

Public Prosecutor Vs. K. Ramachandra Chettiar

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Court : Chennai

Decided On : Aug-17-1966

Reported in : 1967CriLJ1115

Judge : Ramakrishnan, J.

Appellant : Public Prosecutor

Respondent : K. Ramachandra Chettiar

Judgement :

Ramakrishnan, J.

1. These two appeals are filed by the State of Madras against the acquittal of the same accused person in C. T. Nos. 128 and 129 of 1963 on the file of the Fifth Presidency Magistrate, Egmore, Madras. On 1.6.1963 the Special Deputy Commercial Tax Officer, (Detection) South Madras on inspection of the place of business of the accused recovered certain rough account slips and bills. From a perusal of these documents, the Deputy Commercial Tax Officer came to the conclusion that for the assessment years 1956-57 and 1957-58 respectively the dealer had made suppressions of turnover to the extent of Rs. 1,30,857 and Rs. 1,81,018 respectively. It was alleged that in the returns of turnover prescribed under the Madras General Sales Tax Act, 1959, the above amounts were not included, that the omission was wilful and that as a result the dealer is liable to prosecution under Section 45 (2) (a) of the Madras General Sales Tax Act, 1959.

Two charge sheets were filed for the failure to submit correct returns for 1956-57 and 1957-58 respectively.

2. Section 45 (2) (a) of the Madras General Sales Tax Act of 1959 reads thus:

Any person who wilfully submits an untrue return, or, not being already an assessee under this Act, to submit a return as required by the provisions of this Act, or the rule made thereunder, shall on conviction ... be liable to a fine....

3. Before the prosecution the Commercial Tax Officer issued a notice to the accused proposing to levy a compounding fee in lieu of prosecution and for this notice the dealer replied that the amount reported as suppression had been really included in the monthly returns submitted by him and therefore the prosecution might be dropped. It was alleged in the charge-sheet that the dealer did not produce any account of documentary evidence to support his contention and thus had failed to prove the correctness of the monthly returns submitted by him for the concerned years.

4. The learned Magistrate acquitted the accused on a preliminary ground which he recorded in the following manner. Section 16 of the Madras General Sales Tax Act, 1959, gives the authority the power to assess escaped turnovers of a dealer at any time within a period of five years from the expiry of the year to which the tax relates. In other words, for 1956-57 the assessment of escaped turnover should have been made within 31-3-1962 and for 1957-58 before 31-3-1963. Rule 26 (16) of the Madras General Sales Tax Rules states that accounts maintained by dealers together with all vouchers relating to stocks, deliveries, etc., shall be preserved by them for a period of five years after the close of the year to which they relate, and at the place of business mentioned in the certificate of registration.

5. After referring to the above two provisions, the learned Magistrate observed that by virtue of the abovesaid provisions, the assessing authority has power to look into the accounts to detect escaped tax only within a period of five years preceding the detection, and that it would necessarily follow that the assessing authority could not go beyond the period of five years and seek to make a dealer liable for any inaccuracies in the return submitted by him for that year. The detection of an

inaccuracy in the return forms part of the proceeding in an assessment and as such inasmuch as Section 16 prohibits scrutiny of accounts beyond a period of five years the assessing authority cannot also proceed to scrutinise the correctness or otherwise of the return submitted in respect of the year preceding the five year period. The learned Magistrate therefore concluded that the prosecution was not maintainable and acquitted the accused.

6. In my opinion, the learned Magistrate has not Construed the above two provisions of the law correctly. Section 16 provides a period of limitation for assessing escaped turnover, and it has nothing to do with the preservation of the accounts of a dealer. It is R.. 26 (16) which provides a time limit for preservation of the accounts. No doubt, it will work hardship if a dealer is required obligatorily to preserve his accounts only for a lesser period than five years, with liberty to destroy them thereafter while at the same time the assessing authority is given power to assess escaped turnover upto a time limit of five years. A dealer may very well say that relying upon the provisions for destroying accounts he has destroyed them after the shorter time limit, and he is not in a position to show cause against the assessment of escaped turnover within the five years time limit prescribed under Section 16. That is the reason why Rule 26 (16) and Section 16 provide for an identical time limit But, in the present case, the learned Magistrate has treated Section 16 and Rule 26 (16) as providing an automatic bar against prosecution, after the lapse of five years. That view is clearly not correct. One can visualise a situation where the prosecution may be able to show that the nature of the data gathered by them during an inspection, are such that they could lead to the inference of the inaccuracy of the return submitted by the dealer even without reference to the accounts of the dealer. Thus, while one type Of inaccuracy may be related to the suppression of escaped turnover, there may be other inaccuracies which may not deal with the suppression of escaped turnover, but still will be sufficient to justify a prosecution for submission of an untrue return within the meaning of Section 45 (2) (a) of the Act. Even in regard to an inaccuracy in regard to turnover, the turnover revealed by the data secured may be so large that, than (the?) data by themselves and without reference to the actual accounts of the dealer-whether they are capable of being produced or not - would establish that the return submitted was untrue. These questions have got to be investigated

after the accused appears in Court. But they cannot be ruled out on a preliminary finding that Section 16 and Rule 26 (16) automatically bar a prosecution under Section 45 (2) (a), if the discovery of the data which led to the criminal prosecution, happens to be subsequent to the expiry of the five year period. I may add that in this case the discovery of the additional data was on 1-6-1963, while the five year period for the assessment of 1957-58 ended on 31.3.1963. I am of opinion that the acquittal of the accused on the preliminary ground in this case is unjustified in the circumstances stated above.

7. The appeals are allowed and the acquittals are set aside. The learned Magistrate is directed to restore the cases to his file and deal with them according to law.

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