

**The Authorized Signatory Vs. The State by Its**

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**Court :** Karnataka

**Decided On :** Apr-17-2015

**Judge :** A.N.Venugopala Gowda

**Appeal No. :** CRL.P 3273/2013

**Appellant :** The Authorized Signatory

**Respondent :** The State by Its

**Judgement :**

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE 17TH DAY OF APRIL, 2015 BEFORE THE HONBLE MR. JUSTICE A.N.VENUGOPALA GOWDA CRIMINAL PETITION NO.3273/2013 C/W CRIMINAL PETITION NO.3274/2013 BETWEEN: THE AUTHORIZED SIGNATORY M/s. ICICI BANK LTD., K.S. RAO ROAD MANGALORE - 574 227. ... PETITIONER (COMMON) (BY SRI V. LAKSHMINARAYANA, SENIOR ADV. FOR SRI JAI M. PATIL, ADV.) AND: THE STATE BY ITS REGIONAL TRANSPORT OFFICER SHIMOGA - 577 414. ... RESPONDENT (COMMON) (BY SRI VIJAY KUMAR MAJAGE, HCGP) 2 CRL.P.NO.3273/2013 IS FILED UNDER S.482 CR.P.C., PRAYING TO QUASH THE COMPLAINT WHICH IS FILED AGAINST THE PETITIONER BY THE RESPONDENT IN C.C.NO.841/2010 BEFORE THE II ADDL.CIVIL JUDGE AND JMFC, SHIMOGA. CRL.P.NO.3274/2013 IS FILED UNDER S.482 CR.P.C., PRAYING TO QUASH THE COMPLAINT WHICH IS FILED AGAINST THE PETITIONER BY THE

RESPONDENT IN C.C.NO.842/2010 BEFORE THE II ADDL.CIVIL JUDGE AND JMFC, SHIMOGA. THESE CRIMINAL PETITIONS COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

## ORDER

The petitioner, facing prosecution in C.C.Nos.841 and 842 of 2010, on the file of JMFC, II Court, Shivamogga, for the alleged contravention of the provisions of Sections 3 and 4, punishable under Section 12 of the Karnataka Motor Vehicle Taxation Act, 1957 (for short the Act), filed these petitions, under Section 482 of Cr.P.C., to quash the entire proceedings of the said cases.

2. The petitioner was a financier of motor vehicles bearing registration Nos. KA-21/D-555 and KA-21/D-5555. Motor vehicle tax of the said vehicles having not been remitted for the quarters commencing from 01.11.2008 to 31.10.2009, two separate complaints, under Section 200 3 Cr.P.C., in cyclostyled forms, by filling the blanks, were filed. The Magistrate having taken the cognizance and issued process, these petitions were filed for grant of the relief, mentioned supra.

3. Sri V.Lakshminarayana, learned Senior Advocate, appearing for the petitioner, though, did not dispute the fact, that the possession of the said vehicles was with the petitioner during the period from 25.08.2008 to 25.10.2008, firstly, contended that the complaint ought to have been filed both against the registered owner and the person, who had the possession of the vehicle, during the relevant period. He submitted that the registered owner and the person in possession, being the joint tort feasers, filing of complaint against the financier alone, is impermissible. Secondly, the vehicle/s having not been put for use on road w.e.f. 25.10.2008 to 29.10.2010 and the vehicles having been parked in a garage, with prior intimation to the registering authority, stereotyped form/s, lodged as complaint/s, under Section 200 Cr.P.C., are not 4 maintainable. He submitted that the Magistrate having used the cyclostyled proforma, wherein, the blanks have been filled up and even the words Cognizance is taken under Section 190, also appearing on the cyclostyled proforma, there being total non-application of mind and mechanical action, interference is called for.

4. Sri Vijay Kumar Majage, learned HCGP, on the other hand, submitted that in view of the undisputed fact that the petitioner being the financier, had seized the two vehicles and was in possession of the same w.e.f. 25.10.2008 to 19.10.2010 i.e., the period for which the motor vehicle tax was not remitted, either by the registered owner or the person in possession, it is not open to the petitioner to raise technical ground to overcome the penal provision relating to payment of penalty i.e., in terms of Section 12 of the Act. He sought dismissal of the petitions, by placing reliance on the decisions in (1) REGIONAL TRANSPORT OFFICER Vs. RAJENDRAN, (2007) 6 AIR5KAR R610 and (2) STATE OF KARNATAKA Vs. BHAVAKANNA JEEVAPPA ANANDACHE, (2010) 4 Kar. L.J.

378. 5. Perused the petitions and considered the rival contentions. Point for consideration is, whether there is non application of mind by the learned Magistrate in the matter of taking cognizance and whether any interference is called for?.

6. Complaint/s filed before the JMFC are in stereotyped/computer proforma. Blanks appearing therein have been filled up. Registered owner/s of the vehicle/s, were not arrayed as accused. Allegations in the stereotyped/computer proforma complaint/s, show that the accused being registered owner of the vehicle, as having not remitted the motor vehicle tax, for certain period/s, which has also filled by hand.

7. B Register Extract/s of the vehicle/s, show that name and address of the registered owner/s as (1) Sri Narayana P.M., S/o.Late Subba Pujari, M/s. Nishmitha 6 Motors, Near Hanuman Rice Mill, Bolavar, Puttur w.e.f. 3.11.2003 and (2) Sri K.Radha Krishna Pai, S/o.Venkatesh Pai, Sri Ram Motors, Maruthi Building, B.H.Road, Shivamogga w.e.f. 23.11.2006. The arrears of tax, shown in the complaint/s pertain to the period 01.11.2008 to 31.10.2009. Printed demand notice/s, vide Annexure-C, by filling the blanks was served on the petitioner. The stereotyped proforma complaint/s, with blanks therein being filled i.e., relating to the case number, name of the accused, provisions of the offences alleged against the accused, by also filling up the words Ss to accused 11.08.2010, cognizance has been taken. The proforma order/s, passed by the Magistrate, being relevant,

is extracted hereinbelow: Cognizance is taken. Register the case in Registration No.III. Check and receive the properties if any. The case is made over to the II Additional Civil Judge (Jr.Division) and JMFC Shimoga as per the Order No.27/03 dated 31.10.2003 of the Principal Civil Judge (Jr.Division) & JMFC, Shimoga. Ss to accused 11.08.2010. Except the underlined sentence (supra), rest is in printed form/s. 7 8. In FAKHRUDDIN AHMAD Vs. STATE OF UTTARANCHAL AND ANOTHER, (2008) 17 SCC157 with regard to taking cognizance, Apex Court has held as follows: 17. Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender. 9. In S.RAMESH Vs. STATE OF KARNATAKA BY HEBBAL POLICE, Criminal Petition No.194/1996, decided on 14.08.1997, this Court, deprecated the use of printed form, for taking cognizance and the use of stereotyped form, as taking cognizance can be after application of 8 mind. Cognizance taken on cyclostyled and stereotyped form, being mechanical action, was not sustained.

10. In HANUMAN G. Vs PCH MARKETING SERVICES PVT. LTD., 2001 (6) KLJ63 practice of filling up typed form was deprecated.

11. Taking of cognizance by Magistrate essentially constitutes reading of the complaint and coming to the conclusion that the complaint does disclose commission of an offence, which is required to be tried. Summoning of an accused in a criminal case being a serious matter, the order taking cognizance by the Magistrate must reflect that he has applied his mind to the facts of the case and the law applicable thereto. Unless the allegations in the complaint and the materials placed along with it, constitute an offence, cognizance should not be mechanically taken.

12. In the instant case/s, use of stereotyped and printed form/s, for taking of cognizance of the offences, 9 being a mechanical act, thereby disclosing the non-application of mind, cannot be sustained. Consequently, taking cognizance of the offences in C.C.Nos.841 and 842 of 2010, by the JMFC, II Court, Shivamogga, is quashed. However, learned Magistrate shall consider the matter/s by keeping in view the observations made supra and in accordance with law. In the said view of the matter, it is unnecessary to consider the rival contentions, noticed supra. These petitions are allowed accordingly. Sd/- JUDGE sac\*

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