

**Rajendra Singh Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Jan-15-1997

**Reported in :** 1997(1)WLN244

**Judge :** M.A.A. Khan, J.

**Appeal No. :** S.B. Criminal Misc. Petition No. 1027 of 1989

**Appellant :** Rajendra Singh

**Respondent :** State of Rajasthan

**Disposition :** Petition allowed

**Judgement :**

**M.A.A. Khan, J.**

1. The petitioner, Rajendra Singh, used to carry on his business of selling and repairing radios in the business name of M/S Rajan Radios at Jaipur under registration certificate No. 87/8630/JPR and was assessed to sale tax. Demands for sales tax under Sections 12 and 16(i)(c) the Rajasthan Sales Tax Act, 1954 (the Act) for A.Y. 1956-57 to A.Y. 1964-65 amounting to Rs. 17,320.95 were raised against him and his movable property in the shop was attached on 17.8.1966. As late as in the year 1983 decision to prosecute him for offence Under Section 16(3) of the Act was taken and the sanctioning authority accorded the sanction to

prosecute the petitioner. The Asstt. Commercial Taxes Officer ward IH(B) Circle f, Jaipur accordingly filed a complaint against the petitioner on 18.12.83. The learned Magistrate took cognizance of offence Under Section 16(3)(h) of the Act and summoned the petitioner as an accused. The petitioner challenged the order dated 18.12.83 by filing an application Under Section 257 Cr. P.C. before the learned Magistrate. By his impugned order dated 29.7.89 the learned Magistrate rejected his application for cancellation of order dated 18.12.83. Hence this petition Under Section 482 Cr. P.C.

2. Mr. R.K. Yadava, the learned Counsel for the petitioner vehemently urged that launching prosecution after 20 years of the commission of an offence punishable with six months imprisonment or fine and that too when the petitioner had been deprived of his very source of earning his livelihood by attachment of moveable property clearly amounts to abuse of the process of law and such abuse must be prevented by this Court in order to secure ends of justice to the petitioner.

3 Though the learned A.P.P. submitted that the offence committed by the petitioner was a continuing offence and therefore, the provisions of Section 468 Cr. P.C. do not stand attracted to this case yet I am satisfied that in the facts and circumstances of this case the continuance of the criminal proceedings against the petitioner amount to abuse of the process of the court of the learned Magistrate. The powers of this Court Under Section 482 Cr. P.C. are exceptional and should be sparingly exercised in rarest of rare cases where it is necessary to do so in order to prevent the abuse of the court or otherwise to secure the ends of justice. I find the present case one of the rarest of rare cases where this Court should act to prevent the abuse of the process of law.

4. Section 16(3)(h) of the Act, relevant for our purpose, reads as under 'Section 16(3), If any person:

(h) wilfully refuses or fails to pay the amount of any demand notice, and a period of not less than six months has elapsed since the receipt of the demand notice by him; he shall, on conviction by a judicial Magistrate, be punished with simple imprisonment for a term which may extend to six months or with fine not exceeding one thousand rupees or with both.

[Explanation-An offence under this clause shall be deemed to be a continuing offence until payment is made or]

(9) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974):

(b) the Commissioner or the Deputy Commissioner [competent to sanction] prosecution for any offence may, either before or after the institution of proceedings, accept from any person charged with the offence, by way of composition of the offence:

(i) such sum not exceeding three times, but not less than the amount of tax evaded in consequence of an offence; and

(ii) where the offence does not result in any evasion of tax, such sum not exceeding two thousand rupees, as the Commissioner or the Deputy Commissioner, as the case may be, may by order determine.

(c) on payment of the sum determined under Sub-clause (b), no further proceedings, shall be taken in respect of the offence under Sub-section (2) or Sub-section (3) against the person charged with it; and

(d) The composition of an offence under this sub-section shall be without prejudice to the liability of the person charged with the offence to pay the tax under this Act.

5. A reading of the above provisions makes it clear that liability to punishment Under Section 16(3)(h) shall stand attracted if there has been a wilful refusal or failure on the part of the assessee to pay the demand within a period of six months after the service of demand notice upon him. The word 'wilfully' though occurs before the verb 'refuses' yet to my mind it modifies the verb 'fails' also. The act of 'refusal' involves a much more degree of intention in it than that in the act of mere 'failure'. Refusal suggests the making of a demand and a positive act, express or implied, of not acceding to such demand. It may mean something more than mere failure. 'Failure' is akin to 'omission' in meaning and sense. Refusal is something more than mere failure or omission. The use of the work 'fails in the company of the verb 'refuses' which stands modified by the adverb 'wilfully suggests that the

adverb 'wilfully' modifies the verb 'fails' also. It thus follows that in order to attract the penal provision of Section 16(3)(h) there must be 'wilful refusal' or 'wilful failure' to pay the amount of demand on the part of the defaulting assessee. A mere 'failure' or mere 'refusal' to pay would not attract the punishment Under Section 16(3)(h). It must be an intentional act of the defaulting assessee. If refusal or failure occasions from factors or circumstances affecting the very capability of the defaulter to pay, it may not be wilful.

6. The Explanation to Section 16(3)(h) was inserted by Rajasthan Act No. 7 of 1987. It is clarificatory in nature and clarifies the position of law which it has always been from its inception. But this clarification is in respect to a provision which casts penal liability on the subject. Penal provisions in a statute are to be strictly construed. Before the insertion of the Explanation a defaulting assessee could have reasonably made a belief in good faith that expiry of the period of limitation prescribed Under Section 468 Cr. PC had saved him from liability to punishment Under Section 16(3)(h). The other provisions in the Act enabling the Assessing Authority to realize the outstanding demand by taking recourse to other co-excise methods like attachment and sale of defaulters property could have reasonably persuaded a defaulter to look at the provisions of Section 16(3)(h) in that way prior to insertion of the Explanation. Therefore, a distinction shall have to be made in the application of the Explanation to the case instituted prior to its insertion in 1987 and those inserted after its coming into force. The provisions contained in Section 468 Cr. P.C. are, therefore, required to be viewed accordingly in the context of prosecutions Under Section 16(3)(h) of the Act.

7. Now coming to the merits of the present case I find that the demand raised, as stated earlier, pertained to Act 1956-57 to 1964-65. Notices of demands for Act 1956-57, 1960-61 and 1963-64 are not stated to have been served on the petitioner. Just after the end of A.Y 1964-65 the department had attached the movable properties of the petitioner in the shop on 19.8.66. The copy of the inventory placed on the record of the Magistrate enlists movable articles like H.G.E.C. community receiver steel cabinets with and without charris, wooden Radiogram, portable radios, table radio, National EKCO radio etc. Attachment of petitioners moveable property on 17.8.66 and reported sale thereof for an amount

exceeding the tax liability of the petitioner stands rebutted by no evidence from prosecution side. In fact no reference to this relevant and material aspect of the case was made in the complaint which was not drafted in a careful manner. The D.O. letter dated 8.6.83 written by Mr. R.R. Gupta, the then Dy. Commissioner (Admn.) to Mr. M.P. Verma, Asstt. Commercial Taxes Officer shows that the later was reluctant to file the complaint due to expiry of limitation but Mr. Gupta 'stressed that complaint should be filed as offence Under Section 16(3)(h) was a continuing offence not attracting the provisions of Section 468 Cr. P.C. While granting sanction for prosecution the Dy. Commissioner made no reference to the attachment of the movable property of the petitioner, made as back as in the year 1966, and by writing a separate D.O. letter to his subordinate forcing him to file the complaint for minor offences committed more than 20 to 30 years back, when the Explanation to Section 16(3)(h) was not yet there on the statute books in 1983, and unnecessarily and unwarrantedly put the machinery of law into motion against a person who had already closed his business. It was not an appreciable approach of Mr. Gupta to the facts of the case and this Court records displeasure and disapproval of the conduct of Mr. Gupta in the context of this case.

8. The attachment of his property in the year 1966 and the closure of the business by him clearly show that non-payment of the demand in question by the petitioner was not a wilful act on his part. The contents of his application Under Section 258 Cr. P.C. and of the affidavit of his son Gurdip Singh show that the petitioner had been residing at Kapurthala (Punjab) and was an ailing and aged man. The non-payment of the demand by him under such circumstances obviously did not amount to 'wilful refusal or failure' for the purposes of applicability of Section 16(3)(h) against him. The contents of the complaint, when read in the light of these facts, do not disclose the commission of offence Under Section 16(3)(h) of the Act and therefore the impugned order class for interference by this Court. Apart from that, the filing of the complaint for an offence punishable with six months simple imprisonment or fine or with both after the unexplained delay of 20 to 30 years speaks of the exercise of the discretionary power by the prosecuting authority in an arbitrary rather than in a judicial manner and leads to abuse of the process of law. Therefore, in order to prevent such abuse and to secure the ends of justice to the petitioner it is necessary for this Court to put a halt to the wheel of the

proceedings of this unwarranted criminal case.

9. In the result the impugned order is set-aside and the proceeding of the criminal case pending against the petitioner in the court of learned Magistrate quashed and dropped.

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