

State of Kerala Vs. P. Krishnan

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Court : Kerala

Decided On : Jul-30-1957

Reported in : AIR1958Ker55; 1958CriLJ381; [1957]8STC738(Ker)

Judge : Varadaraja Iyengar and; Raman Nayar, JJ.

Acts : Madras General Sales Tax Act, 1939 - Sections 15 and 16A; [Constitution of India](#) - Articles 21 and 226; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 256; Madras General Sales Tax (Amendment) Act, 1956 - Sections 1, 3 and 114; [Madras General Clauses Act, 1891](#) - Sections 3, 4, 5 and 8

Appeal No. : Criminal Appeal Nos. 2, 3 and 39 of 1957

Appellant : State of Kerala

Respondent : P. Krishnan

Advocate for Def. : K.N. Karunakaran, Adv.

Advocate for Pet/Ap. : M.U. Issac, Public Prosecutor

Disposition : Appeals allowed

Judgement :

Raman Nayab, J.

1. The State appeals against the acquittal of ' the same accused person of three offences under Section 15(b) of the Madras General Sales Tax Act, 1939, (hereinafter referred to as the Act) as it stood before the amendment by Madras Act XV of 1956. There were three separate trials and there are three appeals but, the question involved being the same the appeals have been heard together and can be disposed of by a common judgment.

2. In the case of Criminal Appeal 39 of 1957, the assessment is for the year 1950-51 and the tax remaining unpaid is Rs. 5278-3-0; in Criminal Appeals 2 of 1957, for the year 1951-52, Rs. 1872-0-4; and in Criminal Appeal 3 of 1957 for the year 1952-53, Rs. 662-15-3.

3. That the amounts mentioned above are due in respect of assessments made by competent authority under the provisions of the Act (in two of the cases after the accused had challenged the assessment in appeal) was, and is, not disputed. The accused's defence was that the assessments were excessive, in the first case because no exemption was given in respect of sales outside the State; in the second case because no exemption was given in respect of inter-State sales; and in the third because sales not effected by him were taken into account in determining his turnover.

The learned Magistrate went into the merits of these contentions and, in each case throwing the burden on the prosecution to disprove them, held that the burden had not been discharged and that consequently the accused was entitled to an acquittal. Here there can be no doubt that he was wrong. The gist of an offence under Section 15 (b) is an assessment under the Act and the failure to pay, within the time allowed, any tax so assessed. Both these elements were proved and, in fact, admitted; on the- wording of the section there was no scope for an enquiry as to the validity or the propriety of the assessment; and indeed Section 16-A of the Act precluded the Magistrate from embarking on such enquiry.

We are aware that in *In re, Guruviah Naidu & Co.*, AIR 1954 Mad 833 (A), a Bench of the Madras High Court had held that Section 16-A of the Act is void as being repugnant to the provisions of the Constitution and the Criminal Procedure Code as also to the principles of natural justice. But, with great respect, we prefer to

follow the Bench decision in *V.M. Syed Mohamed & Co. v. The State of Madras*, AIR 1953 Mad 105 (B), where the validity of this provision was upheld, and the Full Bench decision in *In re, Velayudhan, P. K.*, 1955 Ker LT 399: ((S) AIR 1955 Trav-C 220) (C), which upheld the corresponding provision (Section 21) of the T.C. General Sales Tax Act, 1125, following the latter decision and differing from the former.

3a. By Section 14 of the Madras General Sales. Tax (3rd Amendment) Act, Act XV of 1956, Section 15 of the principal Act was substituted by a new section which omitted the original Section 15(b). Under the new section mere failure to pay the tax assessed is no offence. Under Sub-section 2(c) thereof there must be a fraudulent evasion as in the case of Section 15(d) of the principal Act. But this 'repeal of Section 15(b) of the principal Act cannot avail the accused since the amending Act came into force only on the 1st October 1958, long after the offences with which he is charged were committed and, except in the case of Criminal Appeal 39 of 1957, after the conclusion of the trial.

Therefore, under Section 8 of the Madras General Clauses Act, the repeal cannot in any way affect the offence already committed by him or his liability to punishment for such offence. Section 1 of the amending Act expressly makes Sections 3 and 5 thereof retrospective in operation from the dates mentioned therein, but no such provision is made in respect of Section 14 and that section can therefore operate only with effect from the 1st October 1956. It is nevertheless argued that the very fact that the original Section 15 was repealed and re-enacted with Clause (b) thereof deliberately left out, proclaims a contrary intention within the meaning of Section 4 of Madras General Clauses Act and makes the repeal retrospective. We cannot agree.

There is nothing in the wording of the amending Act to show that the repeal of the old Section 15 and the substitution thereof by the new section is to be retrospective; on the contrary Section 1 of the amending Act would indicate that except for Sections 3 and 5 thereof the remaining sections are only prospective. Nor is there anything in the amending Act or in the new Section 15 that manifests an intention incompatible-with the previous operation of the old Section 15(b), and

the decision in *State of Punjab v. Mohar Singh*, (S) AIR 1955 SC 84 (D), which has been cited on behalf of the accused is really against him.

4. We allow the appeals and, in each case, convict the accused of an offence under Section 15 (b) of the Madras General Sales Tax Act. Since the Legislature itself has felt that a mere failure to pay tax should not be visited with a criminal sanction, we consider that a nominal sentence would suffice to serve the ends of justice. Accordingly we sentence the accused to pay a fine of Rs. 10 in each case, in default, to suffer simple imprisonment' for a week. In the terms of the latter part of Section 15(h) of the Act (which again, being a remedy given by the principal Act is not retrospectively affected by reason of the repeal by the amending Act) we specify that the arrears of tax due from the accused in the three cases are the amounts mentioned in para. 2 of this judgment.

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