In Re: Noor Mohammad Rowther

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Court : Chennai

Decided On : Feb-11-1955

Reported in : AIR1955Mad599; (1955)2MLJ425

Judge : Balakrishna Ayyar, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 64; Madras General Sales-tax Act, 1939 - Sections 15

Appeal No. : Criminal Revn. Case No. 952 of 1954 and Case Ref. No. 52 of 1954

Appellant : In Re: Noor Mohammad Rowther

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : L.V. Krishnaswami Aiyar, Adv.

Judgement :
ORDER

Balakrishna Ayyar, J.

1. On 27-9-1954, the Additional First Class Magistrate, Tiruchirapalli, ' convicted the accused in S.T. No. 434 of 1954 under Section 15(b) of the Madras General Sales-tax Act and sentenced him to pay a fine of Rs. 25 and in default to suffer simple imprisonment for three weeks; As required by Section 15 (b) of the Act, the learned Magistrate also specified the amount of tax due from him as Rs. 116-7-0.

He further directed that- this amount was recoverable as it it were a fine. On 27-9-1954, the. accused tendered a sum of Rs. 25 to the Court along with a memorandum making it clear that the payment was in respect of the fine imposed upon him; so far as the tax was concerned he prayed for a month's time to pay it. The learned Magistrate refused to allow that and passed the following order;

'The tax is also collectable by the Court which sentenced the accused. The accused cannot pay the fine and walk off and make the tax irrecoverable. It is the duty of the Court to collect the tax as well. So unless the tax is paid there is no meaning in collecting the fine alone. The prosecution is only for the realisation of the tax arrear. If this is not done, the object of the prosecution is frustrated. The accused cannot question the Court in crediting the amount tendered towards the tax due from him.

The amount if any paid by the accused will be credited to the tax till it is completely wiped off. The question of granting time will be considered if at least a portion of the amount is paid.' The accused moved the learned Sessions Judge, Tiruchirapalli, under Sections 435 and 438 of the Criminal P. C., to set aside the order of the Additional First Class Magistrate, and alternatively to refer the matter to this court. The Sessions Judge took the view that the order of the Magistrate was wrong and has made this reference to this court.

2. I am clear in my mind that the order of the learned Magistrate is erroneous. If a person is ordered by a court to make payments in respect of two items or matters, whatever the items or matters may be, then in the absence of any express provision in that regard the person who is required to pay, has the option of saying that the money tendered by him should be appropriated to a particular item or matter.

Naturally a person making a payment would desire that the appropriation should be made' in the manner most beneficial or at any rate least injurious to him, and in the absence of clear authority in that behalf, a court has no jurisdiction to prevent him from making such an appropriation. In -- 'Yacoob Juma Khan v. Emperor, AIR 1931 Sind 73 (A), a case cited by the learned Sessions Judge, it was held as follows:

'Where an accused, who is convicted under one section to a fine of Rs. 200 or in default to three months' imprisonment and also under two other sections to a fine of Rs. 15 or in default to one month's imprisonment, for each offence, pays into court Rs. 30 and thus impliedly requests that the payment should be appropriated to the two smaller offences it should be so appropriated.' The same view appears to have been taken by Somasundaran J., in 'Criminal M.P. No. 787 of 1954 (Mad) (B)', on the file of this Court.

3. In the result the reference made by thelearned. Sessions Judge is accepted and the orderof the Magistrate set aside. The money paid bythe accused will be appropriated in the mannerdesired by him.