imam Bakhsh Vs. Emperor

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Court : Allahabad

Decided On : Mar-10-1936

Reported in : 162Ind.Cas.504

Judge : Niamat Ullah, J.

Appellant : imam Bakhsh

Respondent : Emperor

Judgement :

Niamat Ullah, J.

1. This is an application for revision by one Imam Bakhsh, who has been convicted by a Magistrate, 1st Class, Shahjahanpur, under Section 62, Stamp Act, and fined Rs. 150. The facts which led to the prosecution of the applicant are as follows:

2. The applicant Imam Bakhsh was an agent of a firm styled Bakhshi & Co. of Lucknow, who were themselves agents of Allenbury & Co. Bahadur Ali Khan negotiated with Imam Bakhsh for the purchase of a Cheverolet lorry. It was agreed that Imam Bakhsh would take two old lorries belonging to Bahadur Ali Khan, for Rs. 2,000 to be set off against the price of Rs. 4,200 payable by Bahadur Ali Khan to Imam Bakhsh for the new Cheverolet lorry purchased by the former. Two documents were executed on May 4, 1934, one by Bahadur Ali Khan and the other by Imam Bakhsh. Each is described as "receipt and bears a stamp of one

anna. The one executed by Bahadur Ali Khan recites that he purchased a Cheverolet lorry from Bakhshi & Co. for Rs. 4,200, giving two old lorries valued at Rs. 2,000 in exchange and Rs. 500 in cash, and that he would pay the remaining Rs. 1,700 in twelve monthly instalments of Rs. 141-10-0 each. The document also mentions that it has been agreed that the new lorry would be delivered to Bahadur Ali Khan in Lucknow at Allenbury's. The document executed by Imam Bakhsh on behalf of Bakhshi & Co. similarly recites that he had sold a new Cheverolet lorry to Bahadur Ali Khan for Rs. 4,200 and had received Rs. 500 in cash and two old lorries priced at (kimati) Rs. 2,000, which sum has been set off against the sum of Rs. 4,200 payable by Bahadur Ali Khan. It proceeds to mention that the remaining sum of Rs. 1,700 would be payable in twelve equal monthly instalments of Rs. 141-10-0 each. As already stated, both the documents are styled as receipts, and bear a one anna stamp each. The two documents were produced in a certain criminal case, and were impounded. Both Bahadur Ali Khan and Imam Bakhsh were prosecuted under Section 62, Stamp Act, on the allegation that the two documents, read togother, amounted to a deed of exchange, for which a stamp duty under Article 31, should have been paid. Bahadur AH Khan was fined Rs. 140. Imam Bakhsh, who was separately tried, was fined Rs. 150. The latter applied to the learned Sessions Judge in revision which was dismissed. He has moved this Court under Section 435, Criminal Procedure Code.

3. The learned Magistrate held that the transaction, evidenced by the two documents already referred to, amounts to exchange and falls within Article 31, Schedule I, of the Stamp Act, and that the one anna stamp, affixed to each of the two documents, was inadequate, the proper stamp duty being that provided for a conveyance. The learned Advocate for the applicant contends that, in the first instance, the transaction, whatever it was, had been completed before the two documents were executed, and that any recitals contained in them cannot make them otherwise than receipts, which they purport to be. It is contended, in the second place, that, in any case, the two documents are no more than memoranda of agreement relating to the sale of goods and, as such, fall within Exemption (a) to Article 5, which provides for a duty payable on an agreement or a memoranda of agreement. I have carefully considered the two documents, and am unable to accept the first contention. The documents, though styled as receipts, embody an

agreement entered into between Imam Bakhsh and Bahadur Ali Khan regarding the sale of a Cheverolet lorry for Rs. 4,200. The terms of the sale were intended to ''be reduced into writing, and are to be found in the two documents. The second contention seems to me, however, to have force. The transaction may, for convenience, be described as an exchange; but if it falls within the purview of an agreement for which a provision is made in Article 5 and if it relates to the sale of goods, as contemplated by Exemption (a) appended to Article 5, there is no reason why the 'benefit thereof should be given to the parties to this transaction. 'Where one property is given in exchange for another property, and nothing more is said about the consideration proceeding from one to the other of two parties, the transaction cannot be regarded otherwise than as an exchange, and the case cannot fall under Article 5, at all. The same view will hold good where one article is transferred in consideration of another article plus money, there being no indication of the elements of a mutual sale. But in the present case, it is clearly stated that Bahardur Ali Khan agreed to purchase a new Cheverolet lorry for Rs. 4,200 from Imam Bakhsh, while the latter agreed to purchase two old lorries belonging to Bahadur Ali Khan for Rs. 2,000, and that one price was to be set off against the other, the balance alone remaining unpaid. As to this balance, there was a distinct agreement that it would be paid in twelve monthly instalments. In my opinion, all the elements of an agreement to sell are present, and since the documents are memoranda of an agreement relating to sale of goods, i.e., of new Cheverolet by Imam Bakhsh and of old lorries by Bahadur Ali Khan, I think the case is covered by Article 5, Exemption (a). If the transaction be viewed in the manner stated above, neither Bahadur Ali Khan nor Imam Bakhsh can be considered to have committed an offence under Section 62 (b), Stamp Act, as was held in Raghubar Dayal v. Emperor : AIR1934 All201 .

4. The result is that this application is allowed and the conviction of the applicant is set aside. The fine, if paid, shall be refunded.