

In Re: Jayarama Chettiar

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SooperKanoon Citation : sooperkanoon.com/806431

Court : Chennai

Decided On : Jan-16-1948

Reported in : (1948)1MLJ161

Appellant : In Re: Jayarama Chettiar

Judgement :

ORDER

Govinda Menon, J.

1. The true and proper construction of Sections 2 (A) and 15 (a) of the-Madras General Sales Tax Act, 1939, will determine the contention raised regarding the guilt or innocence of the petitioner.

2. The essential facts cannot be disputed and shortly stated they are that the-petitioner who is a dealer in silver wares and gold jewels in Kumbakonam Town and an assessee under the General Sales Tax Act, furnished a return on the 15th April, 1946, Ex. P-i, in Form 'A' for the year 1945-1946 which admittedly did not include the value of 15,322-1/8 tolas weight of silver relating to the silver articles sold by him. The justification for the non-inclusion of the value of this: weight of silver according to the petitioner, is the practice followed by him to sell! the articles, not for proper money consideration but only after getting back the equivalent weight of silver from the customers, for the precise quantity of the silver utilised in the manufacture of the article or articles. I think it can be taken as proved that

when the petitioner gave a finished silver article to a customer, he took back the equivalent weight of silver as well as the actual manufacturing charges in cash., It was only the cash received as the making or manufacturing charges, that was brought into the account and the quantity of silver was omitted from the account and from the ' A ' return. According to the finding of the trial Court, the petitioner has not brought into the account and the ' A ' return a sum of Rs. 20,110 being the price of 15,322 1/8 tolas of silver at the flat rate of Rs. 1-5-0 per tola. Rejecting the contention to the effect that under the law he was not bound to include this amount in his ' A ' return, both the lower Courts have convicted the petitioner of an offence under Section 15 (a) though the appellate Court reduced the fine of Rs. 1,000 imposed on him by the trial Court and fined him a sum of Rs. 200 only.

3. Mr. Jayarama Aiyar for the petitioner urges that the transaction in question will not amount to a sale as defined in Section 2 (h) which is as follows:

' Sale' with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge.

4. Reference is made to the definition in the Sale of Goods Act, Act III of 1930, Section 4, where a contract of sale is defined and from a comparison of these two Sections, I am asked to infer that the petitioner's action is not a sale but what is popularly known as barter. The definition of ' sale ' in the General Sales Tax Act, is, in my opinion, much wider in scope and amplitude than in the Sale of Goods Act. According to this latter Act, a contract of a sale of goods is a contract whereby a seller transfers the property in goods for a price. The word ' price ' is defined as money consideration for a sale of goods, so that in the case of a sale or contract of sale .under the Sale of Goods Act it is an essential requisite that the consideration should be money. But in order to bring a transaction within the ambit of the term as denned in the Madras General Sales Tax Act, it need not necessarily be that money alone, should be the consideration. Every sale under the Sale of Goods Act is certainly a sale under the General Sales Tax Act but every ' sale ' under the General Sales Tax Act, will not come within the definition of the term in the Sale of

Goods Act, e.g., if a person transfers the property in goods to another in the course of trade or business for cash or for deferred payment or other valuable consideration it is a 'sale' within Madras Act IX of 1939, but unless there is money consideration for the sale, the transaction will not amount to a sale under Act III of 1930.

5. Whether the quantity of silver received by the petitioner from his customers in the course of the transactions in the present case will come within 'other valuable consideration' is the point for consideration. When the property in a finished silver article is transferred to a purchaser in exchange for an equivalent weight in silver along with a sum of money equal to the manufacturing or making charges, the sale becomes complete because the consideration for the sale is cash plus the quantity of silver. Such a transaction may not amount to a sale under the Sale of Goods Act, as the price does not consist of money consideration alone but it is certainly a sale within the meaning of the term in the General Sales Tax Act, since the material in the silver received by the petitioner is a valuable metal.

6. Mr. Jayarama Aiyar's attempt to explain away the words 'other valuable consideration' as being ejusdem generis with cash or deferred payment does not appeal to me. He contended that the words 'other valuable consideration' are intended to cover promissory notes, bills of exchange and hundies, etc., which according to him, will not be cash or deferred payment. According to this argument, if a person sells certain articles in consideration for a promissory note executed by the purchaser or a bill of exchange or the other negotiable instrument, it would not amount to a sale under the Sale of Goods Act. I am unable to agree with this argument. A decision of the Court of Appeal in *Robinson v. Graves* (1935) 1 K.B.579 where Greer, L.J., quoting a passage from Benjamin on Sales has discussed the meaning of the term 'sale' was cited in support of this argument. I do not think that the decision justifies the contention of the learned Counsel. Another decision on which reliance was placed is *Misa v. Currie* (1875) 1 A.C. 554 where the House of Lords decided that a draft drawn for the amount of bills of exchange purchased for transmission abroad, which amount by the usage of the bill brokers was due on the first foreign post day next after the purchase and which draft was dated as of that day, was an order for the payment of money on demand

and such a draft or order made by a person who has sold the bills and addressed to the purchaser of them constitutes a valuable consideration for a cheque given by the purchaser of the bills. I fail to see how this decision is applicable to the facts of the present case. The question considered by their Lordships was whether there was valuable consideration or not for the cheque issued by the purchaser and their Lordships were unanimous in holding that there was valuable consideration.

7. I am next asked to say that the transaction in question is a barter and not a sale. The word 'barter' is defined in Wharton's Law Lexicon page qq as 'to exchange one commodity for another.' I very much doubt whether the exchange of a finished silver article for an equivalent weight of silver along with the making charges is the exchanging of one commodity for another. No authority has been brought to my notice where the word has been understood in that light. In the Oxford Dictionary the word is defined as:

the computation of the quantity or value of one commodity to be given for a known quantity-and value of another.

8. This shows that 'barter' implies the reciprocal transfer of different commodities,. e.g., if the petitioner received as consideration for the sale of his silver articles any article made of a different metal, it will amount to a barter; but not in a case where the same commodity in a different form is exchanged. In these circumstances, the first contention raised by the learned Counsel that the 15,322-1/8 tolas of silver cannot be the subject of sale has to be rejected.

9. The further point raised is that even if there was a sale with respect to this quantity of silver the petitioner did not wilfully submit an untrue return. That the return is untrue admits of no doubt in view of my decision on the first point. On the authority of the decision in Hudson v. Official Liquidator : AIR1929 All826 where the word 'wilful' has been the subject of consideration by the learned Judges, it is contended that there was no wilful act done in this case. The learned Judges of the Allahabad High Court relying upon a number of English cases have held that the adjective 'wilful' in wilful acts or defaults has evidently been used as a description and not as a definition. They say:

The idea intended to be conveyed is that the default is occasioned by the exercise of volition or as the result of non-exercise of will due to supine indifference although the defaulter knew or was in a position to know that the loss or harm was likely to result. The word does not necessarily suggest the idea of moral turpitude. We have also to eliminate the elements of accident or inadvertence or honest error of judgment. The default must be the result of deliberation or intent or be the consequence of a reckless omission. ' Wilful default' therefore, is indicative of some misconduct in the transaction of business or in the discharge of duty of omitting to do something either deliberately or by a reckless disregard of the fact, whether the act or omission was or was not a breach of duty.

10. That was a case where some officers of a company were sought to be proceeded against by the Official Liquidators for their wilful default or negligence. I am of the view that the words which formed the subject-matter of consideration there, are not ad idem to those in the present case. In *Ardeshir Bhicaji v. The Agent, G.I.P. Railway Company, Ltd.* (1927) 54 M.L.J. 167 : L.R. 55 IndAp 67 : I.L.R. 52 Bom. 169 (P.C.) the Lord Chancellor in delivering the judgment of the Board interprets the words ' wilful neglect' relying upon *The Queen v. Robert Downes* (1875) 1 Q.B. 25 and *The Queen v. Senior* (1899) 1 Q.B. 283 as meaning that the Act is done deliberately and intentionally and not by accident or inadvertence, but so that the mind of the person who does the act goes with it. In *In re City Equitable Fire Insurance Co., Ltd.* (1925) 1 Chanc. 407 the Court of Appeal has observed that an act or omission to do an act is wilful where the person who acts or omits to act, knows what he is doing and intends to do what he is doing; but if that act or omission amounts to a breach of that person's duty, and therefore to negligence, he is not guilty of wilful neglect or default unless he knows that he is committing, and intends to commit, a breach of his duty, or is recklessly careless in the sense of not caring whether his act or omission is or is not a breach of duty.

11. One has to make a distinction between wilful neglect and a wilful submission, as in this case. If the petitioner by inadvertence or oversight or mistake omitted to include these amounts in the 'A ' return, then it is not a wilful act. But on the other hand, under the impression that this amount is not taxable and therefore need not

be included in the return, he omits to make mention of it in the 'A ' return with the wilful knowledge of his having omitted the same, in my opinion, he has wilfully omitted it. It need not necessarily be that in making such omission he should know that it was improper or criminal. The word 'wilfully' has been inserted in Section 15 to exclude cases of inadvertence or mistake but not cases where the omission was due to a wrong view of the law or ignorance of law. The word ' wilfully ' in relation to crimes has been used in Sections 405 and 477-A, Indian Penal Code. In order to make it an offence under Section 477-A, the falsification should be wilful and with an intent to defraud, so that a mere wilful act without an intention to defraud will not be an offence under Section 477-A, Indian Penal Code. Comparing the expression there, with the term used in Section 15 of the General Sales Tax Act, I am inclined to hold that the distinction is real. It is not necessary for the application of Section 15 that there should be a criminal intent which, on the other hand, is a necessary pre-requi-site, under Section 477-A, Indian Penal Code. In construing the word 'wilfully' a decision of the Queen's Bench Division in *The Queen v. Senior* (1899) 1 Q.B. 283 containing the dicta of Lord Russell of Killowen, L.C.J., is helpful. In that case, a certain person who belonged to a sect who objected on religious grounds to calling in medical aid and to the use of medicines, was convicted under the Prevention of Cruelty to Children Act, 1894, for wilfully neglecting the child in a manner likely to cause injury to his health, etc. His Lordship took the view that if the Act was done deliberately and intentionally and not by accident or inadvertence, even if the act was bonafide it amounted to a crime in the case of the prisoner who was a conscientious objector to the use of medicine or medical aid. The Lord Chief Justice observed that because the prisoner was proved to be an affectionate parent and was willing to do all the things for the benefit of the child except the one thing which was necessary in that case, viz., providing of medical aid for the child he cannot be heard to say that there was no wilful neglect. I am emphasising this point to show that when the Legislature used the word ' wilfully ' in Section 15 it would not have intended that the person who submits an incorrect or untrue return should necessarily have the idea that he was committing an offence. An earlier case reported in *The Queen v. Robert Downes* (1875) 1 Q.B. 25 also supports the same view. Mr. Jayarama Ayyar conceded that the omission to include the value of 15,322-1/8 tolas of silver

in the 'A' return was not the result of any mistake, inadvertence or oversight. It was due to the circumstance that in the previous year of assessment, also, there was such non-inclusion and the authorities did not take note of that omission. As the learned Sessions Judge has pertinently observed, there is nothing to show that the authorities expressly or impliedly accepted such a return as true with the full knowledge of the omission. The learned Judge rightly took the circumstance into consideration in reducing, the fine imposed by the trial Court.

12. For the above reasons, I am of opinion that the conviction of the petitioner is correct and in the circumstances of the case and considering the turnover of his business a fine of Rs. 200 is not excessive. The Revision is therefore dismissed.

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