

(1968) 01 DEL CK 0004

In the Delhi High Court

Case No : Criminal Revision Application Appeal No. 63 of 1967

Bakshish Lal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 09-01-1968

Acts Referred:

Citation : (1968) 4 DLT 330

Hon'ble Judges : T.V.R. Tatachari, J

Bench : Single Bench

Advocate : A.C. Sud and K.C. Pandit, for the Appellant;

Judgement

T.V.R. Tatachari, J.

(1) This Revision Application was filed against the judgment of Shri R.N. Aggarwal, Sessions Judge, Mahasu, dated 12th June 1967, in Criminal Appeal No. 9 M/14 of 1966, on his file, dismissing the said appeal and confirming the judgment of Shri Nihal Singh, Magistrate, 1st Class, Mahasu District, Kasumti, dated 30th.November 1965 whereby the learned Magistrate convicted the petitioner herein u/s 17 of the Himachal Pradesh Passenger and Goods Act, and sentenced him to a fine of Rs. 250.00, and in default of payment of the fine immediately, to undergo simple imprisonment for two months.

(2) The facts which have given rise to this Revision Application may be stated briefly. On 18th August 1965, Shri M. L. Gupta, Excise and Taxation Inspector, checked Bus No. PNS-596 at Solan. The bus was being driven by one Kanshi Ram and was being conducted by Ved Raj. The bus was owned by Simla Hills Transport Service Limited, which is a limited Company. On checking, the Inspector found that the owner of the vehicle had not changed Himachal Pradesh tax on tickets Nos 49888/90 49888/91 and 49888/92, issued from Simla to Solan. The complaint before the Magistrate was that the three persons, viz, Shri Bakshish Lal, who is the Secretary of the Company to which the above mentioned vehicle belongs, Kanshi Ram. who is the driver of the bus, and Ved

Raj, who is the conductor of the bus, by not charging the tax due to Himachal Government, on the tickets mentioned above, had violated the provisions of section 3 of the Himachal Pradesh Passengers and Goods Taxation Act (hereinafter referred to as the Act) and the rules framed there under, and had thus committed an offence punishable u/s 17 of the said Act, Bakshish Lal appeared before the Magistrate on 12th October 1965, and in his presence, in accordance with section 2(f) of the Act, wherein the word "owner" in respect of a vehicle is defined, was considered sufficient for the purpose of the alleged offence under the Act, and it was not considered necessary to insist upon the presence of the other two accused persons. The accused Nos. 1 Bakshish Lal, being the Secretary of the company, was considered by the learned Magistrate as good an "owner" of the vehicle as the company for the purposes of the Act. The particulars of the offence with which the three accused persons were accused were stated to Shri Bakshish Lal, accused No. 1, and he was asked to show cause why they should not be convicted u/s 17 of the Act. Bakshish Lal pleaded in defense that their vehicle was registered with the Punjab Government for the purpose of tax, that after Realizing the tax, they were paying the same to the Punjab State and that this practice was prevailing since 1952. He, however, admitted that the company has not been paying any tax separately to the Himachal Pradesh Government. The contention on behalf of the complainant State was that in view of the clear provisions in section 3 of the Act, the company was bound to pay "the necessary share of the tax to Himachal Pradesh Government. On the other hand, the contention on behalf of the accused was that the vehicle was registered in Punjab, that after Realizing the tax, the same was paid to the State of Punjab, and that the company was not liable to pay anything to the Himachal Pradesh Government.

(3) The learned Magistrate held that u/s 3(3) of the Act, owners plying their vehicles from a place outside the territory of Himachal Pradesh, and vice versa, have to pay certain amount of tax to the Government of Himachal Pradesh for the distance covered within the territory of Himachal Pradesh, that it is clear from the challan that the company plied the vehicle from Simla to Solan and was, Therefore liable to pay certain tax to the Government of Himachal Pradesh for the distance covered by the vehicle inside the territory of Himachal Pradesh, that it was clear from "the plea at the accused that the company did not pay the tax to the Government of Himachal Pradesh, and that the accused thus committed an offence u/s 17 of the Act. Accordingly, the learned Magistrate convicted the accused Bakshish Lal u/s 17 of the Act and sentenced them to pay a fine of Rs 250.00, and in default, to undergo simple imprisonment for two months.

(4) . Against that judgment and order of the learned Magistrate. Bakshish Lal alone filed Criminal Appeal No. 9-M/14 of 1966, in the Court of the Sessions, Judge, Mahasu. As already stated, the learned Sessions Judge, by his judgment, dated 12th June, 1967. dismissed the appeal and confirmed the conviction and sentence passed by the learned Magistrate. It is against that judgment of the

learned Sessions Judge that the present Revision Application has been preferred to this Court by Bakshish Lal.

(5) Shri A.C. Sood the learned counsel, turn the petitioner, raised four contentions. The first contention was that Bakshish Lal was not the owner of the vehicle within the meaning of section 2(f) of the Act and could not, Therefore, be held to be liable for the alleged offence. The second contention was that since the vehicle was registered in Punjab and the tax was collected and paid to the Punjab Government, no tax need be paid to the Government of Himachal Pradesh, and that, therefore, the company was not guilty of the alleged offence. The third contention was that since the vehicle was registered under the Motor Vehicles Act, the registration was effective throughout India by virtue of the provision in section 28 of the Motor Vehicles Act. and that, Therefore, the company could not be held liable for non-registration. The fourth contention was that since the vehicle was not registered in Himachal Pradesh, the non-registration absolved the company from collecting any paying tax to the Government of Himachal Pradesh under the Act.

(6) For a proper appreciation of the contentions on behalf of the petitioner, it is necessary to refer to the various provisions of the Himachal Pradesh Passengers and Goods Taxation Act, 1955 (Act Xv of 1955). Section 3 of the Act which provides for the levy of the tax, runs as under:-

"3.(1) There shall be levied, charged and paid to the State Government a tax on all fares and freights in respect of all passengers carried and goods transported by motor vehicles at the rate of one-twelfth of the value of the fare or freight, as the case may be, subject to a minimum of two paise in any one case, the amount of tax being calculated to the nearest paise. Explanation.-When passengers are carried and goods are transported by a motor vehicle, and no fare or freight whether chargeable or not has been charged the tax shall be levied and paid as if such passengers were carried or goods transported at the normal rate prevalent on the route. (2) Where any fare or freight charged is a lump sum paid by a person on account of a season ticket or as subscription or contribution for any privilege, right or facility which is combined with the rights of such person being carried or his goods transported by a motor vehicle, without any further payment or at a reduced charge, the tax shall be levied on the amount of such lump sum or on such amount as appears to the prescribed authority to be fair and equitable having regard to the fare or freight fixed by a competent authority under the Motor Vehicles Act, 1939. (3) Where passengers are carried or goods transported by a motor vehicle from any place outside the State or from any place outside the State to any place outside the State but through the State or from any place within the State to any other place within the State but through the intervening territory of another State to any place within the State, or from any place within the State to any place outside the State, the tax shall be payable in respect of the distance covered within the State at the rate laid down in sub-section (1) and shall be calculated on such amount as bears the same proportion to the total fare

and freight as the distance covered in the State bears to the total distance of the journey." Section 4 provides the method of collection of the tax, and runs as under:-

"4.The tax shall be collected by the owner of the motor vehicle and paid to the State Government in the prescribed manner. Provided that in case of public carriers or private carriers the Government may accept a lump sum in lieu of the tax chargeable in freight in the manner prescribed: Provided farther that in case of contract carriages the Government may accept a lump sum in lieu of the tax chargeable on fare in the manner prescribed." (7) Thus, u/s 4, the tax levied under the Act has to be collected by the owner of the motor vehicle and paid to the State Government in the prescribed manner. Section 5 which provides the method of levy runs as under :--

"5(1)Save as otherwise provided by this Act, no passenger shall be allowed to travel by the owner in a motor vehicle unless he is issued a ticket in the prescribed form for the journey, denoting that the tax has been paid : Provided that if a Journey begins outside the State, the tax shall become chargeable on entry within the State, in the prescribed manner. (2) Save as otherwise provided by this Act, no goods shall be allowed to be carried in a motor vehicle unless the person in charge of the vehicle or a passenger, as the case may be, has in his possession a receipt in the prescribed form issued by the owner of the motor vehicle, showing the freight charged or the freight chargeable at the usual current rate and denoting that the tax due under the Act has been paid." (8) Thus, u/s 5(1) of the Act. no passenger shall be allowed to travel by the owner in a motor vehicle unless he is issued a ticket in the prescribed form for the journey, denoting that the tax has been paid. The violation of the provision u/s 5(1) is made an offence u/s 17(1) (e) of the Act, and the failure to pay the tax due within the prescribed period is made an offence by section 17(1) (a), and the contravention of any of the provisions of the Act or the rules made there under is made an offence by section 17(1)(h) of the Act. Section 17 which provides for the offences and penalties runs as under:-

"17(1)whoever:- (a) fails to pay the tax due from him within the prescribed period; or (b) fraudulently evades the -payment of any tax due under this Act; or (c) allows any passenger to travel in a motor vehicle without a ticket prescribed under this Act as required by section 5 (1) of this Act; or (b)carries goods in his motor vehicle without issuing receipt prescribed in section 5(2) of this Act ; or (e) willfully fails to apply for registration or to pay tax ; or (f) fails to furnish information u/s 9(5) and 9(6) of this Act; or (g) obstructs any officer from making entry and inspection u/s 13 ; or (h) contravenes any other provision of this Act or the rules made there under or any order or direction made under an" such provision or rules not specifically provided for in the Act ; shall be liable on conviction to a fine which may extend to one thousand rupees and when the offence is a continuing one on a subsequent conviction to a fine not exceeding twenty-five rupees for each day of the continuance of the offence. (2) No court

shall take cognizance of any offence under this Act or the rules framed there under, except on a complaint in writing by the prescribed authority, and no court inferior to that of a Magistrate of the first class shall try any such offence." (9) As already stated above, the complaint against the petitioner herein was that by not charging Himachal Pradesh Tax on three tickets which were issued from Simla to Solan, the owner had contravened the provisions of section 3 of the Act. The first contention of the learned counsel for the petitioner was that the petitioner. Bakshish Lal is only the Secretary of the Simla Hills Transport Service Limited, and not the owner of the vehicle, that it is only the owner of the vehicle that can be made liable under the provision of the Act, and that, Therefore, the petitioner could not be held guilty of the alleged offence u/s 17 of the Act. It is true that the provisions of sections 3, 5 and 17, when read together, show that it is the owner of the vehicle in question that is made liable for conviction u/s 17 of the Act. The term "owner" is defined in section 2(f) of the Act as follows:-

"(F)"owner" means the owner of a motor vehicle in respect of which a permit has been granted or countersigned under the provisions of the Motor Vehicles Act, 1939, and includes (a) the holder of a permit in respect of such vehicle, (b) any person for the time being in charge of such vehicle, (c) any person responsible for the management of the place of business of such owner, (d) Government or a Corporation constituted under the Road Transport Corporations Act, 1950 It is clear from the above definition that the word "owner" used in the Act includes any person responsible for the management of the place of business of the owner of a motor vehicle. The petitioner. Bakshish Lal, as the Secretary of the company in question, is a person responsible for the management of the place of business of the said company, and. Therefore, comes within the definition of "owner" in section 2(f) of the Act. There is, Therefore, no substance in this contention of the learned counsel for the petitioner. (10) . The second contention of Shri A. C. Sood, the learned counsel for the petitioner, was that the company was registered in the Punjab State under the Punjab Passengers and Goods Taxation Act, 1952, that as required by the provision in section 3 of the said Act, the company collected the tax and paid the same to the Government of Punjab, that he need not ,Therefore, pay the same again to the Government of Himachal Pradesh, and that it is for the Government of the two States to divide among themselves the amount of tax paid by the company.

(11) Section 3 of the said Punjab Act provides for the levy of tax on all fare and freights in respect of passengers carried and goods transported by motor vehicles at the rate of 1/6th of the value of the fare or freights, and directs the same to be paid to the Government of Punjab. Sub-section (3) of the said section provides as follows : -

"(3)Where passengers are carried or goods transported by a motor vehicle from any place outside the State to any place within the State or from any place within the State to any place outside the State, the tax shall be payable in respect of the distance covered within the State at the rate laid down in sub-

section (1) and shall be calculated on such amount as per "the same proportion to the total fare or freight as the distance covered in the State bears to the total distance of the journey. Provided that where passengers are carried or goods transported by a motor vehicles from any place within the State or any other place within the State through the intervening territory of another State, the tax shall be levied on the full amount of the fare or freight payable for the entire journey and the owner shall issue a single ticket or receipt, as the case may be, accordingly" In the present case, admittedly, the vehicle of the company was registered in Simla which was previously in the State of Punjab. Prior to 1955, there was no Act passed by the Government of Himachal Pradesh. Therefore, the company was collecting the tax contemplated by the Punjab Act and paying the same to the Government of Punjab. In 1955 the Government of Himachal Pradesh enacted the Himachal Pradesh Passengers and Goods Taxation Act, 1955. Section 3 of the said Act has already been extracted above. It will be noticed that the provisions in sub-section (3) of the Himachal Pradesh Act are similar to those in subsection (3) of section 3 of the Punjab Act. As already pointed out above, section 4 of the Himachal Pradesh Act provides for the method of collection of tax and section 5 thereof provides for the method of levy. Section 8 of the Himachal Pradesh Act provides for the registration of the motor vehicle and runs as under :-

"8.No owner shall ply his motor vehicle in the State unless he is in possession of a valid registration certificate as provided hereinafter." Thus section 8 requires that an owner of a motor vehicle should possess a valid registration certificate granted under this Act, if he desires to ply the vehicle in the State of Himachal Pradesh. A plain reading of this section 8 with section 3 of the Himachal Pradesh Act shows that an owner who plies this motor vehicle in the State of Himachal Pradesh should not only possess a valid registration certificate granted under the Himachal Pradesh Act, but should also collect and pay the tax as provided in section 3 of the said Act.

(12) . In the present case, the company in question plied its vehicle from Simla to Solan and issued tickets without denoting thereon the tax payable under the Himachal Pradesh Act as required by section 5 of the Act. Admittedly, the company did not collect the tax and did not denote the same on the tickets.

(13) It is agreed before me by the learned counsel for both the parties that in 1965 when the tickets in question were issued, the route from Simla to Solan was through portions of the two States of Punjab and Himachal Pradesh as detailed below :-

(i) Route from Simla to motor barrier was in Punjab State. (ii) Route from Motor barrier to Shogi was in Himachal Pradesh. (iii) Route from Shogi to Shalogra was in Punjab. (iv) Route from Shalogra to Solan was in Himachal Pradesh. Thus, so far as the above route from Simla to Solan is concerned, it started from a place in the Punjab State and ended in a place in Himachal Pradesh. This is clearly covered by the provision in subsection (3) of the Himachal Pradesh Act. As

already stated, before the Himachal Pradesh Act was enacted, the playing of a motor vehicle from Simla to Solan was covered by the provisions in sub-section (J) of Section 3 of the Punjab State Act. But, after the Himachal Pradesh Act, was enacted, the plying of the motor vehicle from Simla to Solan was also covered by the provision in sub-section (3) of section 3 of the Himachal Pradesh Act. The argument of the learned counsel for the petitioner was that since the company had already registered its vehicle in the Punjab State, and paid the tax to the Punjab Government, it need not again register the vehicle under the Himachal Pradesh Act and collect and pay the tax imposed by the Himachal Pradesh Act. The argument is clearly untenable. The two Acts of the two States are distinct and separate and they operate in their respective areas. A plain reading of the provisions in sub section (3) of section 3 in each of the two Acts shows that an owner who wishes to ply his motor vehicle in the manner contemplated by sub-section (3) of section 3 in each of the Acts, has to register his vehicle in the Punjab State, collect the tax as provided in the Punjab Act and pay the same to the Punjab Government and at the same time has to register his vehicle under the Himachal Pradesh Act, collect the tax as provided in the Himachal Pradesh Act and pay the same to the Himachal Pradesh Government. When the two Acts are passed by two separate States, three provisions apply and operates separately. Therefore, the fact that the vehicle in question was registered under the Punjab Act and the tax levied by the Punjab Act was collected and paid to the Punjab Government is no answer to the requirement under the Himachal Pradesh Act for the registration of the vehicle under the Himachal Pradesh Act, and the collection and payment of the tax levied by the said Act. The contention of the learned counsel cannot, Therefore, be accepted.

(14) The third contention of the learned counsel for the petitioner was that the motor vehicle in question was registered under the Motor Vehicles Act, and that by virtue of the provision in section 28 of the Motor Vehicles Act, there need be no separate registration again of the same vehicle. Chapter III of the Motor Vehicles Act, 1939 (Act No. 4 of 1939) deals with registration of Motor Vehicles. Section 22 of the Act runs as under : -

"22(1) No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner. Section 28(1) of the Act provides that- "Subject to the provisions of section 29, a Motor vehicle registered in accordance with this Chapter in any State shall not be required to be registered elsewhere in India and a certificate of registration issued or in force under this Act in respect of such vehicle shall be effective throughout India." Thus the registration contemplated by section 22 and 28 of the Motor Vehicles Act, 1939. is for the purposes of the said Act, and the same is entirely different from the registration contemplated by section 8 of the Himachal Pradesh Act for

the purposes of the said Himachal Pradesh Act. The provision in section 28 of the Motor Vehicles Act, means only that if a motor vehicle is once registered in a State for the purpose of the Motor Vehicles Act, the said registration would be effective throughout India, and the vehicle need not again be registered in any other State for the purpose of the Motor Vehicles Act, 1939. The said provision does not in any manner control or govern the provision in section 8 of the Himachal Pradesh Act. As already stated, the purpose of the Himachal Pradesh Act is to levy tax on the carriage of passengers and transport of goods in the territory of Himachal Pradesh, and the registration u/s 8 of the Act is for the purpose of the said Act, namely, the levy and the collection of the said tax imposed by the Act. The contention of the learned counsel is, Therefore, clearly untenable.

(15) The learned counsel for the petitioner contended lastly that since the company did not register its vehicle under the provision in section 8 of the Himachal Pradesh Act, it need not collect to pay the tax as provided in the Himachal Pradesh Act. A reading of the sections 3 and 8 of the Himachal Pradesh Act, clearly shows that the former section provides for the levy of the tax and the latter section provides for the registration of the vehicle. The two provisions of levy and the registration are separate and are not dependent upon each other. The provision for registration is only to facilitate the collection of the tax payable u/s 3. It is, Therefore, clear that the company cannot plead its own default to register its vehicle u/s 8 as a defense to its default to collect and pay the tax as provided u/s 3. This contention of the learned counsel is also, Therefore, untenable.

(16) Admittedly, the company did not collect the tax payable under the Himachal Pradesh Act and pay the same to the Himachal Pradesh Government. It is also admitted that the company did not denote on the tickets the amount payable under the Act, as required by section 5 of the Act. It has, Therefore, clearly committed an offence punishable u/s 17 of the Act. The lower courts are therefore right in convicting the petitioner u/s 17 of the Act. The non-collection and the non-payment of the tax payable under the Himachal Pradesh Act was deliberate, and in the circumstances, the fine of Rs. 250.00 imposed by the lower courts cannot be said to be excessive.

(17) For the above reasons, the Criminal Revision is dismissed.