(1979) 07 AHC CK 0017

In the Allahabad High Court

Case No : Criminal Miscellaneous App. No. 5999 of 1977

Bipin Behari and Others — APPELLANT

Vs

State of U.P. — RESPONDENT

Date of Decision : 05-07-1979

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) — Section 482
- Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 3, 4, 4(1), 4(2), 5
- Uttar Pradesh Entertainments and Betting Tax Rules, 1981 — Rule 25

Citation : (1979) AWC 629

Hon'ble Judges : B.N. Katju, J

Bench : Single Bench

Advocate : G.P. Dixit, for the Appellant;

Final Decision : Allowed

Judgement

B.N. Katju, J.—This is an application u/s 482 Code of Criminal Procedure filed by, Bipin Behari, Binod Kumar and Pradumn Ji praying that the proceedings pending against them in complaint case No. 351/77 State v. Bipin Behari in the court of S.D.M. Rasra be quashed.

2. It appears from the complaint filed against the applicants u/s 5(3) of the U.P. Entertainment and Betting Tax Act (hereinafter referred to as the Act) by the Entertainment Tax Officer that Bipin Behari and Binod Kumar applicants are the proprietors of Sarju Chitra Mandir, Rasra and Pradumn Ji applicant is the Manager of the said cinema hall. On 4-7-1977 at about 8.30 P.M. while the first show was in progress a surprise raid was conducted by a party headed by the S.D.M. Rasra and three persons in the balcony and three persons in the first class were found without tickets. 113 other persons were also found in the first class and 123 persons were found in the second class. 92 tickets were recovered from the persons sitting in first class and 81 tickets were recovered from the persons sitting in the second class. The numbers of these tickets did not tally with the

numbers of the tickets entered in the register in Form B which was required to be maintained by the proprietors of the cinema hall. The complaint when read as a whole indicates that the 244 persons, who were found inside the cinema hall at the time of the raid, were seeing the cinema show on fake tickets whose numbers were not entered in the register in Form B. The question that, however, remains to be determined is whether any offence is made out against the applicants u/s 5(3) or any other Section of the Act even if all the allegations made in the complaint are accepted.

Sections 4 and 5 of the Act run as follows:

4. Manner of admission and payment-(1) Save as otherwise provided by this Act, no person, other than a person who has some duty to perform in connection with the entertainment or a duty imposed upon him by law, shall be admitted to any entertainment, except with a ticket denoting that the proper entertainment tax payable u/s 3 had been paid.

(2) Consolidated payment by proprietor of entertainments.-Government may, on such condition as may be prescribed, require the proprietor to pay the amount of the entertainment tax due either, (3) by stamping the tickets with an impressed, embossed, engraved, or adhesive stamp, (not before used), issued by the Government for the purposes of revenue and denoting that the proper entertainment tax payable u/s 3 had been paid.

Or (b) in accordance with returns of the payments for admission to the entertainment and on account of the tax; Or (c) by a consolidated payment of a percentage, to be fixed by Government, of the gross sum received by the proprietor on account of payments for admission to the entertainment and on account of the tax ; or (d) in accordance with result recorded by any mechanical contrivance which automatically registers the number of persons admitted.

5. Penalty for non-payment of Tax-(1) No person liable to pay entertainment tax shall enter or obtain admission to an entertainment without payment of the tax leviable u/s 3.

(2) Any person who enters or obtains admission to an entertainment in contravention of the provision of Sub-section (1) shall, on conviction before a Magistrate, be liable to pay a fine not exceeding two hundred rupees and shall in addition be liable to pay the tax which would have been paid by him.

(3) If any person liable to pay entertainment tax is admitted to a place of entertainment without payment of the tax leviable u/s 3, the proprietor of the entertainment to which such person is admitted shall, on conviction before a Magistrate, be liable in respect of every such contravention to a fine not exceeding Rs. 500/-.

In order to hold the applicants guilty u/s 5(3) of the Act it must be established that they had admitted the 244 persons found in the cinema hall without payment of the tax leviable u/s 3 of the Act which provides the rate at which the entertainment tax is leviable on the admission fee. In the counter-affidavit filed on behalf of the State it is not stated that the persons, who were found inside the cinema hall, had not paid the entertainment tax leviable u/s 3 of the Act. It is only stated therein that they had entered the cinema hall on fake tickets whose numbers were not entered in the register in Form B. A person pays the entertainment tax leviable u/s 3 of the Act not only when he purchases a genuine ticket issued by the proprietor of the entertainment whose number is entered in the register in Form B but can also pay the tax leviable u/s 3 of the Act when he purchases a fake ticket whose number is not entered in the register in Form B. It is obvious that if a person purchases a fake ticket issued by the proprietor of the entertainment whose number is not entered in the register in Form B but pays the proper tax leviable u/s 3 of the Act, he cannot be held guilty u/s 5(1) of the Act as he has not entered the place of entertainment without paying the proper tax. Similarly if the proprietor of the entertainment admits such a person inside the place of entertainment on a fake ticket whose number is not entered in the register in Form B, it cannot be held that such a person has been admitted to a place of entertainment without paying the tax leviable u/s 3 of the Act as he has, in fact, paid the said tax. Section 4(1) of the Act is complied with even if a person is admitted to a place of entertainment on a fake ticket whose number is not entered in the register in Form B, if the proper entertainment tax leviable u/s 3 of the Act has been paid by him. The proprietor of the place of entertainment may evade the payment of the tax to the Government, which he has received from a person admitted to the place of entertainment on a fake ticket whose number is not entered in the register in Form B, but this is quite distinct from the payment of tax leviable u/s 3 of the Act by the person admitted to the place of entertainment. It is significant to note that a breach of Section 4(2) of the Act has not been made punishable u/s 5 of the Act.

3. It is true that u/s 9(2) of the Act non-compliance of the Rules made under the Act is made punishable, but it has not been alleged in the complaint or shown in the counter affidavit filed on behalf of the State that the applicants contravened any Rule. It is stated that three persons in the balcony and three persons in the first class were found without tickets at the time of the raid. Under Rule 25 of the Rules framed under the Act a person, who has been admitted to a place of entertainment in respect of which he is liable to pay the tax leviable u/s 3 of the Act, is required upon, demand made during the course or immediately before or after the entertainment to produce before any officer authorised u/s 8 of the Act the ticket by means of which he was admitted to the place of entertainment. It is obvious that if he fails to do so he may be punishable u/s 9(2) of the Act, but the proprietors of the place of entertainment are not punishable u/s 9(2) of the Act for this failure. The mere fact that six persons were found to be without tickets at the time of the raid cannot lead to the inference that they were admitted to the cinema hall without tickets as it is quite possible that they might have thrown their tickets after entering the cinema hall which is quite often done by some persons.

4. The result, therefore, is that even if all the allegations made in the com plaint are accepted, no offence u/s 5(3) or any other Section of the Act is made out against the applicants.

5. This application is accordingly allowed and the proceedings against the applicants in complaint case No. 351/77 State v. Bipin Behari in the court of S.D.M. Rasra are quashed.

6. An oral application has been made by the learned D.G.A. for certifying that this case is a fit one for appeal to the Supreme Court, which is rejected as no substantial question of law is involved in this case.