

W.G. Somalwar Vs. the State

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Court : Mumbai

Decided On : Oct-05-1951

Reported in : 1952CriLJ430

Judge : Hemeon, J.

Appellant : W.G. Somalwar

Respondent : The State

Judgement :

ORDER

Hemeon, J.

1. The applicant Shri W.G. Somalwar. advocate, was convicted and sentenced to pay fine of Rs. 150-0-0 under Section 16 of the Central Provinces and Berar Motor Vehicle Taxation Act, 1947; and his application for revision of that order was dismissed by the Sessions Judge, Nagpur. He has now come up in, revision to this Court.

2. The applicant, who was the registered owner of motor vehicle No. C.P.H. 121, did not pay the Rs. 35-0-0 due on account of tax for the period 1st July 1949 to 31st December 1949 nor comply with the proviso to Section 3(2) of the Act which runs as follows:

The tax leviable under Sub-section (1) shall be paid by the owner of the motor vehicle used or kept for use-

(i) for a whole quarter at one-fourth of the annual rate specified in the First Schedule, and for two or more whole quarters, 'pro rata', or

(ii) for any period expiring on the last day of a quarter and not exceeding two months, at one-sixth or one-twelfth of the rate specified in the First Schedule, according as the period exceeds, or does not exceed, one month:

Provided that the tax shall not be payable by the owner of a motor vehicle who does not use the vehicle during such period if, before the tax is due, he has given notice in writing as may be prescribed.

3. His case was that the car was not in use during the period in question, because it was undergoing extensive repairs in the workshop of C.M. Kinkhede (D.W. 1) and was not returned to him before January 1950. He also claimed that he had not given the notice referred to in the aforesaid proviso, as he did not consider that it was necessary.

4. The application must succeed. Section 3(2) provides that the tax shall be paid by the owner of the motor vehicle used or kept for use; and the proviso lays it down that the tax shall not be payable by the owner of the motor vehicle who does not use it during the period if he gives previous notice in writing. This could not, according to Pollock J. In *Bapurao v. King Emperor* 1942 Nag LJ 419, be interpreted as meaning that, if he does not give notice the tax shall be payable, because the substantive part of the section provides that the tax shall be payable only if the motor vehicle is used or kept for use.

5. It is true that Sub-section (3) of Section 3 lays it down that an owner who keeps a motor vehicle other than a transport vehicle of which the certificate of registration is current shall, for the purposes of the Act, be presumed to keep such vehicle for use but that presumption is, as Hidayatullah J. pointed out in *King Emperor v. Diwakar* Cri Revn No. 664 of 1948, D/- 11.5.1949, rebuttable. Here the presumption was successfully rebutted by the following testimony of C.M.

Kinkhede:

I got the car No. C.P.H. 121 for repairs in my workshop in the last summer. The engine was to be overhauled, as it had no piston rings. Other minor repairs were also to be made. It was not fit for use. The parts were not available then. I received the parts in December 1949. The car was repaired and returned in January 1950.

I note also that Shri W.G. Somalwar stated in his application to the Sessions Judge as well as in that to this Court that he had not renewed registration of his car because of its extremely bad condition.

6. The conviction and sentence were, therefore, erroneous. They are Set aside and the applicant is acquitted. The fine, if paid by, shall be refunded to him.

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