

In Re: S.R. Swamy

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Court : Chennai

Decided On : Sep-23-1966

Reported in : [1967]19STC261(Mad)

Judge : Krishnaswamy Reddy, J.

Appeal No. : Crl. R.C. Nos. 566 to 573 of 1965 and Crl. R.P. Nos. 560 to 567 of 1965

Appellant : In Re: S.R. Swamy

Advocate for Def. : S.R. Srinivasan, Adv. for ; Public Prosecutor

Advocate for Pet/Ap. : A. Subramania Iyer, Adv.;Assistant Public Prosecutor

Disposition : Petition allowed

Judgement :

ORDER

Krishnaswamy Reddy, J.

1. The petitioner is the same in all these revision cases. He has been convicted under Section 45(2)(b) of the Madras General Sales Tax Act, 1959, and sentenced to pay a fine of Rs. 35, in default to undergo simple imprisonment for three weeks in each case, by the Fourth Presidency Magistrate, Madras. These revisions relate to non-payment of tax for the years 1954-55 to 1961-62. There is no dispute in

these cases that the demand notices were served on the petitioner. The petitioner asked for time for payment. In spite of the authorities having granted time, he failed to pay the tax. Hence the prosecution.

2. The only point raised in these revision cases by the learned counsel for the petitioner is that the prosecution has not proved that the petitioner fraudulently evaded the payment of tax. It is clear from Section 45(2)(b) that mere evasion of payment of tax or failure to pay tax is not an offence. But the prosecution should prove that the petitioner failed to pay tax with fraudulent intent. Mere failure to pay tax even for a long time is not per se an offence. The word 'fraudulently' used in Section 45(2)(b) of the Act will have the same meaning as is given in Section 25, Indian Penal Code. Under Section 25, Indian Penal Code, a person is said to do a thing 'fraudulently' if he does that thing with intent to defraud but not otherwise. There must be an element of deception, to bring it within the scope of Section 25, Indian Penal Code. It must be understood in its ordinary and popular sense.

3. The learned Magistrate has, in finding that the petitioner evaded payment of tax fraudulently, observed as follows in C.T. Nos. 32, 34 and 35 of 1964 :

There is no reason why the accused failed to pay the amount in spite of notice. No evidence at all has been let in by the accused. The fact that even the collected tax has been withheld by the accused and the accused has not chosen to take any proceedings against the assessment and yet he did not pay the assessed tax would lead to the irresistible inference that the non-payment is fraudulent evasion.

4. In C.T. No. 39 of 1964 the learned Magistrate has observed as follows in the same context:

It is clear that in spite of notice (the petitioner) has not chosen to pay the collected tax nor the assessed tax. Under the circumstances in the absence of any evidence to show that the non-payment was for unavoidable reasons, it is irresistible to infer that the accused fraudulently evaded payment of tax and other amount due from him under the Act.

5. The learned Magistrate seems to be under the impression that the petitioner should show that the evasion was not fraudulent. It is a well-established principle that the ingredients of the offence should be proved by the prosecution to bring home the guilt against the accused. There is absolutely no evidence in these cases to infer that the evasion was fraudulent and that the petitioner had the intention to deceive. Instances like concealing or secreting properties or even disposal of properties with a view to make such properties unavailable for realisation of arrears of tax may amount to fraudulent evasion of tax. Fraudulent evasion has to be inferred from the facts and circumstances of each case. A person who may have the intention to pay tax may not be able to pay it due to loss in business or similar other circumstances. It cannot be said that non-payment of tax under those circumstances is fraudulent evasion. In this case though the petitioner had not paid the tax in spite of notice for a long time, there is no evidence to infer that he evaded payment fraudulently. On the other hand, there is evidence to show that he disputed the validity of the assessment. The prosecution has not made out the offence under Section 45(2)(b) of the Act against the petitioner in all these cases. These revisions are allowed. The convictions and sentences in each case are set aside. The fine, if paid, will be refunded.

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