

In Re: Vijayam and Co.

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Court : Chennai

Decided On : Feb-02-1962

Reported in : [1962]13STC504(Mad)

Judge : Sadasivam, J.

Appeal No. : Criminal Revision Case No. 1205 of 1960 (Criminal Revision Petition No. 1174 of 1960)

Appellant : In Re: Vijayam and Co.

Advocate for Def. : V.V. Radhakrishnan, Adv. for ;The Public Prosecutor

Advocate for Pet/Ap. : G. Gopaldaswami and ; P.C. Sarangapani, Advs.

Judgement :

ORDER

Sadasivam, J.

1. Petition by Messrs Vijayam and Co., represented by its managing director Sri C. V. Srinivasan, to revise the judgment of the Fourth Presidency Magistrate, convicting the petitioner under Section 174, Indian Penal Code. The complaint in this case is that Messrs Vijayam and Co., which I shall hereafter refer to as the company, refused to comply with the summons sent by P. W. 1, Sri R. Govindaraj, Commercial Tax Officer (Administration), North Madras, to produce the accounts

for the year 1954-55 at 11 a.m. on 21st March, 1960. Exhibit P. 1 is the summons sent to the company along with the covering letter exhibit P. 3, and exhibit P. 2 is the acknowledgment by the company for the receipt of the summons. Admittedly, the company did not comply with the summons. It is clear from the summons, exhibit P. 1, that the company was summoned merely to produce the account books. Hence, the offence, if any, committed by the company is one falling under Section 175, Indian Penal Code, and not under Section 174, Indian Penal Code.

2. The only point to be considered in revision is whether the company, was legally bound to produce the account books of the year 1954-55. It is specifically printed in the summons form that the subject-matter of the enquiry, in respect of which the documents were required to be produced, should be entered briefly. Though this has not been done in the printed summons form, the covering letter, exhibit P. 3, gives the necessary particulars. P. W. 1, Sri R. Govindaraj, has been appointed Commercial Tax Officer under Section 28 of the Madras General Sales Tax Act. But, it is clear from his evidence that there are two classes of Commercial Tax Officers, one for administration and the other for assessment. He is only the Commercial Tax Officer, Administration, Madras, and he has no powers of assessment under the Madras General Sales Tax Act. He admitted in his evidence that he is not an original assessing authority or an appellate authority or a revising authority. The head note in exhibit P. 3 shows that the accounts were summoned for rectification. P. W. 1, Sri R. Govindaraj, stated in his evidence that he wanted the accounts for the purpose of rectification and for examining the claim for exemption which was allowed for the year 1954-55. But, he admitted that, under Section 35 of the Madras General Sales Tax Act, rectification could be made only by the assessing authority or the appellate authority or the revising authority including the Appellate Tribunal in respect of errors apparent on the face of the record, and that too only within a period of three years from the date of the order. In re-examination, he stated that he called for accounts to inspect the claims for exemption allowed by the assessing authority and to report the matter to the Deputy Commissioner of Commercial Taxes. In the body of exhibit P. 3, it is stated that the accounts for 1954-55 were called for at the direction of the revising authority to re-examine the claim for exemption duly allowed. But, under Sections 32 and 34 of the Madras General Sales Tax Act, the Deputy Commissioner and

the Board of Revenue alone are empowered to revise the orders passed by the subordinate Commercial Tax Officers, and such powers of revision could not be exercised if more than four years had elapsed after the passing of the order. P. W. 1, Sri R. Govindaraj, has no powers to rectify or revise the orders passed by the Deputy Commercial Tax Officer.

3. The learned Fourth Presidency Magistrate has relied on Sections 41(1) and 54 of the Madras General Sales Tax Act as empowering P. W. 1 to summon the accounts. It is true that under Section 41(1) of the Madras General Sales Tax Act, any officer empowered by the Government may require any dealer to produce before him the accounts etc., but it is only for the purpose of the Act. Section 54 of the Madras General Sales Tax Act also states that any officer of the Commercial Taxes Department not lower in rank than an Assistant Commercial Tax Officer, is empowered to call for accounts from a dealer. But it specifically states that such powers could be exercised only for the purpose of the Act. There is no provision in the Act empowering P.W. 1, Sri R. Govindaraj, to summon accounts for a departmental enquiry or to inspect the claims of exemptions granted by the assessing authority and making a report to the Deputy Commissioner of Commercial Taxes. There is also no provision in the Madras General Sales Tax Act empowering the Deputy Commissioner of Commercial Taxes to delegate his revisional authority to P. W. 1, Sri R. Govindaraj. Even P. W. 1 did not state in his evidence that he was, in fact, directed by the Deputy Commissioner of Commercial Taxes to hold an enquiry and submit a report to him or to exercise the powers of revision. There is nothing in the evidence in this case to support the averment in exhibit P. 3 that the accounts of the petitioner for the year 1954-55 were called for at the direction of the revising authority to re-examine the claim for exemption duly allowed. Further, as already pointed out, such revision could be made only during a period of four years. It is true that, both under the rules framed under the old Act and under the new Act, a dealer should preserve his accounts for a period of five years. But, in the absence of any evidence to show that P. W. 1, Sri Govindaraj, had powers to summon the accounts for the purpose of the Act as contemplated under Sections 41(1) and 54 of the Madras General Sales Tax Act, it could not be said that the petitioner was legally bound to produce his account books. The conviction of the petitioner under Section 174, Indian Penal Code, cannot,

therefore, be sustained. The conviction and the sentence are, therefore, set aside and the fine amount, if collected, is ordered to be refunded to the petitioner.

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