

State Vs. Awtar Krishna

State Vs. Awtar Krishna

SooperKanoon Citation : sooperkanoon.com/449414

Court : Allahabad

Decided On : Sep-17-1956

Reported in : AIR1957All88; 1957CriLJ167; [1957]8STC244(All)

Judge : V. Bhargava and ;Sahai, JJ.

Acts : Uttar Pradesh Sales Tax Act, 1948 - Sections 14; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 4, 5(2) and 417

Appeal No. : Govt. Appeal Nos. 1304 and 1308 of 1955

Appellant : State

Respondent : Awtar Krishna

Advocate for Def. : Behariji Dass, ;Sadiq Ali and ;Anangpal Gupta, Adv.

Advocate for Pet/Ap. : Govt. Adv.

Disposition : Appeals allowed

Judgement :

V. Bhargava, J.

1. These are two appeals by the Government against the acquittal of the respondent Awtar Krishna who was prosecuted for an offence punishable under Section 14(b), U. P. Sales Tax Act on two different counts. For two years in

succession the respondent was assessed to Sales Tax and notices of the assessment were served on him demanding payment of the amounts assessed within 16 days in both the years, These demands were in accordance with Section 8, U. P. Sales Tax Act. The respondent did not make payments within the time allowed.

Later on, notices were served on him to show cause why he should not be prosecuted for committing the offence punishable under Section 14 (b), U. P. Sales Tax Act. No adequate cause having been shown, complaints were filed in court. In the trial Court, evidence was led to show that the respondent had been assessed in both the years and had not paid the amounts of tax due within the time allowed to him under Section 8, U. P. Sales Tax Act.

In spite of these findings, the learned Magistrate, who tried the cases, acquitted the respondent after expressing the view that the offence would be complete only when the respondent had failed to pay the assessed tax after he had exhausted all the remedies given to him by law and the order of assessment had become final and binding.

2. When the complaints were filed, the appeals against the orders of assessment presented on behalf of the respondent were pending. It appears that, in the appeals, there was certain deduction in the amounts of assessment but the evidence also shows that the respondent had not paid within the time granted to him even those amounts which were ultimately found to be due from him on appeal or even after his revisions which were filed subsequently, had been heard and decided.

In both the cases, therefore, there was default on behalf of the respondent in paying the amounts which were found to be even ultimately due by the appellant and the revisional authority under the U. P. Sales Tax Act. In these circumstances, it is clear that the respondent had wilfully defaulted in complying with the notices and making the payments of the amounts assessed against him within the time allowed in the notices.

Under Section 14(b) an offence is committed whenever any person wilfully fails to pay the tax due from him under that Act within the time allowed. This section does not require that the failure to make the payment must be 'dishonest or mala fide'. All that is needed is that the failure to make the payment should be wilful, and as held by a Division Bench of this Court in Radhey Mohan v. Har Narain Das : AIR1950 All504 , such failure must mean not an unintentional failure or a failure by inadvertence but a deliberate failure, where the mind has been brought into play and a man has, after taking the facts into consideration, refused to make the payment.

In that case, the word 'wilful' was interpreted with reference to the U. P. (Temporary) Control of Rent and Eviction Act. The word used in the U. P. Sales Tax Act is also 'wilful' and, in our opinion, carries the same meaning. In this case, the evidence given by the prosecution shows that the default in payment by the respondent was not by inadvertence but was a deliberate failure. He had been given notice to make the payment and he did not pay it. Even when notice were given to him to show cause why complaints should not be filed against him for an offence under Section 14(b) of the U. P. Sales Tax Act, he continued his failure to make the payment.

The failure to make the payment was therefore deliberate. The mere fact that he was challenging the assessment does not afford any protection to him. The appropriate authority, exercising jurisdiction vested in it under the U. P. Sales Tax Act, had made the assessment against the respondent and it was for him to comply with the notice issued in accordance with that assessment. In these criminal prosecutions, he could of course take up the defence that the assessments were invalid or that the amounts claimed in the notices were not due from him. Such pleas were not established by him.

At best, it might have been possible to hold that he would not be liable to punishment in case, after all proceedings for challenging the assessment were over, the amounts of assessment against the respondent had been reduced to a figure equal to or less than the amounts actually paid by him. As long as the amounts which remained finally due from him exceeded the amounts which he

had actually paid, he is guilty of wilful non-payments due from him.

The respondent took the risk that, if it was found that the amounts paid by him were less than the amounts actually due from him, his default in payment would become a wilful default even though it may not be mala fide. This risk did naturalise so that he is clearly guilty of the offence punishable under Section 14(b), U. P. Sales Tax Act,

3. Learned counsel for the respondent referred us to a decision of a Division Bench of the Madras High Court In re., Curuviah Naidu & Co. : AIR1954 Mad833 . Having gone through the judgment of the Madras High Court and having heard learned counsel for the respondent, we find that the principles laid down in that case are not applicable to the case before us at all. The point that arose in that case was whether Section 16A of the Madras General Sales Tax Act, which barred a defence by an accused on the ground of the validity or correctness of the assessment under which the payment was demanded from him, was valid or invalid.

It was held that Section 16A of the Madras General Sales Tax Act was invalid inasmuch, as it deprived the accused from a good and tenable defence the result of which was that he was to be punished unheard. No such question has arisen in the case before us as the U. P. Sales Act contains no provision similar to Section 16A of the Madras General Sales Act.

In the cases before us, the respondent had the full right to put forward any defence including the defence that the assessment was invalid or that it was incorrect. If he had succeeded in establishing that defence, he could not be convicted.

The mere fact that he had filed appeals against the assessment was not a good defence and, as we have said earlier, now that the appeals and the revisions have been finally disposed of and it has been found that, in spite of the relief granted to him in those proceedings, there was still default by him in payment of the tax due from him, the respondent was liable to be convicted for the offence under Section 14(b) of the U. P. Sales Tax Act.

The considerations which led the learned Magistrate to acquit the respondent are, in our opinion, entirely out of place as it was not the function of the Magistrate to sit in judgment over the Legislature and determine what should have been the policy in the Act. The policy was laid down by the Legislature and it was for the Magistrate to see that the provisions of the Act are carried out.

4. We may also deal with one technical point which has been raised on behalf of the respondent in both these appeals. Learned counsel urged that the U. P. Sales Tax Act was a self-contained Act and it made no provision for an appeal by the State against an order of acquittal for an offence punishable under Section 14(b) of the Act so that these appeals were incompetent and could not be entertained by this Court. This argument completely ignores the fact that Section 14(b) of the U. P. Sales Tax Act merely constitutes an offence and makes it punishable and does not prescribe the procedure for the trial of that offence.

The offence created by Section 14(b) of the U. P. Sales Tax Act is an offence as defined in Section 4(o), Criminal P. C. Consequently, to the trial of an accused for an offence under Section 14(b), U. P. Sales Tax Act, the Code of Criminal Procedure is applicable and all its provisions have, therefore, to be given effect to. These appeals are, therefore, competent as having been filed under Section 417, Criminal P. C.

5. As a result we allow both these appeals, set aside the orders of acquittal passed by the learned Magistrate and convict the respondent in both the appeals for offence punishable under Section 14(b), U. P. Sales Tax Act. He is sentenced to a fine of Rs. 50/- in each case. In default of payment of fine, the respondent shall undergo simple imprisonment for a period of two months in each case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com