

Bhaskaran and ors. Vs. the State

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Court : Chennai

Decided On : Apr-21-1989

Reported in : 1990CriLJ2260

Judge : David Annoussamy, J.

Acts : Tamil Nadu General Sales Tax Act, 1959 - Sections 40, 45(2)(CC), 46, 468(2), 470(3) and 473

Appeal No. : Crl. R.C. No. 731 of 1985 and Crl. R.P. No. 713 of 1985

Appellant : Bhaskaran and ors.

Respondent : The State

Advocate for Def. : R. Shanmughsundaram, Addl. Public Prosecutor

Advocate for Pet/Ap. : K.V. Sridharan, Adv.

Judgement :

ORDER

1. This is a revision against the order of the Judicial first Class Magistrate, Kulithalai in Cri. M.P. No. 2142 of 1985 rejecting the plea of limitation raised by the accused.

2. A complaint was filed by the respondent against the petitioners for contravention of the provisions of S. 40 of the Tamil Nadu General Sales Tax Act, 1959 r/w Rr.

25 and 26(5) of the Rules framed under the Act. Such contravention is punishable under Section 45(2)(CC) of the Act. Under S. 45(2)(CC) of the Act, an offender is liable to be punished only by way of fine and for the subsequent offence, he is liable to be punished by way of simple imprisonment which may extend to six months. Therefore, the period of limitation is six months as per S. 468(2)(a) of the C.P.C.

3. It is admitted that the date of the commission of the offence is 19-9-1984 and the date of filing of the complaint is 18-4-1985. The complaint is obviously beyond the period of six months. The provisions of S. 470(3), Cr.P.C., were invoked in order to save limitation. In fact the Department had issued to the petitioner two notices. The period in each notice is 10 days. Even if we include the period of both notices, that will make only 20 days and the prosecution would be hit by limitation on 9-4-1985. Therefore, the complaint dated 18-4-1985 is obviously beyond time. Secondly the department has got a right to issue only one notice for the purpose of compounding under Section 46 of the Act. In this case, it has issued the first notice on 5-11-1984, without indicating the amount for which the offence can be compounded. It only says that it can be compounded for a sum fixed by the D.C.T.O., Musiri. That notice is not in order and therefore it will not constitute a valid notice u/S. 473 Cr.P.C.

4. The second notice dated 5-12-1984 indicates the amount for which the offence can be compounded and is the proper notice. Law does not permit the Department to issue several notices in order to save limitation. Only one notice can be taken into account for the purpose of S. 473 Cr.P.C. If it is so, the complaint would be hit by limitation on 29-3-1985 itself. Further the complaint was not accompanied by any affidavit explaining the delay nor the court found that the period of limitation sought to be extended was in the interest of justice. The court below has allowed the petition on a wrong calculation of period of limitation.

5. In the result, the revision is allowed and the act of the learned Magistrate taking cognizance of the offence is illegal and consequently the proceedings in Cri. M.P. No. 2142/85 on the file of the Judicial First Class Magistrate are quashed.

6. Revision allowed.

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