Channabasappa Vs. the State of Karnataka

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Court : Karnataka

Decided On : Aug-25-1978

Reported in : 1979CriLJ185

Judge : M.S. Nesargi, J.

Appellant : Channabasappa

Respondent : The State of Karnataka

Judgement :
ORDER

M.S. Nesargi, J.

1. In these two petitions common question of law arises and hence they are being disposed of by a common order.

2. Cr. R. P. 243 of 1978 arises out of the order dated 20-6-1978 passed by the J. M. F.C. Koppal, in C. C. No. 184 of 1978 and Cr. R. P. No. 244 of 1978 arises out of the order dated 20-6-1978 passed by the J. M. F. C Koppal, in C. C. No. 185 of 1978.

3. In C. C. No. 184 of 1978 the Regional Transport Officer, Raichur, alleged that the petitioner had committed an offence punishable under Section 12 (1) of the Karnataka Motor Vehicles Taxation Act, 1957 (hereinafter referred to as the 'Act')

as he had, as a registered owner or otherwise in possession or control of the motor vehicle bearing registration No. MYR 4566 (lorry) without paying tax as per the provisions of the Act for the quarter ending on 30-6-1976. In C. C. No. 185 of 1978 the Regional Transport Officer, Raichur, complained that the petitioner had committed an offence punishable under Section 12 (1) of the Act as he had, as a registered owner or otherwise, in possession or control of the same vehicle without paying tax as per the provisions of the Act for the quarter ending on 30-9-19781

4. The petitioner filed two applications one in C. C. No.]84 of 1978 and one in C. C. No. 185 of 1978 contending that no prosecution could be taken up against him in view of Section 468 (2)(a) of the Code of Criminal Procedure because the complaint had been filed on 21-5-1978. The learned Magistrate has passed the impugned orders holding that the contention of the petitioner was not tenable as according to him the offences complained of by the Regional Transport Officer were continuing offences and the provision in Section 472 of the Code of Criminal Procedure saved the situation in favour of the prosecution.

5. Section 12 (1) of the Act reads as follows:

12. Penalties: (1) Whoever

(a) as a registered owner or otherwise has possession or control of any motor vehicle liable to tax under this Act without having paid the amount of the tax or additional tax due in accordance with the provisions of this Act in respect of such vehicle, or

(b) delivers a declaration or additional declaration where in the particulars required by or under this Act to be therein set forth are not fully and truly stated.

shall, on conviction, be punishable with fine which shall not be less than a sum equal to the quarterly tax payable in respect of such vehicle and which may extend to a sum equal to the annual tax payable in respect of such vehicle; and in the event of such person having been previously convicted of an offence under this section with fine which shall not be less than a sum equal to the tax payable in respect of such vehicle for two quarters and which may extend to a sum equal to twice the annual tax payable m respect of such vehicle; and the amount of any tax due shall be recoverable as if it were a fine.

A plain reading of this provision makes such possession or control of a motor vehicle an offence punishable with fine as provided therein. The sentence is based on the amount of quarterly tax. It is also plain that whenever a person fails to pay tax for a particular quarter during which be, as a registered owner or otherwise, has possession or control over such a vehicle, be commits an offence If he does it again in another quarter he commits another offence.

6. In view of the foregoing, it follows that. if the tax is not paid for a particular quarter for a vehicle, the person who has possession or control over such vehicle as a registered owner or otherwise commits an offence which continues to be an offence every day during such quarter. This position in law is arrived at without deciding what would be the legal position when there is delayed payment of tax during a particular quarter. When such person pays tax for the next quarter and continues to be in possession and control over such a vehicle, he does not commit any offence under Section 12 of the Act. For the offence he has committed in the previous quarter he could be, in law, prosecuted. Such prosecution shall have to be within the period prescribed in Section 468 (2)(a) of the Code of Criminal Procedure. It cannot at all be said, in law, that an offence that had been committed for a particular quarter is a continuing offence for subsequent quarters also, 'though the concerned person pays tax in accordance with the provisions of the Act for 'those quarters. Therefore, the offence for which the petitioner is prosecuted in C. C. No. 184 of 1978 had been committed by him during the quarter ending 30-6-1976 and it was a continuing offence till the end of the quarter namely, till 30-6-1976. Similarly, the offence for which the petitioner is prosecuted in C. C. No. 185 of 1978 is a continuing of fence continuing up to the end of the quarter namely, ending on 30-9-1976. In regard to the offence complained of in C. C. No. 184 of 1978, the petitioner ought to have been in law, prosecuted within six months from 30-6-1976, and in regard to the offence complained of in C. C. No. 185 of 1978, the petitioner ought to have been prosecuted within six months from 30-9-1976. But the prosecutions have been instituted against the petitioner on 21-5-1978. The prosecution has not claimed extension of period of limitation under

Section 473 of the Code of Criminal Procedure. In this view of the matter, the learned Magistrate had no power to take cognizance of the offences and as such the prosecuting the petitioner in these cases is bad in law.

6A. In view of the foregoing reasons, these petitions are allowed and the prosecutions of the petitioner in C. G No. 184 of 1978 and C C. No. 185 of 1978 on the file of the J. M. F. C. Koppal, are quashed.