

(1995) 07 MP CK 0041

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 823 of 1990

Harikishan Shivhare

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 03-07-1995

Acts Referred:

Partnership Act, 1932 — Section 25

Citation : AIR 1996 MP 37 : (1996) 1 MPJR 198

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : R.D. Jain, for the Appellant; R.K. Vashishtha, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Doabia, J.

The brief facts for the purposes of this petition preferred under Article 227 of the Constitution of India are as under.

The petitioner is one of the partners of the firm namely; M/s. Dinesh Kumar Harishankarand Company. This partnership firm consisted of 15 partners. This firm was engaged in the sale of country-liquor. A contract of country-liquor was taken by the firm during the period 1978-79, 1979-80 and 1980-81. This was with regard to shops located in the town of Gwalior. For some reason or the other, a dispute arose between the firm in which the petitioner was a partner it is alleged that State authorities did not supply the country-liquor. The matter was taken to the civil court but was dismissed as proper Court-fee was not paid. The further fact is that on 19th of March, 1990, a notice was served on the petitioner and a sum of Rs.2,75,231/- was sought to be recovered from him. This was issued with a view to recover from him the amount in his capacity as partner of the above firm on account of the liability having been created against the above firm. It is this notice, copy whereof is Annexure P/4 which has been challenged in this petition.

Two contentions have been raised by the learned counsel appearing for the petitioner. These are as under:

(i) that, the present petitioner was a partner only to the extent of 24% share in the partnership firm and he could be burdened with liability to that extent only; and

(ii) that, the country-liquor shops could not be opened on account of certain lapses committed by the Governmental agencies themselves.

As to what lapses were committed by the Government has not been elaborated, though an assertion to this effect has been made in para 3 of the petition. This para is vague. As such, the assertion made by the petitioner cannot be given any recognition.

The contention of the learned counsel on behalf of the petitioner that the liability of the petitioner was only to the extent of 24% share be examined.

The liability of a partner for the acts of the firm would be governed by the Indian Partnership Act, 1932, (hereinafter referred to as the Act). Section 25 of the Act is relevant and it reads as under :

"25. Liability of a partner for acts of the firm. -- Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner."

Before examining the scope of Section 25 of the Act, another section to which the learned counsel for the petitioner has made a reference be also noticed. This is Section 13(b) of the Act. This deals with mutual rights and liabilities. Section 13(b) of the Act reads as under:

"13(b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm."

The general principle of partnership firm is that a partner is always liable for partnership debt unless there is implied or express restriction to the contrary.

All the partners are jointly and severally liable for the acts of one of the partners of the firm. In this regard reference be made to the decision reported as Gurram Subbarayudu (Died) Gurram Subbamma and Others Vs. Moto Pothula Narasimham (Died) Garre Venkaiah and Others, . A promissory Note was executed by the Managing Partner of the firm. It was found by the Court that the debt was incurred for and on behalf of the firm and, therefore, all the partners are liable. It was pointed out that in view of the provisions contained in Sections 5, 18, 19 and 25 of the Act, all the partners are liable for the acts of other partners of the firm. In the present case, it is clear that the liability was created against the firm while it was carrying on business as firm. All partners including petitioner would thus be liable to discharge this liability.

A reference be made to the decision given by the Supreme Court reported as

Sahu Rajeshwar Nath Vs. Income Tax Officer, C-Ward, Meerut and Another, . Tax was due from an unregistered firm. Certificate was issued u/s 46 of the Income Tax Act, 1922. Certificate mentioned that the amount of arrears of tax is due from the unregistered firm. It was held that the Collector can execute the certificate of demand against a partner. In para 6 of the judgment, the Supreme Court observed that "in the present case we see no reason why the Collector should not execute the certificate for demand of Income Tax against the appellant who admits that he was a partner of the unregistered firm for the relevant accounting year." It was further observed that "it follows therefore that the proceedings taken for recovery of the tax by the respondents against the appellant is not entitled to the grant of a writ under Article 226 of the Constitution." The same view would be found in the decisions reported as UNION OF INDIA Vs. SATYANARAYAN KHAN AND OTHERS., and RAMGOPAL KHEMKA AND OTHERS Vs. UNION OF INDIA, , The Supreme Court approved the view of the Calcutta High Court in the above cases and specifically held that the view expressed by the Mysore High Court in T. Govindaswamy Vs. Income Tax Officer, Special Survey Circle, Bangalore and Another, and Allahabad High Court in Moti Lal Purshottam Das Vs. The Income Tax Officer, Kanpur, , does not lay down correct law.

In view of the above, I do not find any merit in the petition. However, reference may be made to the decision relied upon by the learned counsel for the petitioner reported as Mandyala Govindu and Co. Vs. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad, . The question before the Supreme Court was whether the firm should be registered under the Act or not. There were four partners, one of them was a minor. The partnership deed did not specify the shares of partners. The partnership deed specified shares in profits only and not the losses of the firm. It was held that the partnership is not entitled to registration. The reasoning given was that even if the adult partners bear the losses in proportion of their respective shares in the profits, the amount of loss in the minor's share would still remain undistributed. On this reasoning, it was held that the firm cannot be registered. This case in no way advance the case in hand. As such, I am of the view that there is no merit in this petition and the same is dismissed with costs. Costs Rs. 250/-.