

PETITIONER:
THE STATE OF MYSORE

Vs.

RESPONDENT:
SHANTA VEERAPPA CHANNA MALLAPPABOMMANAHALLI & ORS.

DATE OF JUDGMENT:
04/03/1966

BENCH:
MUDHOLKAR, J.R.
BENCH:
MUDHOLKAR, J.R.
SARKAR, A.K.
BACHAWAT, R.S.

CITATION:
1966 AIR 1635 1966 SCR (3) 611

ACT:
Mysore Sales Tax Act (25 of 1957), ss. 13 (3) and 29 (1) (d)
Assessee filing appeal against order of assessment-No
interim stay of proceedings for recovery of tax-Prosecution
for non-payment of tax-Maintainability.

HEADNOTE:

The respondent was assessed to sales tax and was served with a notice requiring him to pay the amount within 21 days. He preferred an appeal against the order of assessment but did not pay the tax, nor did he obtain an order of stay of proceedings from the appellate authority. While the appeal was pending a complaint was filed against him under s. 29(1)(d) of the Mysore Sales tax Act, 1957, because the demand was not complied with, but the trial court and the High Court acquitted.

In appeal to this Court by the State,

HELD: The acquittal of the respondent was unwarranted as his action in not paying the tax within the time allowed, was deliberate and therefore wilful and such failure to pay is rendered an offence under s. 29(1)(d). [814 D, E]

The liability to pay tax is created by the order of assessment. Where the tax so assessed is not paid despite service of notice of demand, the tax may be recovered under s. 13(3)(a) as an arrear of land revenue or under s. 13 (3) (b) on an application to a magistrate as if it were a fine imposed on the assessee. Under the proviso to s. 13(3), the assessee has been afforded interim protection from action under s. 13 (3) (a) or (b), provided he obtains from the appropriate appellate or revisional authority mentioned in the proviso, an order of stay of proceedings. Merely because an appeal has been preferred, the liability of the assessee to pay the tax cannot be deemed to be suspended under s. 20(5). This provision requires that if the order of such appropriate authority lays down any condition, the proviso requires that the assessee must comply with it before he can obtain interim relief. Apart from these two methods of obtaining interim relief, the proviso to s. 13(3) cannot be an answer to a prosecution under s. 29(1)(d). (813 E-G]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 150-152 of 1965.

Appeals by special leave from the judgment and order dated March 17, 1965 of the Mysore High Court in Criminal Appeals Nos. 93 to 95 of 1965.

B. R. L. Iyengar and B. R. G. K. Achar, for the appellant.
K. R. Chaudhury, for the respondents.

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The Judgment of the Court was delivered by Mudholkar, J. This judgment will also govern Criminal Appeals Nos. 151 and 152 of 1965. The respondent was at the relevant time a dealer at Bijapur in groundnuts, cotton seed and other commodities and was registered as a dealer under the Mysore Sales Tax Act, 1957. For the period between November 12, 1958 and October 31, 1959 he was assessed to sales tax amounting to Rs. 9,864-31 ps. by the Commercial Tax Officer, Bijapur in his order dated December 4, 1963. On January 3, 1964 the Commercial Tax Officer served on him a notice of payment requiring him to pay the tax assessed on him within 21 days. He was similarly assessed to pay tax for two subsequent periods by two separate orders passed by the Commercial Tax Officer. Two separate notices of demand were served on him requiring him to pay the tax assessed within 21 days. It is common ground that the respondent did not comply with any of the three notices. Three separate complaints were, therefore, preferred against him by the Commercial Tax Officer before the Judicial Magistrate, First Class, second court, Bijapur for offences punishable under s. 29(1)(d) of the Act. The respondent had preferred appeals against each of the three orders of assessment under sub-s. (1) of s. 20 of the Act. He did not, however, pay the tax assessed against him or any portion thereof as contemplated in the second proviso of sub-s. (1) of s. 20 nor did he seek or obtain from the appellate authority any order under the proviso to sub-s. (5) of s. 20. The learned Magistrate held that since the respondent had preferred appeals against the orders of assessment and those appeals were still pending when the complaints were made before him the respondent was not liable for offences under s. 29 (1) (d). On this ground the learned Magistrate acquitted the respondent in all the three cases. Appeals preferred by the State of Mysore against the orders of acquittal passed in favour of the respondent were rejected by the High Court on the ground that as the State could avail itself of other remedies under the Act for enforcing the payment of tax levied on the respondent it did not think it fit to exercise its discretion under s. 421 (1) of the Code of Criminal Procedure and entertain the appeals.

Mr. Chaudhuri refers to the proviso to sub-s. (3) of s. 13 and contends that unless the requirements of the proviso are satisfied he is not liable to be proceeded against under s. 29 (1) (d). In order to appreciate his argument it is desirable to reproduce the provision relied upon by him. Sub-section (3) of s. 13 reads as follows

"Any tax assessed, or any other amount due under this Act from a dealer, may without prejudice to any other mode of collection, be recovered-

(a) as if it were an arrear of land revenue, or

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(b) on application to any Magistrate, by such Magistrate as if it were a fine imposed

by him:

Provided that no proceeding for such recovery shall be taken or continued as long as he has, in regard to the payment of such tax or other amount, as the case may be, complied with an order by any of the authorities to whom the dealer has appealed, or applied for revision, under sections 20, 21, 22- 23 or 24."

The matter dealt with by s. 13 is "payment and recovery of tax". The substantive part of the provision renders an assessee in arrears of tax liable to be proceeded against under either cl. (a) or cl. (b) of the provision. Mr. Chaudhury, however, contends that by virtue of the proviso an assessee will not be liable to be proceeded against unless it is shown that he has failed to comply with an order made by the appropriate authority under one of the sections referred to in the proviso. He points out that though he has preferred appeals under s. 20 of the Act no order has been made by the appellate authority in any of the appeals dealing with the question of payment or otherwise of the tax and that, therefore, there has been no failure on the part of the respondent to comply with an order made by the appropriate authority. Mr. Chaudhury in effect wants us to construe the proviso as if it contemplated the creation of liability to pay the tax by an order of the appropriate authority under one of the sections specified in the proviso. There is no warrant for such a construction. The liability to pay tax is created by the order of assessment. Where tax so assessed is not paid despite service of notice of demand the substantive portion of sub-s. (3) of s. 13 renders the assessee liable to be proceeded against under cl. (a) or cl. (b) of that provision. The assessee who has moved the appropriate authority under one of the provisions referred to in the proviso has, however, been afforded interim protection from action under cl. (a) or cl. (b) provided that he approaches the appropriate authority and obtains from that authority an order of stay of proceedings under cl. (a) or cl. (b). That, however, is not enough. If the order of the appropriate authority lays down any condition the proviso requires that the assessee must comply with those conditions before he can obtain interim relief under the proviso. Apart from that, we fail to see how the proviso to sub-s. (3) of s. 13 can at all be an answer to a prosecution under s. 29 (1) (d). What is rendered an offence under s. 29 (1) (d) is the failure of the assessee to pay the tax within the time allowed. But where, as here, the assessee has not paid the tax within the time allowed by a notice of demand he immediately renders himself liable to be proceeded against under s. 29 (1) (d).

Mr. Chaudhury then contended that in view of the fact that an appeal has been preferred the liability of the assessee to pay

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the tax must be deemed to have been suspended during the pendency of the appeal. This argument ignores the specific provisions of sub-s. (5) of s. 20 and the proviso thereto. They read thus :

"Notwithstanding that an appeal has been preferred under sub-section (1), the tax shall be paid in accordance with the assessment made in the case :

Provided that the appellate authority may, in its discretion give such directions as it thinks fit in regard to the payment of the tax before the disposal of the appeal, if the

appellant furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed."

The provision we have just quoted is a complete answer to Mr. Chaudhuri's contention. Mr. Chaudhuri then contended that there was no wilful default on the part of the respondent. It is difficult to appreciate what he means by saying that there was no wilful default. The respondent knew that he was required to pay the tax within certain time and also knew that he had not complied with the notice of demand. His action in not paying the tax was quite clearly deliberate and, therefore, wilful. There is no substance in this contention.

We are, therefore clear that the acquittal of the respondent for offences in the case was unwarranted. We would, therefore, have, after setting aside his acquittal in each of the three cases, convicted and sentenced him under s. 29 (1) (d) of the Act but for the fact that when special leave was granted an undertaking was given by the State that irrespective of the result of the appeal the respondent would not be prosecuted. Probably what was meant was that the State would not press for conviction and sentence of the respondent. Therefore, though we allow the appeals and set aside the acquittal of the respondent in the three cases we leave the matter just there.

Appeals allowed.

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