(1990) 07 MAD CK 0034

In the Madras High Court

Case No : Criminal M.P. No''s. 8915, 8917, 8919, 8921, 8923, 8925, 8927, 9487, 9489, 9491, 9493 and 9495 of 1990

A.B. Anbu and 11 Others — APPELLANT

Vs

Nemili Town Panchayat — RESPONDENT

Date of Decision : 10-07-1990

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1992) LW(Cri) 129

Hon'ble Judges : Janarthanam, J

Bench : Single Bench

Advocate : M.B. Jeganathan, for the Appellant;

Final Decision : Dismissed

Judgement

Janarthanam, J.—A challenge invoking the extraordinary jurisdiction of this court under S.482, Crl.P.C. in all those petitions, is made of the

launching of prosecution before the Judicial Magistrate No. I. Wallajapet for the refusal to pay the house-tax for the specified period by the

respective petitioners-house owners residing in Nemili Town Panchayat, North Arcot District, as the existing house-tax appears to have been

revised by the said panchayat for the assessment year 1988-89 onwards and notice of demand was issued for payment of tax at the enhanced

rate.

2. The petitioners and other house owners, aggrieved by the said enhanced levy formed Nemili Town Panchayat Tax Payers, Welfare Association

and challenged the said levy in this court by means of a writ. This court quashed the levy of tax on the ground of not following the rules under the

Tamil Nadu Town Panchayats Act, 1958 (for short ''the Act'') in the process of making such revision. Writ appeal filed by the aggrieved panchayat

also got dismissed. Thereafter, the panchayat appears to have issued special notices and after hearing objections of the respective house owners,

enhanced the house-tax by following the procedure prescribed under the Rules. The Tax payers individually also preferred revision objecting to the

enhancement of the house-tax and the same also got dismissed. Thereafter, the Tax Payers, Welfare Association filed a suit before the competent

civil forum challenging the enhanced levy by the panchayat. Thus, they refused to pay the house tax. In such a situation, the Executive Officer was

constrained to initiate criminal proceedings against defaulters.

3. The challenge stems and revolves in the following objections:

(1) the provisions, under which the prosecution is launched if scrutinized with a little bit of care, caution and circumspection would indicate in so

clear cut a fashion as to the utter inapplicability to the demand and need of the situation m which the said Panchayat is placed and therefore it is that

the prosecution is incompetent and not maintainable;

(2) Even otherwise, launching of prosecution simplicitor, at the first instance, without resorting to initiate distraint proceedings for recovery of the

house-tax is not sustainable; and

(3) The prosecution, whilst pendency of a civil proceedings challenging the enhanced levy before the competent forum, cannot at all be lawfully

entertained.

4. The first prong of attack arises out of callous negligence of the Executive Officer of the Nemili Town Panchayat in filing petty case charge-sheet

before the Criminal Court in a cavalier fashion by quoting wrong provisions of law, which by itself is not sufficient to throw out the case lock, stock

and barrel, without there being any further enquiry into the matter. S.120 of the Act gives the source of power for levy of house-tax and S.178

gives a power to the State Government to make Rules to carry out the purpose of this Act while S.127 gives power to the panchayat or Panchayat

Union council to write off any tax, fee or other amount whatever due to it, if it is found to be irrecoverable.

5. The Government had framed Rules and Regulations separately for the Village Panchayats as well as Town Panchayats relating to assessment

and collection of taxes. Four modes of collection of taxes had been prescribed under the Rules. They are:

(1)Suing a civil court for the tax due under sub-clause (4) of Rule 24:

(2) Distraint and Sale of immovable property under Rules 25 to 29.

(3) Recovery of arrears of tax as if it were an arrear of land revenue under Rule 31; and

(4) Launching of a prosecution before a Criminal Court by imposition of fine for wilful omission to pay the tax due as well as for recovery of

arrears or tax under Rule 32.

6. Apart from the allegation in the petty case charge sheets on the question of wilful refusal to pay the tax due, pertinent it is to note here that a

cursory perusal of the petty case charge sheets filed in the respective cases would indicate to a clear cut recital of wilful omission to pay the tax,

which is prosecutable under R.32. The Executive Authority, instead of quoting Rule 32 quoted wrong provisions, namely S.120, 127 and 178 of

the Act. Misquoting or wrong quoting of the relevant provisions is irrelevant and is of no consequence, if the material allegation or recital invoking a

particular provision of law or Rule is ingrained in the plaint or the charge-sheet, as the case may be, which is sufficient for the court to proceed with

the case under the proper provisions of law or rule. In this view of the matter, I am of the view that the first objection is of no substance.

7. A cursory perusal of the relevant Rules regarding collection of tax namely, Rules 24 to 29, 31, and 32 would point out in no uncertain terms that

there is no prohibition to choose anyone of the modes of collection of tax provided the conditions requisite for one mode of collection resorted to

are complied with. The condition requisite for resortment of launching of prosecution under R.32 is prescribed by Sub-rule(2) of R.25 and what it

states is that if for any reason the distraint or a sufficient distraint of defaulters property is impracticable, the Executive Authority may prosecute the

defaulter before a Magistrate. The said Sub-rule gives discretion to launch prosecution to the Executive Authority on his deriving subjective

satisfaction without resortment to distraint proceedings, if the circumstances is found impracticable. As such, this objection also merits little

substance.

8. As to the third objections, mere pendency of a proceedings instituted before a

competent civil forum questioning the levy of house tax is by itself

not sufficient to prevent the Executive Authority to proceed with the collection of I he tax levied under any of the modes prescribed. There is no

provision either in the Act or Rules prohibiting recovery of lax levied, in case it is questioned before a competent civil forum, till a decision is given

thereon. This apart, the competent civil forum before which proceedings are pending questioning the levy of enhanced house-tax, as a matter of

fact, did not grant any stay or injunction preventing the Executive Authority from recovering the arrears of tax. As such, this prong of attack also

bristles next to nothing.

9. In view of what had been stated above all these petitions deserved to be dismissed, even at the admission stage.

10. In the result, all these petitions are dismissed.

