce before him any accounts, registers or documents, relevant to the financial transactions of a dealer including accounts, registers or documents relating to profits derived from the business of any firm, or to furnish any information, relating to the stock of goods of the dealer, or purchases, sales or deliveries of goods made by him, as may be necessary for the purpose of this Act.

(2) All accounts, registers and documents relating to the stocks of goods of any dealer, or to purchases, sales or deliveries of goods made by him, and all goods kept in any place of business or warehouse of any dealer shall, at all reasonable times, be open to inspection by the Commissioner.

(3) If the Commissioner has reason to suspect that any dealer is attempting to evade payment of any tax, he may, for reasons to be recorded in writing, seize such accounts, registers, or documents of the dealer as he may consider necessary and shall grant a receipt for the same, and shall retain the same only for so long as may be necessary for examination thereof or for a prosecution.

(4) For the purpose of sub-section (2) or sub-section(3), the Commissioner may enter and search any place of business or wherehouse of any dealer."

"*Madhya Pradesh General Sales Tax Rules*

54. Notice of inspection. Unless the inspecting officer in his discretion deems it necessary to make a surprise visit, he shall give reasonable notice in writing to the dealer of his intention to inspect the accounts, registers, documents or stocks of goods of such dealer and in fixing the date, time and place for the purpose

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shall, as far as possible, have due regard to the convenience of the dealer.

55. Retention of seized books of accounts, registers and documents. If the inspecting officer seizes any books of accounts, or documents under section 29, he
B shall give a written acknowledgement of the same specifying in brief the articles so seized. He shall not without recording in writing the reasons retain them for more than twenty-one days."

A similar section was construed by this Court in *Commissioner of Commercial Taxes* v. *Ramkishan Shrikishan Jhaver*(1). The
C section which came up for interpretation was s. 41(2) of the Madras General Sales Tax Act (1 of 1959), which reads as follows:

"41(2). All accounts, registers, records and other documents maintained by a dealer in the course of his
D business, the goods in his possession and his offices, shops, godowns, vessels or vehicles shall be open to inspection at all reasonable times by such officer :

Provided that no residential accommodation (not being a place of business-*cum*-residence) shall be entered into and searched by such officer except on the
E authority of a search warrant issued by a Magistrate having jurisdiction over the area, and all searches under this sub-section shall, so far as may be, be made in accordance with the provisions of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898)."

F The contention of the respondent in that case was that the provisions did not authorise search of premises but merely provided for inspection thereof at all reasonable times by the empowered officer. This Court observed :

"Though, therefore, the word 'search' has not been used in sub-section (2) these two powers of entering
G the offices, etc., for inspection and of inspecting every kind of account maintained by a dealer with respect to his business together amount to giving the officer concerned the powers to enter and search the offices, etc., and if he finds any account in the offices, shops, etc., to inspect them. Otherwise, we can see no sense in the
H legislature giving power to the empowered officer to enter the offices, etc., for the purpose of inspection as the officer concerned would only do so for the purpose

(1) 66 I.T.R. 664, 671.

of finding out all accounts, etc., maintained by the dealer and if necessary to inspect them for the purposes of the Act. We cannot therefore agree with the High Court that there is no power of search whatsoever in sub-section (2) because the sub-section in terms does not provide for search.

Similarly, the officer has been given the power to inspect the goods in the possession of the dealer. He has also the power to enter the dealer's offices, etc., for the purpose of such inspection. Combining these two powers together it follows on the same reasoning that the officer has the power to search for the goods also and to inspect them it found in the offices of the dealer. We have therefore no hesitation in coming to the conclusion that the power of search is implicit in sub-section (2) with reference both to the accounts, etc. maintained by the dealer and the goods in the possession of the dealer."

We have referred to the above case, which was not cited at the bar, in order to show that there is no rule that provisions like this should be construed very strictly. In the present Act there is a special provision s. 29(4) which enables the Commissioner to enter and search any place of business or wherehouse of any dealer for the purpose of sub-s. (2) of s. 29. If the powers under sub-ss. (2) and (4) are read together it would mean that the Commissioner is entitled to search for the account books even if the assessee does not place the account books before him. If the Commissioner searches and takes hold of account books for the purposes of inspection it is difficult to say that he is seizing the account books within the meaning of sub-s. (3) of s. 29. Search for inspection implies taking possession of the account books for the purpose of inspection. In the Act 'seizure' means something different because here seizure means that the Commissioner would take into possession the account books and take them outside the possession of the assessee.

The learned counsel referred to us the decision of this Court in *Hazari Lal* v. *State of Bihar*(1), where this Court observed :

"In our opinion merely holding books found lying in the premises for perusing them cannot properly be regarded as seizure because seizure implies doing something over and above holding an article in one's hand. According to Shorter Oxford Dictionary, seizure, among other things, means '....confiscation or forcible taking possession (land or goods); a sudden and forcible taking hold.' As already stated, Mr. Singh

(1) [1963] Supp. 1 S.C.R. 419, 425.

A merely picked up the books which were lying in the shop and did not snatch them away from anyone nor did he take them by force. On the contrary they were taken away by force by the appellant. If, indeed, he had retrieved them by force it may have been possible to urge that latter act of his amounts to seizure."

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In our opinion the last sentence quoted above is an *obiter.* and we must examine the question independently whether the attempt made by the Sales Tax Inspector in this case to take possession of the account books from the hands of the appellant's son amounts to seizure or does it amount only to an attempt to C enforce his right of inspection.

It seems to us that if we were to accept the contention of the learned counsel for the appellant we would be nullifying the power of inspection and search contained in s. 29(2) and (4) of the Act. Any assessee who does not want to show any particular D book or if he finds that the Sales Tax Inspector has got hold of a book, which might prove damaging to his case, the assessee could snatch away or ask his clerk or son or relation to snatch away the book and run away leaving the Sales Tax Inspector helpless to do anything in the matter.

E In our view the Sales Tax Inspector having seen the two books in the hands of the assessee was entitled to demand that they be shown to him and if he did forcibly try to take possession of them it cannot be said that he attempted to seize the account books within the meaning of s. 29(3) for the object was not to dispossess the trader but to hold the books for a temporary period for the purpose of inspection. If s. 29(4) authorises him to sea- F rch business premises for the purpose of inspection it implies that he can get hold of the books in respect of the business of the assessee. As observed by this Court in *M. P. Sharma* v. *Satish Chandra*(1) these powers are given to the Sales Tax Inspector for the protection of social security. This Court observed that "a power of search and seizure is in any system of jurisprudence an G overriding power of the State for the protection of social security and that power is necessarily regulated by law."

The learned counsel urges that the appellant was entitled to exercise his right of private defence of the person of his son. We are unable to sustain this contention. The son was clearly com- H mitting an offence under s. 46(h) of the Act and in these circumstances we are unable to appreciate how any question of private defence arises.

(1) [1954] S.C.R. 1077; 1096.

In our view the Sales Tax Inspector was acting in execution of his duty as a Sales Tax Inspector and the appellant used criminal force against the Sales Tax Inspector. Further he intended to deter the Sales Tax Inspector and prevent him from discharging his duty as a public servant. A

In the result the appeal fails and is dismissed. B

R.K.P.S. *Appeal dismissed.*