

In Re: Chekka Appa Rao

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Court : Chennai

Decided On : Sep-29-1948

Reported in : 1949CriLJ547

Judge : Rajagopalan, J.

Appellant : In Re: Chekka Appa Rao

Judgement :

ORDER

Rajagopalan, J.

1. The charge against the petitioner was under Section 15 (b), General Sales Tax Act, Madras Act ix [9] of 1989, that he failed to pay the tax due from him within the time allowed.. The complaint was preferred on 4th May 1947, and the offence alleged to have been committed by the petitioner was anterior to the enactment of Section 16A of the Amended Act. Section 16A came into operation on 1st January 1948. It is really unnecessary to decide whether any vested right is taken away even if Section 16A is to be given retrospective effect. The offence with which the petitioner was charged jyas failure to pay the tax due under the law as it stood before the complaint was launched on 4th May 1947. The Amending Act xxv [25] of 1947 amended Section 15 (b) also, and the offence that was made punishable under the Amended-Act was failure to pay the tax assessed, not failure to pay the tax due. Quite obviously, in the absence of any specified provision in the

Amending Act to make that definition amended in Section 15 (b) applicable to acts committed prior to that enactment, the Court will have to investigate whether the accused was guilty of the offence with which he was charged, i. e., failure to pay the tax due under Section 15 (b) of the Act, as it stood before it was amended.

2. The next question is whether Section 16A of the Amended Act bars the criminal Court from going into the question whether the tax was due. Here again the prosecution will have to prove that the accused is guilty of the offence with which he was charged, i. e., that he failed to pay the tax due from him. The expression 'due' can only be interpreted to mean 'lawfully due'. Section 16A cannot be construed independently of the amended Section 15 (b), both of which came into effect long after the alleged commission of the offence with which the petitioner, accused was charged. The view of the learned Magistrate that Section 16A barred the investigation of the validity of the tax assessed cannot be sustained.

3. Except in one case, Cri. B. c. No. 183 of 1947, unreported, decided by Govinda Menon J. it has been consistently held by this Court that the validity of the assessment can be gone into by a criminal Court in deciding whether any offence punishable under Section 15 (b), as it stood before the amendment, was committed. It is only necessary to refer to the latest of these decisions of Rajamannaic J. as he then was, in Cri, R. C. Nos. 1257,1258 and 1259 of 1946 (unreported). On a perusal of the order of the Govinda Menon J. in Cri. R.C. No. 183 of 1947, I think the difference is more apparent than real. The learned Judge did not hold that the finality he referred to was really final. The learned Judge observed 'the accused can dispute the correctness of the amount levied but he has not done so here.' If the finality was not be final as to preclude a dispute about the correctness of the amount levied, I am really unable to understand how the other 'disputes' about the correctness of the levy including its validity can be excluded from investigation. The same learned Judge, Govinda Menon J., in Numsinganmthu Ghettiar v. King, : (1948)2MLJ93 went elaborately into the question of burden of proof in cases arising under Section 15 (a), General Sales Tax Act. If the accused cannot be permitted to raise the question of the validity of the assessment, the investigation of the question of onus of proof cannot arise. Taking the decision in Cri. E. C. No. 183 of 1947 with reference to the facts of that

case and with reference to the views the same learned Judge expressed in Narsingamuthu Cliettiar v. King, 1948 M. W. N. Ori. 138 : A.I.R. 1949 Mad. H6: (1949) Cri. I. J. 118, I think the learned Judge had no real intention of departing from the principles laid down in the series of decisions I have referred to above ending with those of Rajamannar J. as he then was in cri. E. o. Nos. 1257, 1258 and 1259 of 1946. I have, therefore, considered it unnecessary to refer this question to a Bench for decision.

4. Following the trend of cases decided in this Court and the decisions as I have pointed out have been consistent on the point-I hold that as the offence was alleged to have been committed prior to 1st January 1948 when the Amending Act came into force, what the learned Magistrate had to decide was whether the offence with which the accused was charged, viz., failure to pay the tax due, was committed; and before that question can be decided, it is fully open to the accused to prove that the tax was not lawfully due and that no offence was, therefore, committed.

5. The petition is allowed. The learned Magistrate will dispose of the case in the light of the observations of this judgment.

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