(1977) 10 MAD CK 0001

In the Madras High Court

Case No : Criminal M.P. No. 4153 of 1977

G. Renganathan and another APPELLANT

Vs

The State RESPONDENT

Date of Decision : 31-10-1977

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Tamil Nadu General Sales Tax Act, 1959 — Section 24, 24(2)(b)

Citation : (1979) LW(Cri) 47

Hon'ble Judges : Suryamurthy, J

Bench : Single Bench

Advocate : B.T. Seshadri, for the Appellant; The Public Prosecutor for the State, for the Respondent

Judgement

Suryamurthy, J.—This is a petition under S. 482 of the Criminal Procedure Code to call for the records in CT/M.P. 58/77 on the file of the

VII Metropolitan Magistrate Court, Madras, and quash the same. The petitioners are the President and Secretary respectively of the New General

Officers Staff Co-operative Canteen situate in the office of the Southern Railway, Madras. This Co-operative canteen is a society registered under

the Co-operative Societies Act. This canteen has been assessed by the Joint Commercial Tax Officer for the year 1974-75. Payment of the sales

tax assessed was also demanded subsequently. Against the order of assessment, the canteen filed an appeal before the Appellate Assistant

Commissioner and the Appellate Authority remitted the matter to the Joint Commercial Tax Officer to verify whether the sales were made

exclusively to members as contended by the canteen. The original order of Assessment was set aside. After remand, the Joint Commercial Tax

Officer, is said to have come to the conclusion that the sales were made only to members, but that there was no distribution. He held that there

were only sales. Against that order, the canteen has again filed an appeal. That appeal is said to be pending. It is stated by Sri B.T. Seshadri,

learned counsel for the petitioners, that the canteen has subsequently applied to Sales Tax Appellate Tribunal and has obtained an order of stay

against the execution of the order assessing the canteen to payment of sales tax.

2. In the meantime, the Joint Commercial Tax Officer, Park Town, Madras, has instituted proceedings under S. 24(2)(b) of the Tamil Nadu

General Sales Tax Act, hereinafter referred to as the Act, against the petitioners herein in the Court of the VII Metropolitan Magistrate, for

realisation of the sales-tax as if it were a fine imposed by the Magistrate. To quash the said proceedings, this petition has been filed.

3. The only question to be considered is whether the petitioners are personally liable to pay the sales-tax assessed on the ""New General Officers

Staff Co-operative Canteen."" Sub-section (2) of S. 24 of the Act, empowers the recovery of any tax assessed on a dealer or person as if it were

an arrear [of land revenue or on application to any Magistrate, by such Magistrate as if it were a fine imposed by him. The dealer or person

referred to in sub-section (2) of S. 24 of the Act is the dealer who has been assessed to the payment of tax. In the instant case, the dealer or

person assessed is the ""New General Officers Staff Co-operative Canteen"", which is a separate legal entity. However, it is not only the society that

is sought to be proceeded against but also Thiru G. Ranganathan, Senior Personnel Officer, Southern Railway and Thiru C.S. Narasimhan, Claims

Clerk, Southern Railway, namely, the petitioners herein, and not the Society represented by them. The petitioners are not personally liable to pay

the sales-tax assessed on the society. It is not clear from the complaint filed in this case whether the society is sought to be proceeded against at all.

However, it is clear that the petitioners are sought to be proceeded against. The respondent is not entitled to proceed against the petitioners

personally, since the liabilities are not personal to them. This view finds support in a decision of Veeraswami, J. as he then was, reported in

Paramasivam Pillai v. Board of Revenue (1963) 14 S.T.C. 972. The learned Judge has observed as follows:

...the assessment orders were made against the canteen represented by its honorary secretaries, one of whom happened to be the petitioner. The

assessment was not made personally against him It follows, therefore, that no proceedings could be taken under S. 24(2)(b) of the Madras

General Sales Tax Act, 1969, to collect the tax personally from the petitioner, since the liability was not personal to him. The fact that creditors,

like the provision shop, who supplied provisions to the petitioner were able to obtain a decree against the petitioner personally does not help the

department. The decree there is clearly based on the contract between the petitioner and the decree-holder. There is no such basis to support the

recovery proceedings against the petitioner personally, in respect of the sales tax arrears due from the canteen.

Following the ratio of the decision cited above, I find that the petitioners herein are not personally liable to pay the sales-tax assessed on the

canteen. Therefore, the proceedings as against the petitioners in C.T./M.P.58/77 on the file of the VII Metropolitan Magistrate are quashed.

