(1968) 06 KL CK 0002

In the High Court Of Kerala

Case No : Criminal Appeal No. 55 and 56 of 1968 against C. C. No. 742 of 1967 and C. C. No. 743 of 1967

Bhaskaran Pillai APPELLANT

Vs

K. G. Varghese RESPONDENT

Date of Decision : 12-06-1968

Acts Referred:
Kerala Local Authorities Entertainments Tax Act, 1961 — Section 5(1)

Citation : (1968) KLJ 754

Hon'ble Judges : T. C. Raghavan, J

Bench : Single Bench

Advocate : M.N. Sukumaran Nayar, for the Appellant; K. Kuriyan Joseph and Mathew Jacob, for the Respondent

Judgement

T. C. Raghavan J.

1. Both these appeals involve the same question; and both the cases are between the same parties. The respondent, the proprietor of a cinema, was prosecuted for contravening section 5 of the Kerala Local Authorities Entertainments Tax Act of 1961 by selling tickets not stamped with the seal of the panchayat, of which the petitioner is the Executive Officer. The magistrate has acquitted the respondent holding that the mere sale of unstamped tickets is not sufficient to complete the offence: in his opinion, to constitute the offence there must be evidence that the persons who purchased the tickets witnessed the entertainment as well. In other words, in the opinion of the magistrate, the crux of the matter is not the collection of the price of the tickets, but it is the actual witnessing of the entertainment by the purchasers of the tickets.

2. Section 5 (1) of the Act enacts, inter alia, that no person shall be admitted for payment to any entertainment where the payment is subject to entertainments tax except with a ticket stamped with an impressed, embossed, engraved or adhesive stamp issued by the local authority indicating the proper tax for such ticket. Thus, we have to ascertain the meaning of the expression "admitted for

payment to any entertainment". Section 2 defines "admission to an entertainment" as including admission to any place in which the entertainment is held. Again, the same section defines "admission" as including admission as a spectator or as one of an audience. From these definitions and the wording of section 5 (1), the counsel of the respondent argues (such argument appears to have weighed with the magistrate also) that unless there is evidence that the person who purchased the ticket has also been a spectator or one of the audience, the liability of the proprietor of the entertainment for tax under the Act "does not arise. This argument has no force, because what is subject to tax u/s 5 (1) is the payment; and the liability of the proprietor to pay tax must also arise on receiving the payment. The purchase of a ticket entitles or confers a right on the purchaser thereof to be admitted as a spectator or as one in the audience; and such right to be admitted to the entertainment is admission to the entertainment. The moment a ticket is purchased the purchaser gets the right to get admitted to the entertainment; and the moment a ticket is sold and payment received, the proprietor of the entertainment becomes liable for tax. The liability of the proprietor for tax does not depend upon the question whether the purchaser of the ticket actually witnessed the entertainment or not. In this view, I set aside the orders of acquittal and convict the respondent u/s 10 (1) of the Act. In view of the apparently doubtful position (though I do not feel any doubt), light sentences alone are called for. I sentence the respondent to pay a fine of Rs. 20/- in each case, in default of which he will undergo simple imprisonment for two days each. The respondent will also pay the tax due by him.

