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S.V. Bagi Vs. State of Karnataka

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Court : Karnataka

Decided On : Feb-28-1992

Reported in : ILR1992KAR1123

Judge : S.P. Bharucha, C.J., ;K. Shivashankar Bhat and ;Shivaraj V. Patil, JJ.

Acts : Karnataka Sales Tax Act, 1957 - Sections 20, 20(1), 29 and 31

Appeal No. : S.T.R.P. Nos. 17 and 18 of 1987

Appellant : S.V. Bagi;state of Karnataka

Respondent : State of Karnataka;veerchand

Advocate for Def. : H.L. Dattu, Government Advocate and ;E.R. Indrakumar, Adv.

Advocate for Pet/Ap. : S.P. Bhat, Adv.

Judgement :

S.P. Bharucha, C.J.

1. The Full Bench has this question before it :

'Whether a person agreeing to the composition of the offence under section 31 of the Karnataka Sales Tax Act, 1957, is not entitled to challenge the said proceedings held under section 31 under any circumstances, by invoking the appellate provisions of section 20 of the Act ?'

2. Section 31 of the Karnataka Sales Tax Act reads thus :

'31. Composition of offences. - The prescribed authority may accept from any person who has committed or is reasonably suspected of having committed an offence punishable under this Act, by way of composition of such offence -

(a) where the offence committed is under clause (d) of sub-section (1) of section 29 or clause (c) of sub-section (2) of section 29, in addition to the tax or amount not paid or evaded to be paid, a sum of money not exceeding one thousand rupees or double the amount of the tax or amount so remaining unpaid or evaded to be paid whichever is greater, and

(b) in other cases, a sum of money not exceeding one thousand rupees.'

3. Section 20 of the Act says that any person objecting an order affecting him, passed under the provisions of the Act, may appeal there against.

4. The reference to the Full Bench was made because it was found that there was a divergence of opinion upon the question, one Division Bench having held that an appeal was maintainable and another having held that it was not maintainable.

5. In S.T.R.P. No. 11 of 1979 a judgment was delivered on 8th July, 1980, which held that an appeal against an order under section 31 was maintainable. The Division Bench said that voluntary acceptance of the offence alleged against an assessee by him and a voluntary offer by him to compound the offence by paying an amount not exceeding the maximum amount prescribed under section 31 constituted the foundation for passing such order. If such conditions did not exist it was open to the assessee to question the validity of the order in an appeal.

6. In S.T.R.P. No. 56 of 1983 another Division Bench, by its judgment dated 6th July, 1988, held that the assessee was not competent either to file an appeal or to approach the High Court in revision against an order under section 31. It came to this conclusion being in agreement with the view earlier expressed by a Division Bench in Veerendra Stores v. State of Mysore [1973] 32 STC 596 (Mys). In that case, a short judgment was delivered, the relevant portion whereof is this :

'In this revision petition, the assessee has challenged the decision of the Tribunal and the contention urged is that the order dated 29th September, 1969, is appealable falling under section 20(1) of the Act. It is unnecessary for the purposes of this case to determine whether an order fixing the compounding fee is appealable or not. What was done by the order dated 29th September, 1969, was to drop the proceedings in view of the fact that the assessee agreed to compound the offence and paid the compounding fee. By the dropping of the proceedings, the assessee cannot be said to be a person aggrieved. Therefore, the authorities below were right in the view they have taken that the order dated 29th September 1969, was not appealable.'

7. Our attention was drawn by Mr. S. P. Bhat, learned counsel for the assessee in the first revision petition (S.T.R.P. No. 17 of 1987), to the recent judgment of a Division Bench in Assistant Commercial Tax Officer v. N. N. Jariwala : ILR 1991 KAR4414 . This was a case where a writ petition was filed to impugn an order made under section 31. It was contended that the assessee was estopped from presenting a writ petition on the ground of acquiescence. The Division Bench observed that if the amount of the compounding fee which was demanded by the sales tax authorities had been within the maximum amount prescribed under section 31 there would have been considerable force in their contention that the assessee, having agreed to the compounding of the offence on payment of the amount within the maximum limits prescribed by law and having avoided prosecution, could not subsequently turn around and contend that the amount collected was excessive. But, in the opinion of the Division Bench, that consideration would not apply to a case where, either on account of misconstruction of the provisions of the Act or for any other reason, the sales tax authorities had demanded an amount which was beyond the maximum prescribed and, on account of ignorance or for any other reason, the assessee had agreed to pay or had paid it to avoid prosecution. In such a case the assessee had the right to contend that the amount that was demanded was not authorised by law and he could not be precluded from challenging the action of the sales tax authorities merely because he had agreed to pay the amount and have the offence compounded.

8. It was submitted by Mr. Bhat that compounding under section 31 was by an order. If there were circumstances that established that it was an invalid order, it was open to the assessee to agitate this in an appeal. For example, the sales tax authorities who had compounded might lack jurisdiction to do so; there may be circumstances present on record to show that the assessee's consent could not have been free; the composition fee might not be within the limits prescribed by section 31; or the payment of the composition fee, when made, might have been voluntary but the assessee might subsequently have discovered that there was no offence. In these circumstances, it was submitted, the assessee was a person aggrieved and had a right to appeal under section 20.

9. The submissions of Mr. Bhat were adopted by Mr. Indrakumar, learned counsel for the assessee in the second petition (S.T.R.P. No. 18 of 1987). He drew our attention to the judgment of a learned single Judge of this Court in Nanjappa & Sons v. Assistant Commissioner of Commercial Taxes [1968] 22 STC 277. The composition fee in this case had been agreed upon but not paid and it was held that the sales tax authorities had the right to recover the amount thereof by coercive process. The learned Judge, in the context of the composition of an offence, said that the word 'accept' in section 31 could and should reasonably be regarded as indicating satisfaction 'received or agreed to be received'. The prescribed authority acting under section 31 was required to apply its mind to two matters; whether the offence should be compounded; and what sum of money would be a sufficient substitute for the punishment that would be imposed if the offender was prosecuted. It was not enough for the competent authority to determine the amount or make up its mind as to the amount the might be regarded as sufficient payment by way of composition; it was also necessary that the assessee should agree to pay it. If he did not agree to pay, then there could not be any composition. Where the assessee agreed to pay a certain sum of money and the prescribed authority agreed to receive it as sufficient by way of composition, the assessee's offer was accepted within the meaning of section 31. To hold otherwise and to say that the whole question of composition was in suspense or in abeyance until the money was actually paid would, in the learned Judge's view, lead to very incongruous and unsatisfactory, if not, unjust consequences. One of the reasons advanced by the learned Judge for this conclusion was that if after

such acceptance had been reached, the question of composition was still to be regarded as being at large, it would permit either the competent authority or the dealer to resile from the agreement. There had to be in the nature of things some time-lag between the acceptance and the actual receipt of the composition money. If between these two points of time, the assessee was to be regarded as still retaining the option of not paying the composition amount, the prescribed authority should also be regarded as still retaining the option of prosecuting the assessee.

10. Our attention was also invited to the judgment of a learned single Judge in Mohammed Illyas v. Union of India : ILR 1991 KAR2804 . That was a case of composition under the Motor Vehicles Act. It is necessary only to state that the learned Judge held that what was compounded was the offence and not the prosecution and that, in the eye of the law, there was, upon compounding, a determination of the fact that an offence had been committed and the conviction or punishment was waived on receiving a certain sum and the offender was treated as having been acquitted of the charge.

11. Mr. Dattu, learned counsel for the sales tax authorities, cited the judgment of the Andhra Pradesh High Court in Ineepakolla Ganiraju v. State of Andhra [1959] 10 STC 108 where, in the context of a provision similar to section 31 in the Madras General Sales Tax Act, it was held that 'though technically an appeal might lie, such an appeal would be clearly unarguable, because there can be compounding only on actual payment of a sum acceptable to the officer and when a person had paid such a sum and has had thereby the benefit of the compounding, it would be idle for him to appeal to a higher authority and contend that he should have been allowed to pay less. If he had not paid the sum, there would have been no compounding. If he had paid the sum and compounding followed, he could not be aggrieved. The compounding contemplated by the section is to be the result of a voluntary payment made by the offending assessee which is accepted by the officer concerned.'

12. We must now note the judgment of the Supreme Court in Shamrao Bhagwantrao Deshmukh v. Dominion of India : [1955]27ITR30(SC) . This judgment dealt with sections 51, 52 and 53 of the Income-tax Act, 1922. The

Supreme Court said that what section 53 provided was that a person should not be proceeded against for an offence under section 51 or section 52 except at the instance of the Inspecting Assistant Commissioner and that the last-mentioned officer might, before or after the institution of proceedings, compound any such offence. The section did not say that the offence could be compounded only if it was proved to have been actually committed. If there was a proceeding on a charge under section 51 or section 52, it came within the purview of section 53 and it could be compounded. The assessee, being anxious to avoid prosecution, could make a voluntary offer to compound the offence, which the Assistant Commissioner of Income-tax was fully competent to accept under section 53. The offer was made obviously to avert the disgrace and ignominy of a prosecution.

13. Now we turn to analyse section 31. It says that the prescribed authority may accept from any person who has committed or is reasonably suspected of having committed an offence punishable under the Act, by way of composition of such offence, an amount, in respect of which the parameters are laid down in clauses (a) and (b). The section, therefore, contemplates the composition of an offence whether it has been committed or is reasonably suspected of having been committed. It contemplates that a person who has committed or is reasonably suspected of having committed an offence may pay, and the prescribed authority, may accept by way of composition for such offence an amount as therein stated. The phraseology used suggests that the offer to compound must come from such person. There is no compulsion upon him to make such offer. He can make it if he is assured of the possibility of being found guilty of the offence and upon satisfying himself that what he offers is within the prescribed parameters and that he to whom he makes the offer is the prescribed authority for the purpose. Once the offer is made it is for the prescribed authority to determine whether the offence should be compounded and, if so, whether it should be compounded for the amount offered. No doubt, it would be open to the prescribed authority to suggest such other sum as in its view would be appropriate, in which case it would be for such person to agree to pay such other sum or not. In our view, the process of compounding is completed only when the money that is agreed upon actually changes hands. If this be the correct view, as we think it is, with great respect to the learned Judge who decided Nanjappa's case [1968] 22 STC 277 (Mys), there

can never be a situation where the person who has committed or reasonably suspected of having committed an offence under the Act can be aggrieved. The fact that he has made the payment would indicate beyond any doubt that he was a willing party to the compounding and he cannot object thereto. It is, therefore, difficult to see how an appeal can be filed against an order of compounding.

14. Since we are, in effect, reversing the judgment in Nanjappa's case [1968] 22 STC 277 (Mys), we must add that until the process of compounding is completed by payment of the agreed compounding fee, the sales tax authorities would be entitled to lodge a prosecution, but not to recover the composition fee by coercive process.

15. For the purpose of this judgment, we have proceeded upon the basis that an 'order' of compounding is required to be made under section 31. Even so, no appeal can lie there against under section 20 because the appellant cannot object thereto. The order is, in fact, in his favour, made to save him 'the disgrace and ignominy of a prosecution'.

16. In the result, we hold that a person in respect of whom an order of compounding is made is not entitled to challenge the order under any circumstances by invoking the appellate provisions of section 20 of the Act.

17. The revision petitions shall now be placed before the Division Bench dealing therewith for appropriate orders.

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