1956

VISHNU GOVIND v. PANDURANG RAGHUNATH

Vyas J.

point. We do not think that they went beyond their competence in doing so. In our view, therefore, no valid reasons are made out by Mr. Hegade for a remand of this case to the Revenue Tribunal with a direction to remand it to the Prant Officer.

Order accordingly.

H. R. G.

APPELLATE CRIMINAL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Dixit.

1956 June 26

ARUNACHALIAM SWAMI AND OTHERS *v.* THE STATE OF BOMBAY*

Criminal Procedure Code (Act V of 1898), ss. 162, 173, 207A, 208, 213, 215, 540 and 561A—Constitution of India arts. 14, 227—Committal Proceedings—Difference between procedure of inquiry upon Police report under s. 207A and procedure upon private complaint under s. 208—Right to call defence evidence and right to move High Court whether prejudicially affected in inquiry under s. 207A—Object and Scope of s. 207A—Power under s. 207A (6) to consider the statements recorded by the Police whether inconsistent with the provisions of s. 162—Scope of art. 14—General principles governing committal orders.

Section 207A of the Code of Criminal Procedure does not prejudice the right of the accused to lead evidence or to move the High Court inasmuch as s. 540 empowers a Magistrate to summon and examine defence witnesses even during an inquiry under s. 207A and the High Court can set aside a Committal Order in revision or under s. 561A as well as under art. 227 of the Constitution of India.

Section 207A (6) which requires a Magistrate to consider all the documents referred to in s. 173, which include statements recorded by the Police under s. 161, is an exception to the provisions of s. 162.

Semble, that s. 207A does not offend against art. 14 of the Constitution of India.

In passing an order of commitment the Magistrate is not supposed to weigh the evidence and to decide whether the accused is innocent or guilty; he is only concerned to see whether there is sufficient evidence to go to the jury.

CRIMINAL Application praying, *inter alia,* for setting aside the order of commitment passed by A. S. Nawalkar, Esquire, Presidency Magistrate, 21st Court, Bandra.

Charge under s. 302 read with s. 34 of the Indian Penal Code.

The facts are sufficiently stated in the Judgment.

S. S. Kavlekar, with *P. K. Nair* for the Applicants.

H. M. Choksi, Government Pleader for the Respondent.

Chagla C. J.—The four petitioners before us were put up before the Presidency Magistrate, 9th Court, under s. 302 read with s. 34 of the Indian Penal Code. The learned Presidency Magistrate after following the procedure laid down in s. 207A of the Criminal Procedure Code came to the conclusion that

*Criminal Application No. 690 of 1956.

1956

ARUNACHALIAM SWAMI v. STATE

Chagla C. J.

the accused should be committed for trial and thereupon he passed an order of commitment. Before the order was passed the accused applied to the learned Magistrate that they should be permitted to lead evidence to disprove the allegations made against them by the prosecution. This application was rejected by the learned Magistrate on the ground that there was no provision in law for defence evidence. The petitioners have now come before us under art. 227 praying that we should quash the order of commitment on the ground that the new procedure followed by the learned Magistrate under s. 207A was contrary to the Constitution inasmuch as it offended against art. 14 and also on the ground that on merits the commitment order was bad.

Now, the Constitutional aspects of this petition raises a rather interesting question. The amendment of the Criminal Procedure Code which was effected recently by Act XXV of 1955 has made a rather radical change in the procedure to be followed in inquiries into cases triable by the Court of Session, and broadly speaking the amendment is this. Whereas under the old Code, the same procedure had to be followed in these inquiries, whether the accused was put up on a private complaint or as a result of a police report, the amendment makes a distinction in the procedure to be followed in these inquiries according as to whether the accused is put up on a private complaint or as a result of a police report. As we shall presently point out, whereas the procedure to be adopted in proceedings instituted on a police report is intended for the purpose of bringing about an expeditious end to the inquiry so that the accused should be able to stand his trial in the Court of Session as soon as possible in case he is committed, in the case of procedure to be followed in inquiries where the accused is put up as a result of a private complaint the procedure is much more elaborate, and what is urged before us is that there is a discrimination as between one accused and another although they may be charged with the same offence and in the procedure that has got to be followed in the case of an accused where proceedings are instituted against him on a police report he is deprived of important rights which are vouchsafed to the accused in the other case, and what is urged is that the most important right that the accused is deprived of in cases falling under s. 207A where the procedure has to be followed in proceedings instituted on a police report are that he is prevented from calling evidence in his defence, and the other right which is suggested he is deprived of is a right to go to the High Court under s. 215 in order to have the order of commitment quashed.

Now, sub-s. (4) of the new s. 207A provides:

"The Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged; and if the Magistrate is of opinion that it is necessary in the interests of justice to take the

1956

ARUNACHALIAM SWAMI v. STATE

Chagla C. J.

evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also."

Then sub-s. (5) gives the accused the liberty to cross-examine the witnesses examined under sub-s. (4) and the right of the prosecutor to re-examine them. Sub-s. (6) provides that after the evidence referred to in sub-s. (4) has been taken and the Magistrate has considered all the documents referred to in s. 173 and has, if necessary, examined he accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him and given the prosecution and the accused an opportunity of being heard, such Magistrate shall, if he is of opinion that such evidence and documents disclose no grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly. Then sub-s. (7) deals with the order of commitment and it provides:

"When, upon such evidence being taken, such documents being considered, such examination (if any) being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that the accused should be committed for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged."

What is pointed out is that under sub-s. (4) the only right that the Magistrate has is to take the evidence of the witnesses produced by the prosecution and further in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution. It is pointed out that this sub-section clearly prevents the Magistrate from taking the evidence on behalf of the defence, even though such evidence may be in the interests of justice. It is said that the accused may be in a position to call a witness who would conclusively prove that the accused was not guilty of the offence with which he was charged, the witness may be in the nature of an alibi witness and he may establish that at the material date the accused was not at the scene of offence but was somewhere else, and yet it is said that the amended Code does not permit the Magistrate to take such evidence. It is further said that the accused has a right at this stage to an order of discharge if by leading evidence he can secure it and he cannot be deprived of that right. In contrast to this it is pointed out that under s. 208 and the following sections which provide for procedure to be followed in proceedings instituted otherwise than on a police report, that is, on a private complaint, the accused has been fully safeguarded by vouchsafing to him the right to call evidence in defence. Section 208 (*1*) casts an obligation upon the Magistrate to hear the complaint and take all such evidence as may be produced in support of the prosecution or on behalf of the accused or as may be called for by the Magistrate. It is further pointed out that under s. 212 discretion is given to the Magistrate to examine any witness named in any list given

to him by the accused under s. 211 and this list is to be furnished after the Magistrate has framed the charge. Therefore it is pointed out that the accused under the old procedure is permitted to lead evidence at two stages; before the framing of the charge and after the framing of the charge. The Magistrate may not frame the charge at all after hearing the evidence called by the accused and even after he has framed the charge if after hearing further evidence led by the accused he is satisfied that the accused should not be committed to the Court of Sessions, he can cancel the charge and discharge the accused.

It is therefore strenuously urged by Mr. Kavlekar that the amendment of the Code deprives the accused, who has been proceeded against on a police report, of a substantive right of relief and defence, and in so depriving him s. 207A offends against art. 14 of the Constitution because this important right of defence and relief has been secured to the accused who is being proceeded against on a private complaint. Mr. Kavlekar is right when he urges that art. 14 assures to the citizen equality not only in respect of substantive law but also procedural law, and if any procedure is set up which deprives a citizen of substantive rights of relief and defence the citizen is entitled to complain of this procedure if to persons equally situated the older procedure is still available where these substantive rights of relief and defence were secured. In the first place, it must be borne in mind that Chapter XVIII of the Code deals with inquiries and not with trials. The object of this inquiry is to enable the Magistrate to determine whether there is a *prima facie* case for the committal of the accused. The Magistrate in a sense is not deciding anything at all. He is not passing any order which substantially affects the accused. He holds an inquiry and decides whether the materials placed before him are such as to make it necessary that the accused should stand his trial before the Court of Session. Therefore, when the petitioners say that they have been deprived of their defence and of leading evidence, in one sense it is not a justifiable complaint because whatever evidence they have to lead they can lead before the Court of Sessions. It is that Court in which they would be tried and it is in relation to that Court that the question has got to be asked whether in their trial in that Court they have been deprived of any substantive right of defence or relief. In the Supreme Court case on which Mr. Kavlekar relies and which had to consider cases of procedure, it will be noticed that in all those cases the accused were deprived of certain important rights in the trial of the cases against them. In the matter before us we are not dealing with trial, but we are dealing with an inquiry which is antecedent to the trial. It should also be borne in mind that the amendment of the Code has been brought about with the express purpose of ensuring a speedy trial and to prevent harassment to the accused. All cases to which Chapter XVIII applies are in their very nature

1956

ARUNACHALIAM SWAMI v. STATE

Chagla C. J.

serious cases and serious cases normally are investigated into by the police and proceedings are instituted on a police report. There are cases where a complainant may put a complaint on the file of the Criminal Court even with regard to a case which should normally be investigated by the police. Even so the Magistrate has the power to refer the complaint for investigation to the police and if on that investigation the police makes a report then again the case would fall under the provisions of s. 207A. But Mr. Kavlekar is right that even so some cases may remain where the police may refuse to take up the matter and the case may proceed on a private complaint. Ordinarily such cases must be those about which the police feel that either they are frivolous or they are actuated by private vendetta and there are not sufficient materials to justify a police investigation. It is in these very cases that the accused require proper protection and the policy of the law is not concerned if there is delay in disposal of such private complaints. It is because of this that the old procedure is retained with regard to an inquiry instituted as a result of private complaints. That procedure makes possible a very elaborate inquiry, formal evidence is called by the accused and a consideration by the Magistrate both of the evidence led by the prosecution and the evidence led by the accused.

But with regard to the right of the accused to call evidence, although there is no specific provision in s. 207A itself, we refuse to countenance the suggestion made by Mr. Kavlekar that in the interest of justice even if the Magistrate wanted to hear evidence called by the accused he is precluded from doing so. Indeed that is the view taken by the learned Magistrate in the matter before us. In the first place, it must be borne in mind that when sub-s. (*4*) of s. 207A speaks of "other witnesses for the prosecution", it assumes that all material witnesses are and must be witnesses for the prosecution. The law is well settled that it is not open to the prosecution or to the police investigating an offence only to place before the Court witnesses who support the prosecution story. If there are other material witnesses who support the defence of the accused, it is equally the duty of the prosecution to call them. Undoubtedly, there may be witnesses supporting the accused whom the prosecution may consider untrustworthy, in which case there would be no obligation on the prosecution to treat them as prosecution witnesses. Therefore the situation would rarely arise where a material witness who would support the defence would not be called by the prosecution under the provisions of s. 207A itself. But we must contemplate a case where for some reason or other the prosecution does not choose to call a witness who is material and who supports the accused. Is it suggested that there is no power in the Magistrate to call such a witness? In our opinion, the clear answer to this conundrum placed before us by Mr. Kavlekar is s. 540. That

is a very wide section and confers power upon every criminal Court at any stage of any inquiry, trial or other proceeding under the Code to summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case. Therefore, it is obligatory upon the Court to summon a person if his evidence is necessary for the just decision of the case, and if the accused makes an application to call a particular witness and if that witness is a material witness and it would help the Magistrate to come to a just decision, then undoubtedly under s. 540 not only the Magistrate would have the discretion to call him, but there would be a duty upon him to summon that witness and examine him. Therefore, in our opinion, the learned Magistrate was wrong when he rejected the application of the petitioners to call evidence on the ground that there was no provision in law for a defence witness. He should have considered the nature of the evidence and should have exercised his discretion under s. 540 and if he had come to the conclusion that any of the witnesses was essential to the just decision of the case then it was his duty to summon such witness.

It is then said that the accused in this case has been deprived of the right to approach the High Court under s. 215. Under that section it is provided:

> "A commitment once made under s. 213 by a competent Magistrate or by a Civil or Revenue Court under s. 478, can be quashed by the High Court only, and only on a point of law."

Therefore, this section provided a certain limitation upon the power of the High Court in the case of commitment orders passed under s. 213. If an order of commitment was passed under s. 213 then it could be quashed only by the High Court and only on a point of law. The result of enacting s. 207A is that an order of commitment passed under this section does not fall under s. 215 and the argument put forward by Mr. Kavlekar is that however erroneous in law the order of commitment might be under s. 207A, the accused would have no right to approach the High Court under s. 215. Now, if s. 215 is a limitation upon the power of the High Court then that limitation only applies to orders made under s. 213. They do not apply to an order made under s. 207A. Therefore, the ordinary power of the High Court to revise any order passed by a criminal Court subordinate to it or the power of the High Court under s. 561A remains unaffected as far as the orders of commitment made under s. 207A are concerned. Apart from these two sections the accused has always the right to approach the High Court under art. 227 of the Constitution. It may perhaps be difficult to understand why this distinction was made in the case of an order of commitment passed under s. 213 and one

1956

ARUNACHALIAM SWAMI v. STATE

Chagla C. J.

passed under s. 207A. But it may be that it confers a wider power upon the High Court with regard to orders of commitment passed under s. 207A and the reason for conferring this wider power may be that as orders of commitment under s. 213 are passed after elaborate inquiry and they would be passed rather rarely by the Magistrate who would realise that he is dealing with a serious case which has not been taken up by the police but is being proceeded with on a private complaint, that in such cases ordinarily the order of commitment should not be set aside except on a point of law and the power should be confined to the High Court. Therefore, as far as the present accused are concerned they should have no grievance with regard to their right to approach the High Court being affected by the amendment to the Code. If their rights are affected at all they are affected not to their prejudice but to their advantage, and it is impossible to contend that by reason of s. 215 he has no right to approach the High Court at all, however erroneous the order of commitment the Magistrate may pass.

Mr. Kavlekar has made an application (*sic*) to us that arguments of expediency and despatch should not influence us in deciding against the petitioners if their substantial rights are affected by the amendment introduced to the Criminal Procedure Code. We entirely agree that the Legislature in the interest of quick decision of cases and in order to see that arrears do not mount up in criminal Courts cannot institute a procedure which although it gives an expeditious trial to the accused deprives him of any substantial rights. But it is certainly open to the Legislature to devise a procedure which in certain important class of cases brings about the desirable result of doing away with unnecessary elaborate inquiry and brings the accused to trial as expeditiously as possible. But the procedure devised by the Legislature must always conform to this principle that he should have the same important rights of defence and relief as any other accused who would be entitled to a more elaborate procedure. In our opinion, on both the grounds urged by Mr. Kavlekar, viz., the right of calling defence evidence and the right to approach the High Court, which are both important and substantive rights, no prejudice whatever is caused to the accused before us in contra-distinction to an accused person who though charged with the same offence is being proceeded against at the instance of a private complaint and not on a police report.

It is then urged by Mr. Kavlekar that there is a clear inconsistency between the provisions of s. 207A, sub-s. (*6*) and s. 162. As already pointed out sub-s. (*6*) of s. 207A requires the Magistrate to consider all the documents referred to in s. 173 and after examining the accused and after giving the prosecution and the accused an opportunity of being heard he may pass an order of discharge if he comes to the conclusion that the evidence and documents do not disclose any ground for commitment of

the accused. When we turn to s. 173, among the documents referred to in that section are the documents referred to in sub-s. (*4*) and those documents are a copy of the report forwarded under sub-s. (*1*) of s. 173 and of the first information report recorded under s. 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions, if any, recorded under s. 164 and the statements recorded under sub-s. (*3*) of s. 161 of all the persons whom the prosecution proposes to examine as its witnesses. It is said by Mr. Kavlekar that the documents which the Magistrate has to consider under s. 207A are not documents referred to in sub-s. (4) of s. 173, but they are those documents which are referred to in other parts of s. 173 which the police have to forward to the Magistrate. Sub-section (*4*) is a new sub-section and that confers upon the accused a very important right. That right is that he is entitled to receive copies from the police of all the documents mentioned in this sub-section, and therefore Mr. Kavlekar contends that as this sub-section deals with documents to be sent to the accused they are not the documents which the Magistrate has got to consider under s. 207A (*6*). In our opinion, that contention is entirely untenable because s. 207A (*6*) requires the Magistrate to consider all the documents referred to in s. 173 and among the documents referred to in s. 173 are undoubtedly documents mentioned in sub-s. (*4*) of s. 173. This argument is pressed by reason of the contention put forward with regard to the true construction of s. 162. It is urged that the policy of the law always has been that statements made of witnesses to the police and recorded under s. 161 (*3*) should not be used for any purpose except the limited purpose mentioned in the proviso to s. 162 (*1*) and that limited purpose is the purpose of contradicting the witness in the manner provided by s. 145 of the Evidence Act. It is said that if the Magistrate were to be sent statements recorded by the police under s. 161 (*3*) and if he were given the right to consider these statements under s. 207A (*6*), then the policy of the law would be defeated and the Magistrate will be making use of statements which the law has always been anxious not to have treated as evidence in the case.

Now, there are various answers to this difficulty raised by Mr. Kavlekar. In the first place, under s. 207A (*6*) the statements of witnesses recorded by the police under s. 163 (*3*) do not become evidence. The Magistrate only considers them for the purpose of either discharging the accused or passing the order of committal. It is further quite obvious that the reason why the Magistrate has got to consider the statements is in the interests of the accused himself. The Legislature did not want the Magistrate to commit the accused merely on the oral testimony of witnesses produced by the prosecution. The Legislature wanted the Magistrate to test that evidence in

1956

ARUNACHALIAM SWAMI v. STATE

Chagla C. J.

the light of what these very witnesses had stated to the police earlier and nearer the point of time when the offence was committed, and if the Magistrate on considering these statements felt that the oral evidence given by the witnesses was untrustworthy and unreliable it would be open to the Magistrate to discard or disregard the oral evidence and to discharge the accused. Therefore, in our opinion, the policy of the law with regard to these statements is in no way being defeated by the Magistrate being asked to consider these statements. But apart from the question of policy, when we look at the strict language of s. 162 itself, the prohibition with regard to these statements is qualified by the language used by the Legislature "save as hereinafter provided", and the rather curious contention put forward by Mr. Kavlekar is that that exception is only to be found in the proviso to s. 162 (*1*) and not to any of the provisions of the Code. It is impossible to accept that contention. "Hereinafter" may be either in the latter part of the section or anywhere else in the Code. The Legislature has not stated that the exception must be hereinafter in the section itself, and if there is an exception provided in s. 207A that is an exception which is hereinafter provided in relation to s. 162. We do not understand why the exception provided in s. 107A (*6*) should be disregarded or overlooked. In any case, our duty is to reconcile s. 162 (*1*) with s. 207A (*6*) and there cannot be the slightest doubt that whatever the Legislature might have provided in s. 162 (*1*) it was the clear intention of the Legislature that the Magistrate must look at these statements, and consider them for the purpose of passing his commitment order under s. 207A. If that was the clear intention of the Legislature, it could not be said that the Legislature did not wish to constitute that as an exception to s. 162 (*1*).

Turning to the merits of the case, there is very little that can be said in favour of the petitioners. We would have set aside the order of commitment passed by the learned Magistrate if we had felt that he had erroneously refused to permit the accused to lead evidence in their defence. The position with regard to this evidence is that the accused were called upon to make a statement under s. 207A (*6*) and the answer they gave was that they would make their statement in the Court of Session. They were asked to give a list of persons whom they wished to summon to give evidence in their trial in the Court of Session, and their answer was that they would call their witnesses, if necessary, in the Court of Session. Therefore, in their written statements the accused never foreshadowed any defence, nor did they suggest that they wanted to call any evidence nor substantiate that defence. They reserved their defence for the Court of Session and apparently they also reserved their right to call evidence in the Court of Session. This application which was subsequently put in

seems to us to have been put in solely for the purpose of getting this important Constitutional point decided by the High Court.

As regards the order of commitment passed by the learned Magistrate, Mr. Kavlekar has offered certain criticisms. Now, in all orders of commitment one must always bear in mind the general principles applying to these orders. The Magistrate is not supposed to weigh evidence and to decide as to whether the accused is innocent or guilty. That is the function of the jury when the case goes to the Sessions. It is not even his duty to consider whether a conviction is probable. Even that is the function of the jury and the Magistrate is trespassing upon the province of the jury if he were to debate in his mind whether a conviction is probable. All that he has to consider is whether on the evidence led a conviction is possible; whether reasonable persons like the persons who constitute the jury are likely to take the view on the evidence led that the accused was guilty. It is true that we have laid down that the Magistrate should not waste the time of the jury if the evidence in his opinion is so worthless that no reasonable men would accept it as true. But subject to that the Magistrate is only concerned with deciding whether there is—to use a well known English legal expression—sufficient evidence go to the jury. If there is sufficient evidence to go to the jury then whether that evidence should be believed or not is a matter for the jury and not for the Magistrate. From this point of view it is difficult to say why the order passed by the Magistrate cannot be supported. The Magistrate, in the first place, has dealt with the evidence of one Pechiammal who was standing in front of her room and who saw all the four accused coming there and asking for Dorraj the deceased, and she says that they were all armed with weapons and she describes the weapons which the accused had. She told the accused that Dorraj was not at home and then they all searched for him. Dorraj was in the room of one Peermal. He came out of the room and started running and all the accused chased him with the weapons in their hands, and very soon after this the dead body of Dorraj was found lying at a distance of 100 yards from the chawl of Pechiammal. It is true that she is not an eye-witness to the murder, but she is an extremely important witness and she is a witness whose evidence if accepted would go a long way to establish the guilt of the accused. Then accused Nos. 1 and 2 were arrested on February 9, 1956 and the shirt of accused No. 1 and the shirt of accused No. 2 and the underwear he was wearing had bloodstains. Then accused No. 2 made a statement and took the police to an open place behind a certain place in Dharvi and dug out a sword and a chopper from under a heap of refuse which the police took charge of and both these were bloodstained. Mr. Kavlekar has drawn our attention to a discussion by the Magistrate of the

1956

ARUNACHALIAM SWAMI v. STATE

Chagla C. J.

evidence of certain witnesses who although they did not identify the accused in the inquiry before him had identified him at an identification parade, and Mr. Kavlekar says that this evidence is irrelevant and the learned Magistrate has relied on this evidence in order to commit the accused to the Sessions. We express no opinion as to whether this evidence is relevant or not. The proper time for considering this would be when the evidence is led before the Sessions Court. At this stage all that we are concerned with is to consider whether on the evidence led by the Magistrate it could be said that there was no case to go to the jury. In our opinion, it is impossible to put forward that contention. Therefore, even on the merits the commitment order must be upheld.

The result is that the petition fails and must be dismissed.

Rule discharged.

G. N. V.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Dixit.

1956
June 26

THE COLLECTOR OF SALES TAX, BOMBAY, (APPLICANT) *v.* SHRI MORARJI PADAMSI OF MESSRS. E. EYERS & CO. BOMBAY, (RESPONDENTS).*

The Bombay Sales Tax Act, 1946 (Bom. V of 1946) ss. 5, 18—Whether transferrer of business liable to pay tax after transfer of business—Whether liability of transferrer and transferee co-extensive?

Section 5, of the Bombay Sales Tax Act, 1946, which is the charging section, makes the dealer liable to pay tax. On the transfer of the whole business, the liability of the transferrer does not automatically cease. Section 18 does not absolve the transferrer of the liability to pay tax, incurred by him by reason of s. 5. The transferrer continues to be liable to pay the tax in respect of the period during which he carried on the business and incurred the liability to pay sales tax.

Facts material to this report are fully set out in the Judgment.

At the instance of the Collector of Sales Tax, Bombay, the Sales Tax Tribunal, Bombay, referred the following questions to the High Court at Bombay:—

(*i*) Whether by virtue of the provisions of s. 18 of the Bombay Sales Tax Act, 1946, the applicant is precluded from levying on and/or recovering from the respondent arrears of sales tax dues for the period to the date of transfer of his business.

(*ii*) If question No. (*i*) is answered in the affirmative whether in any event having regard to the fact that the transferee (who did not hold the certificate of registration) did not apply for registration under s. 8 or 8A, the applicant was precluded from levying on and/or recovering from the respondent sales tax for the period prior to the date of transfer of his business.

*Civil Reference No. 7 of 1956 (with Civil Reference No. 8 of 1956).