

STATE OF MADHYA PRADESH & ANR.

v.

BACHHA LAL & ANR.

JUNE 21, 2007

[DR. ARIJIT PASAYAT AND ALTAMAS KABIR, JJ.]

M.P. General Sales Tax Act, 1958; S.48/Code of Civil Procedure, 1908; O.23 R.1(3)(a)/Penal Code, 1860; S.353/Code of Criminal Procedure, 1973; S.197:

Illegal gratification—Sales Tax Officer allegedly harassing respondents-businessman in order to extract illegal gratification—Filing of suit against the officer without obtaining permission from the State Government in terms of S.48 of 1958 Act—Maintainability of the suit—Held: The acts done by the Officer were in discharge of duties entrusted to him under the Act—Hence, Trial Court was justified in holding that in the absence of previous sanction of the State Government to prosecute the Officer, the suit was not maintainable—The High Court has not considered the provisions of law in the proper perspective.

Plaintiffs/respondents are brothers carrying on a business. Appellant No.2 at the relevant time was Sales Tax Officer in the employment of appellant No.1, State of Madhya Pradesh. Respondents alleged that appellant No.2 in order to extract illegal gratification from them conducted illegal search and seizure under the provisions of M.P. General Sales Tax Act, 1958 and also raised heavy demands of tax, got their Sales Tax registration certificate revoked and also lodged a report under Section 353 of Indian Penal Code, 1860 with the police, resulting in prosecution of respondent No.2. However, he was acquitted thereafter. The respondents claimed damages on account of malicious prosecution. They averred that the report lodged by appellant No.2 was not true; and that the suit was barred in view of provisions of Section 48 of the 'Act'.

Trial Court held that the suit was not maintainable since permission of the State Government is required under Section 48 of the Act. Accordingly the trial court directed that suit be permitted to be withdrawn under Order

A 23 Rule 1(3)(a) of the Code of Civil Procedure, 1908 with a liberty that they may institute fresh suit after obtaining necessary permission from the State Government in terms of S.48 of Act. Respondents challenged the order of the trial court on the ground that the cause of action as has been shown in the plaint was based on malicious prosecution on the basis of the report of the appellant No.2 under Section 353 IPC and, therefore, the question of seeking permission under Section 48 of the Act does not arise. The petition was allowed by the High Court. Hence, the present appeal.

B Respondent submitted that in a case relating to malicious prosecution the analogy of Section 197 Cr.P.C. had to be applied and the Act has nothing to do with the jurisdiction.

C Allowing the appeal, the Court

D HELD: 1.1. The language of Section 197 Cr.P.C. is somewhat different. The language used in Section 48 of the M.P. General Sales Tax Act relates to acts done or intended to be done under the Act. Further sub-section 1(a) of Section 48 provides that no officer or servant of the State Government would be liable in respect of any such Act referring to acts referred to in sub-section (1) for which act was done in good faith in the course of execution of duty imposed on him or discharge of function entrusted to him by or under the Act, and the power relates both to Civil and Criminal proceedings.

E [Para 12] [1173-B, C]

F 1.2. The acts done by appellant No.2 were in discharge of duties entrusted to him under the Act. That being so the trial court was justified in holding that Section 48 of the Act is clearly applicable. The High Court has not considered the relevant provisions of law in the proper perspective.

[Para 12] [1173-E, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2904 of 2007.

G From the Final Judgment and Order dated 04.07.2002 of the High Court of Madhya Pradesh at Jabalpur (M.P.) in M.A. No. 1674 of 1997.

Siddhartha Dave, Vibha Datta Makhija and Dharmendra Kumar Sinha for the Appellants.

B.K. Satija for the Respondents.

H

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is the order passed by a learned Single Judge of the Madhya Pradesh High Court. Challenge before the High Court was in a Misc. Appeal in Civil Revision which has later converted to the Misc. Appeal relating to the judgment dated 15.11.1995 in Civil Suit No. 4-B/92 passed by a learned Second Additional District Judge, Shahdol deciding issue No. 7 framed in the suit.

3. Background facts in a nutshell are as follows:

Plaintiffs/respondents are brothers carrying on business in partnership at Shahdol. Appellant No.2 at the relevant time in the year 1981 was Sales Tax Officer in the employment of appellant No.1 State of Madhya Pradesh. It was averred by the plaintiffs respondents that the appellant No.1 in order to extract illegal gratification and to pressurize the respondents, misusing the office, conducted illegal search and seizure under the provisions of M.P. General Sales Tax Act, 1958 (hereinafter referred to as 'Act' for short). He also raised heavy demands of tax and penalty and also got revocation of the Sales Tax registration certificate of the appellants. The respondent No.1 also lodged a report under Section 353 of Indian Penal Code, 1860 (in short 'I.P.C.') with the police, resulting in prosecution of respondent No.2.

However, he was subsequently acquitted. The respondents, therefore, claimed damages on account of malicious prosecution, as would be clear from para 10 of the plaint.

The defendants/appellants resisted the claim. They averred that the report lodged by defendant/appellant No.1 was not true. It was based on falsehood. It was also pleaded that the suit was barred in view of provisions of Section 48 of the 'Act'

4. The learned trial Court framed several issues including Issue No.7 as to whether the suit was not maintainable as against the defendant No.2 in view of Section 48 of the Act.

5. Initially the case was fixed for recording evidence on all the issues. However, subsequently the prayer of the appellants to try Issue No.7 as above a preliminary issue, was accepted and after hearing the parties on the

A said issue trial court held that the suit to be not maintainable.

6. The trial court held that the basic grievance of the present respondents related to action of the present appellants' officials in making search and alleged obstructions in the official duties. It was therefore held that the suit was not maintainable since permission of the State Government is required under Section 48 of the Act. Accordingly the trial court directed that suit be permitted to be withdrawn under Order 23 Rule 1(3)(a) of the Code of Civil Procedure, 1908 (in short the 'CPC') with a liberty that they may institute fresh suit after obtaining necessary permission from the State Government.

B
C 7. There was a challenge by respondents on the ground that the cause of action as has been shown in the plaint was based on malicious prosecution on the basis of the report of the defendant No. 2 under Section 353 IPC and, therefore, the question of seeking permission under Section 48 of the Act does not arise.

D 8. The High Court accepted the plea and held that Section 48 had no application.

9. In support of the appeal it is submitted that a bare reading of Section 48 makes the position clear that the High Court's judgment is unsustainable.

E 10. Learned counsel for the respondent on the other hand submitted that in a case relating to malicious prosecution the analogy of Section 197 Cr.P.C. had to be applied and the Act has nothing to do with said jurisdiction.

11. Section 48 of the Act reads as follows:

F “(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.

G (1-a) 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, imposed on him or the discharge of function entrusted to him by or under this Act.

H (2) No suit shall be instituted against the State Government and no prosecution or suit shall be instituted against any servant of the

State Government in respect of any thing done or intended to be done under this Act unless the suit or prosecution has been instituted within three months from the date of the act complained of: A

(Provided that in computing the period of limitation under this sub-section, the time taken for obtaining sanction under sub-section (1) shall be excluded.)” B

12. The language of Section 197 Cr.P.C. is somewhat different. The language used in Section 48 of the Act relates to acts done or intended to be done under the Act. Further sub-section 1(a) of Section 48 provides that no officer or servant of the State Government would be liable in respect of any such Act referring to acts referred to in sub-section (1) for which act was done in good faith in the course of execution of duty imposed on him or discharge of function entrusted to him by or under the Act, and the power relates both to Civil and Criminal proceedings. Undisputedly a raid was conducted. It appears that the raid was purportedly conducted under Section 29 of the Act. It is to be noted that the requirements are absolute in terms of Section 48 of the Act. It was highlighted by learned counsel for the respondent that a bare perusal of the order of acquittal passed shows that the acquittal was purportedly recorded on the basis of findings that the accused prevented the officials to make search and he abused the Sales Tax Officer and its subordinates. Only on the basis of alleged abuse and threat to him Section 353 IPC was invoked. The reasoning related to non-recording of reasons before the search. Correctness of such a view is open to doubt but that has really no relevance so far as present dispute is concerned. Undisputedly the acts done were in discharge of duties entrusted under the Act. That being so the trial court was justified in holding that Section 48 of the Act is clearly applicable. The High Court has not considered the relevant provisions of law in the proper perspective. The judgment of the High Court is accordingly set aside. C D E F

13. Appeal is allowed. Costs made easy.

S.K.S.

Appeal allowed.