

PETITIONER:
KAPURCHAND SHRIMAL

Vs.

RESPONDENT:
TAX RECOVERY OFFICER, HYDERABAD & ORS.

DATE OF JUDGMENT:
14/08/1968

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
GROVER, A.N.

CITATION:
1969 AIR 682 1969 SCR (1) 691
CITATOR INFO :
R 1979 SC1588 (7)

ACT:
Income-tax Act (11 of 1922)-Hindu undivided family--Defaults
in payment of tax-Whether Karta can be detained.

HEADNOTE:

A Hindu undivided family committed default in payment of income-tax, and a certificate for recovery of tax due to the family was issued by the Income Tax Office in exercise of the power conferred by rule 76 of Sch. II of the Income Tax Act, 1961. The Tax Recovery Officer directed the arrest and detention in prison of the karta of the family for non-payment of tax. The Karta then moved a petition in the High Court of Andhra Pradesh challenging his detention on the ground that he was not a defaulter. The petition was rejected. The Karta appealed. He also moved a petition under Art. 32 of the Constitution in the Supreme Court for an order for his release from custody.

HELD :--The Legislature having treated a Hindu undivided family as a taxable entity distinct from the individual members constituting it, and proceedings for assessment and recovery of tax having been taken against the Hindu undivided family, it was not open to the Tax Recovery Officer to initiate proceedings against the manager of the Hindu undivided family for his arrest and detention. The manager by virtue of his status is competent to represent the Hindu undivided family, but on that account he cannot for the purpose of s. 222 of the Act of 1961 be deemed to be the assessee when assessment is made against the Hindu undivided family and certificate for recovery is also issued against the family. [695 B-D]

For the purposes of cl. (a) of s. 2(7) the person against whom, any proceeding under the Act has been taken is deemed an assessee: but that postulates that the proceeding should be lawfully taken against the person before he may be deemed to be an assessee for the purpose of s. 222 or r. 2 and r. 73. There is no provision in the Act which deems the manager to be the assessee for the purpose of assessment and recovery of tax, when the income of the Hindu undivided family of which he is the Manager is assessed to tax. Nor is

there any provision in the Act enabling the Income-tax Officer or the Tax Recovery Officer to treat the manager of the Hindu undivided family as an assessee in default in respect of tax due by the Hindu undivided family. The Legislature has again made no provision for recovery of tax by resort to the personal property of the manager of the Hindu undivided family assessed to tax or by his arrest and detention for default by the family in paying the tax due. [695 H696D]

JUDGMENT:

CIVIL APPELLATE/ORIGINAL JURISDICTION: Civil Appeals Nos. 1319 and 1320 of 1966.

Appeals by special leave from the judgments and orders dated February 16, 1966 and February 1, 1966 of the Andhra Pradesh High Court in Writ Appeals Nos. 143 of 1966 and 166 of 1965 respectively and Writ Petition No. 103 of 1966.

3Sup.C1/68-13

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Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

B.C. Misra, Om Prakash Gupta and M.V. Goswami, for the appellant/petitioner (in all the matters).

B. Sen and R.N. Sachthey, for the respondent (in all the matters).

The Judgment of the Court was delivered by

Shah, J.. Kapurchand Shrimal a Hindu undivided family-committed default in payment of income-tax due by it for the assessment years 1955-56 to 1959-60. The Income-tax Officer, Special Investigation Circle, Hyderabad, issued certificate on June 16, 1959, under s. 46 of the Income-tax Act, 1922, for recovery of tax due by the family. Pursuant to the certificate, properties of the Hindu undivided family movable and immovable and outstandings were attached for realizing the tax dues.

In exercise of the powers conferred by r. 76 of Sch. II of the Income-tax Act, 1961, the Tax Recovery Officer directed on August 10, 1965, that Kapurchand Shrimal manager of the family be detained in civil prison for fifteen days. The manager then moved a petition in the High Court of Andhra Pradesh against the order of detention. The petition was rejected by a single Judge of the High Court holding that the manager had, in contravention of r. 16(2) of Sch. II of the Income-tax Act, 1961, dealt with the properties of the family after receiving notice of the issue of the tax recovery certificate. In appeal against that order, the manager applied for leave to raise the contention that where a Hindu undivided family had committed default in payment of the tax, its Karta not being the assessee against whom the certificate is issued, is not liable to be detained for recovery of tax due by the Hindu undivided family. The High Court declined to allow the contention to be raised and held that the manager having acted in contravention of r. 16(2) of Sch. II of the Income-tax Act, 1961, the ingredients of r. 73 were attracted and he was liable to be detained in civil prison. A day before this order was passed the appellant filed another petition under Art. 226 of the Constitution challenging the validity of the proceedings against him on the ground that he was not a "defaulter". That petition was dismissed by the High Court holding that the earlier judgment of the High Court operated to bar investigation into the plea raised.

Appeals Nos. 1319 & 1320 of 1966 arise out of the orders

made by the High Court in the two petitions under Art. 226 of the Constitution. The manager was, after the order of the High

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Court, arrested and sent to prison for six months. The manager then filed petition under Art. 32 of the Constitution praying for a writ in the nature of habeas corpus for an order for his release from the custody of Superintendent District Prison, Hyderabad. In our judgment the claim of the manager that he is not liable to be arrested and detained in prison for failure to satisfy the tax due by the Hindu undivided family in enforcement of the certificate issued under s. 222 of the Income-tax Act, 1961,, must be upheld.

By virtue of s. 297(2)(j), notwithstanding the repeal of the Indian Income-tax Act, 1922, any sum payable by way of income-tax, super-tax, interest, penalty or otherwise under the Income-tax Act, 1922, may be recovered under the Act of 1961, but without prejudice to any action already taken for the recovery of such sum under the repealed Act. Proceedings could therefore be taken for recovery of the tax due for the assessment years 1955-56 to 1959-60 by the Hindu undivided family under the Income-tax Act of 1961. Section 220 of Act 1961 deals with payment of tax and the conditions in which an assessee may be deemed to be in default. Under the Act tax assessed has to be paid within thirty-five days of the service of a notice of demand: if the amount is not paid within the time limited at the place and to the person mentioned in the said notice, the assessee shall be deemed to be in default. Section 222 provides for the issue of certificate to the Tax Recovery Officer. It provides, in so far as it is material:

"(1) When an assessee is in default or is deemed to be in default in making a payment of tax, the Income-tax Officer may forward to the Tax Recovery Officer a certificate under his signature specifying the amount of arrears due from the assessee, and the Tax Recovery Officer on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule--

(a) attachment and sale of the assessee's movable property;

(b) attachment and sale of the assessee's immovable property;

(c) arrest of the assessee and his detention in prison;

(d) appointing a receiver for the management of the assessee's movable and immovable properties".

By r. 1 (b) of Sch.-II of the Income-tax Act, 1961, "defaulter" means the assessee mentioned in the certificate. Rule 2 provides

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that when a certificate has been received by the Tax Recovery Officer from the Income-tax Officer for recovery of arrears under Sch. II, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to

realise the amount under the Schedule. Rule 16 provides that where a notice has been served on a defaulter under r. 2, the defaulter shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer. Rule 73 provides that no order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has, issued and served a notice upon the defaulter calling upon him to appear on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Tax Recovery Officer, for reasons to be recorded in writing, is satisfied and that the defaulter with the object or effect of obstructing the execution of the certificate, has, after the receipt of the certificate in the office of the Tax Recovery Officer, dishonestly transferred, concealed, or removed any part of his property; and (b) that the defaulter has, or has had since the receipt of the certificate in the office of the Tax Recovery Officer, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same. Rule 76 provides for the issue of an order of detention of the defaulter by the Tax Recovery Officer.

The scheme of the Income-tax Act, 1961, is to treat the assessee failing to pay the tax due within the period prescribed a defaulter. The Income-tax Officer may, where the assessee is found to be in default, issue a certificate for recovery and forward it to the Tax Recovery Officer specifying the amount of arrears due from the assessee. The amount due may be recovered by resort to any one or more of the four modes prescribed by s. 222 of the Act. If the defaulter fails to comply with a notice issued by the Tax Recovery Officer requiring the defaulter to pay the amount within fifteen days from the date of the service of the notice, proceedings for recovery may be taken against the assessee for recovery of 'the tax. But under the scheme of the Act and the Rules, the assessee alone may be treated in default. The Act and the Rules contemplate that the notice for payment of the tax arrears may be issued against the assessee, and proceedings for recovery of the tax may be taken against the assessee alone. Under the Income-tax Act, 1961, a Hindu undivided family is a distinct taxable entity. apart from the individual members who constitute that family. Section 4 of the Income-tax Act charges tax for any assessment year, the total income of the previous

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year of every person and 'person' is defined in s. 2 (31) as including--(i) an individual, (u) a Hindu undivided family, (iii) a company, (iv) a firm, (v) an association of persons or a body of individuals, whether Incorporated or not, (vi) a local authority and (vii) every artificial juridical person, not falling within any of the preceding sub-clauses. The Legislature having treated a Hindu undivided family as a taxable entity distinct from the individual members constituting it, and proceedings for assessment and recovery of tax having been taken against the Hindu undivided family, it was not open to the Tax Recovery Officer to initiate proceedings against the manager of the Hindu undivided family for his arrest and detention. It is true that if properties of the family movable and immovable are to be attached, proceedings may be started against the Hindu undivided family and the manager represents the family in proceedings before the Tax Recovery Officer. But by the clearest implication of the statute the assessee alone may be deemed to be in default for non-payment of tax, and

liability to arrest and detention on failure to pay the tax due is also incurred by the assessee alone. The manager by virtue of his status is competent to represent the Hindu undivided family, but on that account he cannot for the purpose of s. 222 of the Act of 1961 be deemed to be the assessee when the assessment is made against the Hindu undivided family and certificate for recovery is issued against the family.

Counsel for the Revenue invited our attention to s. 140(b) and s. 282(2) of the Income-tax Act, 1961, in support of his contention that when tax is assessed against the Hindu undivided family there is no distinction between the representative status of the manager of the family and his personal status. Section 140(b) authorises the manager in the case of a Hindu undivided family to sign and verify the return of income, and s. 282(2) provides for the mode of service of notice or requisition issued under the Act, amongst others, against a Hindu undivided family. But because the manager of a Hindu undivided family is authorised to sign and verify the return of income and a notice under the Act could be served upon him when it is addressed to a Hindu undivided family and such service is treated as service upon the Hindu undivided family for the purpose of the Act, the manager cannot be deemed to be the assessee where the income assessed is of the Hindu undivided family. The expression 'assessee' under s. 2(7) means a person by whom any tax or any other sum of money is payable under the Act, and includes--(a) every person in respect of whom any proceeding under the Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person; (b) every person who is deemed

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to be an assessee under any provisions of the Act; (c) every person who is deemed to be an assessee in default under any provisions of the Act. For purposes of cl. (a) the person against whom any proceeding under the Act has been taken is deemed an assessee: but that necessarily postulates that the proceeding should be lawfully taken against the person before he could be deemed to be an assessee for the purpose of s. 222 or r. 2 and r. 73. There is no provision in the Act which deems the manager to be the assessee, for the purpose of assessment and recovery of tax, when the income of the Hindu undivided family of which he is the manager is assessed to tax. Nor is there any provision enabling the Income-tax Officer or the Tax Recovery Officer to treat the manager of the Hindu undivided family as an assessee in default under the provisions of the Act. Section 160 provides for treating a person as a representative assessee and s. 161 prescribes the liability of a representative assessee. Section 179 makes a special provision for rendering the Directors of private company in liquidation to be jointly and severally liable for the payment of tax which cannot be recovered from the assets of the private company in liquidation. The Legislature has made no such provision for recovery of tax by resort to the personal property of the manager of the Hindu undivided family, or by his arrest and detention for default by the family in paying the tax due.

Sections 276, 276A, 277 and 278 on which reliance was placed by counsel for the Revenue in support of his argument also do not assist him. These sections occur in a chapter relating to penalties, and they seek to penalise failure to

carry out specific provisions mentioned therein. We are unable to hold that the expression "person" in ss. 276, 276A and 277 is used in the sense in which it is defined in s. 2 (31) of the Act. For each specific act which is deemed to be an offence under those provisions, an individual who without reasonable cause or excuse fails to do the acts prescribed by statute or acts in a manner contrary to the statute or makes a declaration on oath which he believed to be false or does not believe to be true, is made liable to be punished. Section 278 penalises the abetment or inducing any person to make and deliver an account, statement of declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe to be true. In the context in which the expression "person" occurs in ss. 276, 276A, 277 and 278, there can be no doubt that it seeks to penalise only those individuals who fail to carry out the duty cast by the specific provisions of the statute or are otherwise responsible for the acts done. For the default of the Hindu undivided family, therefore, in payment of tax, the Karta cannot be arrested and detained in prison.

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The High Court, we think, took a somewhat technical view in declining to allow the contention raised by the appellant in the first writ petition presented before the High Court that he was not liable to be arrested and imprisoned for non-payment of the tax arrears, since he was not an assessee, and then in treating the judgment of the High Court in the first writ petition operating constructively as res judicata in the second petition.

The appeals are allowed and the order of detention passed by the Tax Recovery Officer against the appellant is declared unauthorized. No order in Petition No. 103 of 1966. The appellant will be entitled to his costs in Appeal No. 1320 of 1966 in all the three Courts. There will be no order as to costs in Appeal No. 1319 of 1966 and Writ Petition No. 103 of 1966.

Y.P.

Appeals allowed.

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