

The State Vs. Jujarsingh

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Court : Rajasthan

Decided On : Dec-18-1957

Reported in : AIR1959Raj80; 1959CriLJ520

Judge : D.S. Dave and; I.N. Modi, JJ.

Acts : Rajasthan Motor Vehicles Taxation Act, 1951 - Sections 4, 4(1) and 4(2) and 11; [Code of Civil Procedure \(CPC\) , 1908](#)

Appeal No. : Criminal Appeal No. 14 of 1957

Appellant : The State

Respondent : Jujarsingh

Advocate for Def. : Thanchand, Adv.

Advocate for Pet/Ap. : Kansingh, Deputy Govt. Adv.

Disposition : Appeal dismissed

Judgement :

I.N. Modi, J.

1. This is an appeal by the State against an order of acquittal made by the Second Class Magistrate, Sirohi, dated 26-9-1956, in a case under Section 4 read with Section 11 of the Rajasthan Motor Vehicles Taxation Act (No. XI of 1951)

(hereinafter referred to as the Act).

2. The material facts of the case may be briefly stated as follows. The respondent is the owner of motor truck No. R. J. W. 284. He got it registered on 29-4-1954, but he did not pay the tax with respect to it as required by Section 5 of the said Act for the period between 1-4-1954, and 31-3-1955. The respondent was consequently prosecuted under Section 4 read with Section 11 of the Act. The trial Magistrate acquitted him.

The reason which prevailed with the learned Magistrate was that the respondent was not given a fitness certificate for this vehicle and, according to the Magistrate he was, therefore, not in a position to use the vehicle, or, in other words, that it could not be postulated of a case like the present that the vehicle was kept for use within the meaning of Section 4 of the Act.

3. In this appeal by the State, it is strenuously contended that the Magistrate has taken an erroneous view of the relevant provisions of the Act and that the acquittal of the accused be set aside and he should be convicted and sentenced in accordance with law.

4. Now the material portion of Section 4 of the Act is in these terms:

'(1) Save as otherwise provided by this Act or by rules made thereunder or by any other law for the time being in force, no motor vehicle shall be used in any public place or kept for use in Rajas-than unless the owner thereof has paid, in respect of it, a tax at the appropriate rate specified in the Schedules to this Act within the time allowed by Section 5 and, save as hereinafter specified, such tax shall be payable annually notwithstanding that the motor may from time to time cease to be used.

(2) An owner who keeps a motor vehicle of which the certificate of fitness and the certificate of registration are current, shall, for the purposes of this Act, be presumed to keep such vehicle for use'.

5. The contention on behalf of the respondent which was raised in the Court below and which is repeated before this Court, is that the motor Vehicle in tin's case could not have been used at all in the absence of a certificate of fitness for which

he had applied but the same had not been granted to him and, therefore, the vehicle could not have been said to have been either used or kept for use within the meaning of Section 4 of the Act, and consequently the respondent was under no liability to pay the tax.

6. It is necessary to understand the scheme of the Act having regard to its main provisions in order to dispose of the contention relied upon by the respondent. The preamble of the Act states that it was being enacted to provide for the imposition of tax on motor vehicles throughout Rajasthan. Section 1 is the title, extent and commencement section. Section 2 gives definitions of certain terms.

Section 3 provides that nothing in the Act shall apply to a motor vehicle used solely for carrying out agricultural operations, and also invests the Government with power to exclude either wholly or partially any motor vehicle or class of motor vehicles from the operation of the Act.

We have quoted the material portion of Section 4 of the Act above. Section 5 in effect enacts that the tax payable under Section 4 shall be payable in advance on or before the 15th day of January in each year by the owner of a motor vehicle provided that the owner shall have the option of paying the tax in certain instalments as mentioned in the section.

Section 6 provides that subject to the provisions of the next following section, when the tax on any motor vehicle becomes payable for the first time after the commencement of a calendar year, the tax payable shall be 1/12th of the appropriate annual tax for each calendar month or part of a calendar month in respect of which the tax has become payable. Section 7 is important inasmuch as it relates to refund of the tax paid.

It provides that when any person having paid the tax or instalment of tax proves to the satisfaction of the Taxation Officer that the motor vehicle in respect of which such tax has been paid, has not been used for a continuous period of three months or over since the tax or instalment was last paid, he shall be entitled to refund of an amount equal to 1/12th of the annual rate of the tax paid in respect of such vehicle for each complete month of the period for which such tax or

instalment has been paid.

Section 8 then enacts that the owner of every motor vehicle shall every year make a declaration in respect of it in the prescribed form and shall deliver the declaration within the prescribed time to the Taxation Officer and shall pay to him the tax which on his declaration he is liable to pay in respect of such vehicle.

Section 9 provides for the payment of additional tax in those cases where a vehicle is altered so as to become liable to pay a higher rate of tax. Section 10 provides that the Taxation Officer shall deliver to any person who pays to him the tax a receipt in which the particulars of the tax paid shall be specified and also a token in such form as may be prescribed.

This token must be exhibited on the vehicle in the manner prescribed by the rules. Section 11 then provides that whoever contravenes any of the provisions of this Act or of any rule made thereunder shall on conviction be punishable with fine which may extend to Rs. 100/-, and in the event of such person having been previously convicted of an offence under the Act or any rule made thereunder with fine which may extend to Rs. 200/-.

Section 12 provides for compounding of offences before conviction, and it provides that such composition shall have the effect of discharging such person from all liability from the offence. Section 13 then enacts that when the tax due from any person has not been paid or he refuses to pay it, the Taxation Officer may forward to the Collector of the District concerned a certificate specifying the amount of tax due from such person, and thereupon the Collector shall proceed to recover the tax as if it were an arrear of land revenue.

Section 14 provides for appeals. Section 16 bars the jurisdiction of civil and criminal Courts and lays down that the liability of a person to pay the tax shall not be questioned or determined otherwise than as provided in the Act or in the rules made thereunder and no prosecution, suit, or other proceeding shall lie against any officer of Government for anything in good faith done or intended to be done under this Act. Section 19 then provides for tax payable by a dealer or a manufacturer in motor vehicles.

It lays down that a tax shall be paid by a manufacturer of or dealer in such vehicles in his possession in the course of his business under a trade certificate granted or deemed to be granted under the Motor Vehicles Rules in force for the time being in the State at the appropriate rate specified in Schedule 4 of the Act. Section 21 then provides that notwithstanding anything to the contrary in any law for the time being in force in this State, it shall not be lawful for any local authority to levy any tax or toll in respect of any motor vehicle. Section 22 empowers the Government to make rules for carrying into effect the purposes of the Act. This is a brief resume of the entire Act.

7. It seems to us that the scheme of the Act is to provide for the imposition of a tax on the owners of motor vehicles used or intended to be used in Rajasthan. The tax under Section 4 is required to be paid in advance by the owner of a motor vehicle on or before the 15th day of January in each year or he may pay it in instalments as prescribed, and where the liability arises for payment of the tax after the commencement of the calendar year, the tax is required to be paid at the rate of 1/12th of the annual tax for each calendar month or part of a calendar month in respect of which the tax has become payable, but the tax is still to be paid in advance.

Again, Section 4, to our mind, clearly lays down that no motor vehicle shall be used in any public place or kept for use in this State unless such tax has been paid. The language of the section is very wide. The prohibition enacted by the section is not merely with reference to the actual use of the motor vehicle without the tax having been paid, but also extends to the keeping of a motor vehicle for use in Rajasthan without payment of the tax.

From the language of the section, it clearly appears to us that the vehicle may not have been actually used, but if it was being kept for use in this State, then too the liability for tax would arise under this section. This intention seems to us to have been made further clear in the following words occurring at the end of Sub-section (1), namely, 'such tax shall be payable annually notwithstanding that the motor vehicle may from time to time cease to be used'.

It is true that in the second sub-section it is further provided that an owner who keeps a motor vehicle, with respect to which the certificate of fitness and the certificate of registration are current, shall be presumed to keep such vehicle for use so far as the purposes of the present Act are concerned.

It is not permissible, in our opinion, to argue from this that where a certificate of fitness or a certificate of registration may not have been granted, or received the vehicle should be held not to have been in use or kept for use in this State within the meaning of Section 4 of the Act merely on this account.

All that the language of the section legitimately seems to imply is that where a certificate of registration and a certificate of fitness are current with respect to a motor vehicle, then a statutory presumption arises that such vehicle is kept for use, but where they may not be current, it would in our opinion still be open to the prosecution to prove that the vehicle was in use or was kept for use.

The prosecution in such a case would not be entitled to start with a presumption in its favour and it would be the duty of the prosecution in a case of this type to prove by evidence aliunde, that, the vehicle was used or being kept for use in Rajasthan. and where the prosecution do succeed in proving this, a liability to pay the tax under Section 4 would, in our opinion, doubtless arise.

The provisions of Section 7 relating to the refund of tax, in our opinion, also are pointer in the same direction. That section plainly enacts that when any person who has paid the tax or instalment of tax, proves to the satisfaction of the Taxation Officer that the motor vehicle with respect to which such tax has been paid by him has not been used for a continuous period of three months and over. he shall be entitled to a refund of the tax equal to 11/12th of the annual rate for each complete month of the period during which the vehicle has not been used.

This provision is in the nature of a concession to the owner of a motor vehicle and provides that where it may not have been in actual use for a period of three months or over, then it would be open to him to apply for refund of the tax or instalment paid and that such refund would be granted to him as is allowed by the section.

We also wish to point out in this connection that the intendment of the Act having regard to the provisions set forth above appears to us to be that the liability to pay the tax arises as soon as the person becomes the owner of a vehicle which he uses or keeps for use in Rajasthan. The certificate of fitness or the certificate of registration to our mind have no essential connection with the liability to pay the tax under this Act.

8. Let us take the following example to make our meaning clear. Suppose a person purchases a motor vehicle with the intention of using it or keeping it for use in Rajasthan. He does not apply for a registration certificate or a certificate of fitness with respect to this vehicle. Still he uses the vehicle as such use is by no means impossible.

On these facts we have no doubt that the owner would undoubtedly be guilty under the relevant section of the Motor Vehicles Act (No. IV of 1939) which was made applicable to this State by Part B State Laws Act No. III of 1951. The crucial question which next arises is whether such a person is also-guilty under the present Act for non-payment of the tax. If the argument of learned counsel for the accused were correct, such a person would not be guilty at all for non-payment of the tax under this Act.

To our mind, this could not have been the intention of the Legislature. The defaulter in the example we have given commits a double default; he makes himself liable to certain penalties under the Motor Vehicles Act inasmuch as he has failed to apply for and obtain the registration certificate and the fitness certificate and is consequently clearly answerable for his default under that Act.

But such a person, in our opinion, cannot escape his liability under this Act and avoid the payment of the tax merely because instead of committing one default only, he has committed a double-default, namely, that he has not obtained the registration or the fitness certificate but also he has not paid the tax though admittedly such a person has been using his vehicle in Rajasthan.

This illustration clearly brings out the fallacy underlying the argument raised before us on behalf of the respondent. As we have said above, the responsibility for the

payment of the tax arises against the owner as soon as he uses the vehicle or even keeps it for use in this State though he may not have been actually using it.

We pause here just for a moment to point out that there is no qualifying word between the expression 'kept for' and 'use' occurring in Section 4 of the Act, and it would not be open to us to interpose any such words between them as 'immediate' or 'proximate'. The scheme of the Act, therefore, does not require as a condition precedent to the liability of the owner of a motor vehicle for the payment of the tax under this Act that a certificate of registration or a certificate of fitness must have been obtained before such a liability can, in law, arise.

We are fully conscious in this connection that where such certificates are in force, the law does permit a presumption to be raised that the vehicle concerned was in use or was kept for use in this State vide Sub-section (2) of Section 4. From this, it would not be right, -- that is the point we desire to emphasise -- to infer that intention of the Legislature was that where such certificates had not been granted no liability under Sub-section (1) of Section 4 could at all arise. In our judgment it would still be open in such a case to the prosecution to prove that a person was actually using a motor vehicle in Rajasthan or was keeping it for such use.

If this were not the true meaning of the section, an absurd situation would arise, and the accused in the illustration we have given above would be able to escape all liability to pay tax under this Act simply because he has been using his vehicle without obtaining a registration certificate or a certificate of fitness.

9. On a careful consideration of the provisions of the Act as discussed above, we have therefore, arrived at the conclusion that the reasoning of the learned trial Magistrate that the accused in the present case was not liable to pay the tax because he had not received the certificate of fitness with respect to his vehicle cannot be held to be correct.

We are clearly of opinion that the liability to pay the tax must arise under this Act once it is proved that a motor vehicle has been obtained by its owner for use or to be kept for use in Rajasthan. We feel greatly strengthened in arriving at this interpretation also because Sub-section (1) of Section 4 clearly says that the tax

under Section 4 shall be payable annually and in advance notwithstanding that the motor vehicle may from time to time cease to be used.

This rule has of course been laid down subject to the provisions 'hereinafter specified'. The only qualifying provisions, however, are, first, that the tax may be paid in certain instalments instead of annually, and, secondly that a refund of the tax paid may be claimed where a vehicle has not been used for a continuous period of three months and over.

It is significant to mention in this connection that no saving provision has been made in the Act to the effect that the tax under the Act would not be payable until or unless a registration certificate or a fitness certificate with respect to a motor vehicle has not been received by the owner. If that was the intention of the Legislature, it should not have been difficult for them to express it in clear terms.

But that in our opinion, could not possibly be the intention of the Legislature, because if any such exception were made, a person would be able to save himself from the liability to pay the tax by avoiding to apply for or obtain the registration certificate or the certificate of fitness though he might throughout all this time be using his motor vehicle.

10. We are, therefore, satisfied that the correct position is something like this. The liability to pay the tax arises under the Act as soon as a person becomes the owner of a motor vehicle and puts it to use or keeps it for use in this State. In such a case, he must pay the tax in advance either annually or by instalments as provided in the Act.

It is possible that the owner may not have put his car to actual use for a period of three months or over, and in such a case the law leaves him free to apply for refund of the tax paid in accordance with the rules prescribed in this connection, and where such a case is made out, he will be entitled to the refund.

In this connection the Act allows a statutory presumption to be raised against the owner, where a certificate of registration and a certificate of fitness are current, that the vehicle was kept for use. But these certificates, in our opinion, are not a

condition precedent to the liability to pay the tax and the liability arises at once as soon as a person becomes the owner of a motor vehicle which is used or kept for use in Rajasthan. We hold accordingly.

11. The next question that arises is whether on the view which we have felt persuaded to hold above, the respondent should be convicted. Here, however, we are faced with a difficulty because the case for the prosecution happens to have been conducted in a very perfunctory and haphazard manner in the trial Court.

We wish to point out that before a conviction under Section 4 read with Section 11 of the Act would be justified, on the view of the law which we have propounded the prosecution must establish that the motor vehicle was either used in any public place or kept for use in Rajasthan by the respondent. It is not the case of the prosecution at all that the accused had actually put his vehicle to use.

This ingredient is, therefore, obviously not fulfilled. The next ingredient that was required in these circumstances to be proved was that the respondent had kept the vehicle for use in Rajasthan during the relevant period. We wish to point out in this connection that the words 'for use' after 'kept' must be given their due meaning. Nor do we think that 'keeping' or 'keeping for use' mean one and the same thing.

It is a well established principle of the interpretation of statutes that the Legislature does not use words redundantly and that every word used in a statute must be given its due meaning and force. It is not difficult to see that an owner may 'keep' a motor vehicle in his garage and yet he may not keep it for use.

The vehicle for aught one knows, may be unusable. It is therefore incumbent upon the prosecution to prove, by appropriate evidence, in a given case that the owner, where he had not actually put his motor vehicle to use, was still keeping it for use in this State.

12. Judging the present case by this test, we find that there is not a shred of evidence on this record to show that the respondent had kept the vehicle for use in Rajasthan for the period with which we are concerned. The prosecution produced

only one witness in support of its case, namely, Chandrapal Singh, Motor Vehicles Inspector, Sirohi.

His evidence is that the accused was the owner of the truck in question and that he had not paid the tax from the 1st April, 1954, to the 31st March, 1955, although the truck had been registered on the 29th April, 1954. It is much to be regretted that even the registration certificate was not proved in this case either by production of the original certificate or by secondary evidence.

All that this witness further stated was that a notice had been given to the respondent to pay the tax but he did not give any reply. In his cross-examination, the witness was asked when a fitness certificate was granted to the respondent with respect to this vehicle but his reply was that he did not remember.

This witness did not say a word that the vehicle in question had either been used by the respondent or had been kept for use by him. There is no other evidence on the record to prove this. We may also add that no question was put to the accused whether he had kept this vehicle for use in Rajasthan during the relevant period.

It is strange that the learned Magistrate has somehow mentioned in his judgment that the fitness certificate was granted on the 25th March, 1955. That certificate is not on the record, and we feel that we cannot use the information, to which the learned Magistrate refers merely in his judgment, for founding any conviction of the accused without any material on this record.

Under the circumstances, we are constrained to hold that though the finding of the Magistrate on the question of law was wrong and cannot be sustained, we do not still find it possible for us to set aside the acquittal of the accused and convict, him because the ingredients as to fact which must be satisfied before a conviction under Section 4 could be founded have not at all been satisfied in the present case.

13. The result is that this appeal fails and is hereby dismissed.