(1978) 12 OHC CK 0018

In the Orissa High Court

Case No : Second Appeal No. 129 of 1974

Ghanashyam Das APPELLANT

Vs

State of Andhra Pradesh and Others RESPONDENT

Date of Decision : 07-12-1978

Acts Referred:

Citation : (1978) 45 CLT 524

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : S. Misra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S. Acharya, J.—The Plaintiff has preferred this appeal against the decision of the Additional District Judge, Cuttack in Money Appeal No. 4 of 1973 reversing that of the trial Court.

2. The Plaintiff is a registered owner of an oil tanker bearing registration certificate. No. ORC No. 5817. That vehicle had a public carrier permit from the Orissa State Transport Authority, which permit was also extended by the State Transport

Authority of Andhra Pradesh for a term of 3 years with effect from 29-6-1965 on three prescribed routes of which the route Sunki to Rayagada via Chipurapali. Bobilli and Parabatipuram, is relevant for this suit and appeal. The Plaintiff had paid the tax for the said vehicle for the quarter ending 30-6-1966 in the State of Orissa, and undisputedly he was not to pay any tax for plying the vehicle on the above-mentioned prescribed routes. In the night of 30th June, 1966 the vehicle with a load of diesel oil was proceeding from Visakhapatnam to Jeypore, and D.W. 1, the Assistant Motor Vehicles Inspector, Vizianagaram, checked it at a place 4 miles and 2 furlongs away from Viziangaram. On the report of D.W. 1 that the Plaintiff?s vehicle was plying on an unauthorised route on that occasion without a valid permit and endorsement to that effect, tax and penalty amounting to Rs. 2, 280/- in all was levied on the Plaintiff for the quarter ending 30-6-1966 under the Andhra Pradesh Motor Vehicles Taxation Act, 1963 (hereinafter referred to as the? Andhra Pradesh Act?). The Plaintiff deposited the said amount and filed an appeal before the Deputy Transport Commissioner, Andhra Pradesh, against the levy of the said tax. The said appeal was dismissed, and thereafter the Plaintiff instituted this suit.

3. The Plaintiff?s case, in short, is that the vehicle was plying on a single point tax basis with the endorsement of the State Transport Authority of the Andhra Pradesh and the route on which it was found plying on 30-6-1966 was one of the approved routes on which the vehicle was to ply under the terms of the permit granted to him, and so the realization of the aforesaid tax and penalty from him is illegal and without jurisdiction.

4. The case put forward by the Defendants - The State of Andhra Pradesh (D.1) ; The Regional Transport Officer, Visakhapatnam (D.2) ; and the Deputy Transport Commissioner, Kakinada (D.3) in their joint written statement, bereft of unnecessary details, is that on 30-6-1966 D.W. 1 detected the Plaintiff?s above-mentioned vehicle plying inside the State of Andhra Pradesh on an unauthorised route. That being so, it violated the conditions laid down in the permit and the licence on which the Plaintiff was plying that vehicle in Andhra State, and so he was liable to pay the tax and penalty which were levied on him. As the levy and realisation of the tax were perfectly legal, the Plaintiff is not entitled to the refund of the same.

5. The trial Court decreed the suit on the findings that it cannot be strictly said that the place where the Plaintiff?s vehicle was detected on 30-6-1966 was not within the prescribed routes under the permit and licence granted to him. It also found that the Plaintiff?s vehicle was plying on a single point tax basis and the Plaintiff had paid the tax in the State of Orissa for the relevant period for plying the vehicle in Andhra Pradesh and as the tax was payable only in respect of the vehicle and not in respect of the route, the tax and penalty levied on the Plaintiff were legal and without the sanction of law. Accordingly, the Plaintiff was entitled to take back the amount realised from him on the said account.

The other findings are not relevant for deciding the questions raised in this appeal.

6. The lower appellate Court on an independent assessment of the evidence and materials on record has arrived at the finding that the Plaintiff?s vehicle was detected by D.W. 1 on 30-6-1966 while it was plying on an unauthorised route, and that being so, the imposition and realisation of the tax and penalty from the Plaintiff were neither illegal nor incorrect. Mostly on the above findings the appeal has been allowed with costs and the Plaintiff?s prayer in the suit has been dismissed.

7. Mr. S. Misra- 1, the learned Counsel for the Plaintiff-Appellant, questioned the correctness and legality of the above-mentioned findings of the Court below.

8. The finding of the appellate Court that the Plaintiff?s vehicle was plying on an unauthorised route at the relevant time is a pure finding of fact. Mr. Misra challenged that finding of fact on the ground that the Court below not only made an incorrect and improper assessment of the evidence on record on that aspect of the matter, but also committed an illegality in taking into consideration the contents of Ext. C. the Memorandum of Appeal filed on behalf of the Appellant before the Deputy Transport Commissioner, Kakinada, Andhra Pradesh, while considering that aspect of the matter. The finding of the trial Court on this aspect of the matter is rather of a vacillating and hesitating nature. According to that Court -

"Therefore, it cannot strictly be said that the place of check is not within the prescribed routes.

xx xx xx xx

In any case the vehicle cannot be said to have plied altogether beyond the region though it has taken a route at the place of check which is not specifically indicated in the prescribed routes."

The finding of the appellate Court on this aspect is firm and definite. In arriving at that finding the Court below has taken into consideration various facts appearing on the evidence on record including the contents of Ext. C. The Plaintiff has not called for or filed the permit and/or the licence indicating the approved routes on which the vehicle was to ply in Andhra Pradesh. D.W. 1 has merely admitted that the routes mentioned in the plaint on which the Plaintiff?s vehicle was authorised to ply are correct, but from his said admission it cannot be said that the place where the vehicle was detected by D.W. 1 was on any of the approved routes. The evidence given by the Plaintiff?s brother, who alone has been examined on behalf of the Plaintiff in this case, is absolutely useless on that aspect of the matter, as he admittedly did not actually see the place where D.W. 1 detected the vehicle at the relevant time. Whatever he has said on this aspect is based on information received by him from the driver of the vehicle, who has not been examined in this case. The Plaintiff?s said witness could not also trace out from the map Ext. B, the exact routes on which the Plaintiff?s vehicle had been permitted to ply in Andhra Pradesh. Moreover, his evidence on this aspect IS contrary to what is stated in Ext. C, the memorandum of appeal, which appeal admittedly was filed on the instruction of this witness. I shall also later on deal with the contents of Ext. C. D.W. 1. a Government Officer, in a very categorical manner has testified to the fact that when he checked the vehicle it was travelling on an unauthorised route not covered by its permit. The veracity of the witness or his testimony to the above effect has not been successfully assailed, nor the Plaintiff has adduced any convincing evidence to the contrary. In Ext. C, the memorandum of appeal filed on behalf of the Plaintiff-Appellant, it is categorically admitted that the vehicle "while going with a load of diesel oil to Jeypore (Koraput) and meant to travel on the Chipurapali-Bobilli road for the destination, it went by mistake on the Viziangaram-Salur road." In ground No. 7

it is stated that the Appellant who was a bona fide plier of the transport vehicle had not the "slightest intention on his part not to follow the law and take the vehicle on an unauthorised route. "In ground No. 8 it has again been admitted that the vehicle was taken on "a wrong route not meant for travel." From the memorandum of appeal it is evident that the Appellant while admitting the fault of plying the vehicle on an unauthorised route prayed for the refund of the tax and penalty realised from him on that account on grounds of grace and by way of favour or kindness.

9. Mr. Misra, however, contends that in view of the fact that Ext. C was not verified or signed by the Plaintiff, as required under Rule 15(2) of the Andhra Pradesh Motor Vehicles Taxation Rules, 1963 (hereinafter referred to as the, ? Andhra Pradesh?) but was merely signed and presented by his counsel, the said document cannot be admitted in evidence and the contents of the same cannot be utilised as admission binding on the Plaintiff.

True it is that the Plaintiff has not signed or verified the memorandum of appeal, but that memorandum of appeal has been signed by the advocate for the Plaintiff. The Plaintiff?s brother, the only witness examined on behalf of the Plaintiff-Appellant, has admitted in his cross-examination that an appeal before the Deputy Transport Commissioner, Kakinada was filed against the realisation of the tax from the Plaintiff, and that this witness instructed the lawyer for the Plaintiff to file that appeal. He has further said that the said appeal was filed according to his instruction. He has also admitted that the copy of the appeal memo (Ext. C which was shown to him) carries the signature of the Plaintiff?s lawyer. When he was confronted with the aforesaid admissions in Ext. C a bout plying the vehicle on an unauthorised route he stated that he could not say anything about the same. He has not specifically stated that the grounds taken in the said memorandum of appeal were not correct. Rather, he has admitted that the appeal was filed according to his instructions. Though the Plaintiff or his brother has not verified the said memorandum of appeal, the Plaintiff cannot wash his hands clean or wriggle out of the effect of the factual contents of the said document, as that appeal was filed by the lawyer on the instruction of the Plaintiff?s brother who, as it appears, was looking after the entire matter and has figured as the sale witness of the Plaintiff in this case. Moreover, there is nothing on which it can be said that the lawyer made the said statements of facts from his own imagination without getting any instruction to that effect from his clients. Moreover, if p. w. 1 found that some statements were made in Ext. C by the lawyer which were against his instructions, he could have directly stated so in cross-examination when he was shown Ext. C and was confronted with the said admissions therein. Absence of verification in the memorandum of appeal, as required under Rule 15(2) of the Andhra Pradesh Rules, 1963, may render the memorandum of appeal an irregular memorandum for the purpose of the appeal, but the admissions of facts made therein have to be considered as admissions binding on the client. It is well settled that when a lawyer is engaged to conduct a case on behalf of his client it has to be taken for granted that whatever he writes, talks or submits before a Court at law or tribunal relating to the facts of the case were done on the instruction of the client, unless the contrary is established. It is also well settled that a party is bound by the admissions of fact made by his pleader. See 6 Calcutta Weekly Notes, 821; 2 Moore?s Indian Appeals. 2532 ; and 44 Indian Cases 183. In this case, the Plaintiff?s brother who all along has been looking after this matter on behalf of the Plaintiff has directly admitted that the said appeal was filed according to his instruction. That witness has not challenged the correctness of the statements of facts made in the said memorandum of appeal (Ext. C). There is nothing on record to show that the admissions made in the said document were not made on the instruction of the Plaintiff or his brother who was looking after the case. P.W. 1 on being confronted with the said document has not stated anything in his deposition to show that the facts stated in the memorandum of appeal are incorrect. That being so, the above-mentioned statements in the memorandum of appeal filed on behalf of the Appellant can be considered as admissions binding on the Plaintiff. The Court below has not committed any error in taking into consideration the contents of Ext. C while proceeding to give a finding on the question as to whether the vehicle was plying on its approved route or not at the relevant time. In the said document, as stated above, it has been directly and categorically admitted that the vehicle in question, when checked by D.W. 1, was plying on an unauthorised route, not meant for that vehicle.

The Court below on discussion and consideration of the relevant evidence on record has arrived at the finding of fact that the vehicle, when checked by D.W. 1, was plying on an unauthorised route. I do not see any satisfactory reason to interfere with the said finding of fact in this second appeal.

10. It was next contended by Mr. Misra that even if it was found that the Plaintiff?s vehicle was plying on a route not approved for that vehicle, he could not be made to pay any tax or penalty to the State of Andhra as that vehicle was plying on a single point tax basis and the tax on that vehicle had already been paid in Orissa for the relevant period, In this connection it was submitted by Mr. Misra that a violation of a condition in the permit would only make the Plaintiff punishable under the Motor Vehicles Act but would not make the Plaintiff liable for payment of tax and/or penalty thereon as there was no provision in the Andhra Pradesh Act or the Rules for the same. Admittedly, the vehicle in question was registered in the State of Orissa and was expected to operate in Orissa and Andhra Pradesh on routes approved by the concerned authorities of both the States. From notification No. 12 dated 27-3-1963 of the Government of Andhra Pradesh, issued in exercise of the powers conferred by Sub-section (1) of Section 9 of the Andhra Pradesh Act 5 of 1963, it is seen that the Government of that State had exempted from payment of tax, liable under that Act, all transport vehicles covered by countersignature of permanent permits, which are registered in the State of Orissa and operating on routes lying in both the States of Andhra Pradesh and Orissa if the said routes were recognised by both the States to be such routes and every such transport vehicle was operating in accordance with

the conditions of a permit granted as a result of an agreement arrived at between the two States and the tax leviable in respect of every such motor vehicle under any law for the time being in force in the State of Orissa has been paid in full in that State. Admittedly, the Plaintiff had a permanent permit issued by the State of Orissa and that permit had been countersigned by the relevant authorities of Andhra Pradesh. In the said permit the route on which the said vehicle was expected to travel was specified, and the tax leviable on that vehicle for the relevant period had been paid by the Plaintiff. Accordingly, as per Section 9 of the Act and the said notification, that vehicle was exempted from paying any tax in Andhra Pradesh for plying on routes recognised by both the States for that vehicle. But if the vehicle operates on a route not recognised by both the States or violates any of the terms of the permit granted for it, the said exemption would not apply, and on the proof of any such fact the owner of the vehicle would be liable to pay the tax and/or penalty leviable under the Andhra Pradesh Act. Section 3 of the Act provides that a tax shall be levied on every motor vehicle used or kept for use in public place in that State. So, for the use of the vehicle on an unauthorised route in Andhra Pradesh, as established in this case, its owner was liable to the tax leviable under the Andhra Pradesh Act. The tax leviable under the Andhra Pradesh Act has to be paid in advance as provided u/s 4 of that Act. So as the tax due for operating the vehicle on a route not already approved for that vehicle had not been paid in advance, as specified in Section 4, the registered owner or the person having the possession or control of the said vehicle was legally liable not only to pay the tax leviable on that vehicle but .was also liable to pay a penalty as provided u/s 6 of the said Act. The Plaintiff admittedly had not paid any tax under that Act for plying the vehicle on a route not recognised by both the States. On the finding that the vehicle on 30-6-1966 was found plying on such an unrecognised route, the realisation of the tax and penalty from the Plaintiff is perfectly legal and justified.

11. Both the points raised in this appeal on behalf of the Appellant do not have any merit.

I do not find any merit in this appeal. The conclusions of the Court below are confirmed and this appeal is dismissed with costs.

Appeal dismissed.

