

The Public Prosecutor Vs. D. Khader Khan

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Court : Chennai

Decided On : Feb-08-1946

Reported in : AIR1947Mad321; (1946)2MLJ461

Appellant : The Public Prosecutor

Respondent : D. Khader Khan

Judgement :

Kuppuswami Ayyar, J.

1. This is an appeal by the Crown against the order of the Joint Magistrate of Madanapalle, acquitting the accused in C.C. No. 86 of 1945, who was prosecuted for failure to pay the general sales tax for 1943-44 and 1944-45 in contravention of Rule 10 of the General Sales Tax Rules. The offence was punishable under Section 15(b) of the Madras General Sales Tax Act, 1939.

2. There is no other evidence except that, of the Assistant Commercial Tax Officer to show that the accused was liable to pay the tax. Because he did not appeal against the levying of the tax, the prosecution wanted it to be inferred that the tax was leviable and that he was liable to pay the tax. As pointed out in Ramaswami Iyengar v. The Sivakasi Municipality (1936) M.W.N. (Cri.) 221, in which reference is also made to other cases decided by this Court, the burden is upon the prosecution to establish affirmatively that the accused was liable to pay the tax and that he failed to pay the same. It is admitted that he failed to pay it, but he

disputes his liability to pay it. He says that his turnover was very poor, that he did not have so much sales as it was thought he had and that therefore he was not liable to pay the tax. The prosecution must prove that the accused is liable to pay the tax claimed and it is not denied that, if that be so, the order must stand. Since I agree with the Joint Magistrate that the prosecution has to prove that the accused is liable to pay the tax claimed and that it has not proved it satisfactorily, the Magistrate was justified in acquitting the accused.

3. The petition is accordingly dismissed.

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