Assistant Collector of Cus., Karwar Vs. State

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Court : Karnataka

Decided On : Jan-31-1997

Reported in : 1997(92)ELT66(Kar); ILR1997KAR1913

Judge : M.P. Chinnappa, J.

Appeal No. : Criminal Petition No. 1498 connected with 1499-1528 of 1994

Appellant : Assistant Collector of Cus., Karwar

Respondent : State

Advocate for Def. : Shri C. Ramakrishna, HCGP

Advocate for Pet/Ap. : Shri Ashok Harnahalli, CGSC

Judgement :
ORDER

1. That the RTO, Karwar had launched criminal cases against the petitioner under Section 4(1) of the Karnataka Motor Vehicles Taxation Act, 1957 ('the Act' for short) for the alleged offence under Section 12(1)(a) and (b) of the Act on the allegation that the vehicles bearing Nos. MWT 3443 and MTG 3667 were seized by the accused and the same were under his custody without paying tax payable under the Act for different periods. Petitioner is an officer of the Customs Department of the Government of India and functions under the provisions of the Customs Act, 1962. On the basis of the complaint, the learned JMFC, Karwar has

taken cognizance and issued process to the petitioner. The Department of Customs is directly under the control of Ministry of Defence, Union of India. In response to these summons the petitioner had appeared and on one occasion he could not appear. Therefore the learned Magistrate had issued NBW against the petitioner. Therefore the petitioner has filed these petitions questioning the order passed by the learned Magistrate, Karwar taking cognizance of the case and also issuing NBW against him under Section 482 of Cr. P.C.

2. Heard the learned Central Government Standing Counsel and the learned High Court Government Pleader for the respective parties.

3. The learned Counsel for the petitioner vehemently submitted that no criminal prosecution could be launched against the petitioner as the Central Government is not liable to pay any tax. He also submitted these vehicles were seized for contravention of Customs Act and later confiscated to the Central Government. After the vehicles were confiscated it becomes the property of the Central Government free from encumbrance. He also submitted that the action taken by the petitioner is protected by Section 155 of the Act and therefore no criminal prosecution could be launched against him which the learned Magistrate has not taken into consideration. He has also drawn my attention to Article 285 of the Constitution of India wherein the Central Government is exempted from paying any tax levied by the State.

4. The learned High Court Government Pleader however submitted that these are the matters to be decided by the learned Magistrate at the appropriate stage and this Court cannot go into that aspect acting under Section 482 of Cr. P.C. It is no doubt true that the Hon'ble Supreme Court time and again have held that the High Court cannot interfere with the order passed by the Magistrate acting under Section 482 of Cr. P.C. unless it is the case where there is abuse of process of Court and no offence is made out against the petitioner. In view of this, it is now necessary to find out as to whether any offence is made out as far as this petitioner is concerned.

5. Admittedly these two vehicles referred to above were seized during the course of the petitioner's official duty in view of the contravention of Customs Act for

carrying contraband goods. Subsequently these two vehicles were confiscated to the Government. If the vehicles are confiscated to the Government under Section 124 of the Customs Act, it becomes the property of the Central Government. These vehicles were seized under Section 110 of the Customs Act and it was confiscated under Section 127 of the said Act. Therefore it is clear that the act of the petitioner is only in compliance with the requirement of the relevant provisions of the Customs Act. Section 155(1) of the Customs Act reads as under :

'Protection of action taken under the Act. - (1) No suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Government or local authority for anything [which] is done or intended to be done in good faith, in pursuance of this Act or the rules or regulations'.

From this it is clear that he has seized the vehicle and confiscated the same only in accordance with law. Therefore no prosecution could be launched against the officer - the petitioner. Even accepting for the sake of argument that the prosecution is launched on the ground that subsequently he has failed to pay the tax as provided under the Karnataka Motor Vehicles Taxation Act. The question is whether the Central Government is liable to pay the tax to the State Government. To substantiate his argument the learned Counsel as drawn my attention to Article 285(1) of the Constitution of India which reads :

'The property of the Union shall, save insofar as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State'.

Sub-clause (2) is not relevant for the purpose of this case. Hence omitted.

6. It is also clear that the system of double Government set up by a federal Constitution requires, for its smooth working, the immunity of the property of one Government from taxation by another. For this purpose our Constitution embodies this principle in this Article.

7. The expression 'property' in this Article has been used in a perfectly general sense and would include land, building, chattels, shares, debts and in fact

everything that has a money value in the market and comes within the purview of any taxing statute.

8. As stated above since these two vehicles were seized and confiscated to the Government as they belong to the Central Government, no tax as provided under the State Act be levied on these vehicles. That being the case, the respondent could not have demanded tax from the petitioner. Therefore the question of launching the prosecution does not arise.

9. For the foregoing reasons I hold that no offence is committed by the petitioner and if the said prosecution is allowed to continue it would amount to abuse of process of law. Therefore this Court will have to interfere under Section 482 of Cr. P.C. Accordingly these petitions are allowed. The entire proceedings pending in C.C. Nos. 1931/92 to 1961/92 questioned in Criminal Petition Numbers 1498/94 to 1528/94 respectively are quashed and consequently the order issuing NBW is set aside.