
(1972) 08 GUJ CK 0005
In the Gujarat High Court

Harivadan Kanaiyalal

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 16-08-1972

Acts Referred:

Bombay Motor Vehicles Tax Act, 1958 — Section 16(1)(a)(i), 16(1)(a)(ii), 17, 4, 4(1)

Citation : (1973) CriLJ 1866 : (1973) GLR 515

Hon'ble Judges : D.A. Desai, J;A.N. Surti, J

Bench : Division Bench

Judgement

D.A. Desai, J.—Petitioner Harivadan Kanaiyalal has been convicted by the learned City Magistrate, 11th Court, Ahmedabad for having committed an offence u/s 16 (1) (a) (i) of the Bombay Motor Vehicles Tax Act, 1958, and has been sentenced to pay a fine of Rs. 50/- in default to suffer simple imprisonment for seven days.

2. Few relevant facts may be noticed. The petitioner is a registered owner of motor vehicle viz. scooter No. GJA 9418 and the vehicle came to be registered in his name somewhere on 27th February 1958. Tax payable in respect of the said vehicle by the person liable to pay the same commencing from 1st April, 1967 was not paid and a complaint was filed by one Mr. H. B. Rami, Motor Vehicle Inspector and taxation authority on 13th July, 1970 alleging that the petitioner who is a registered owner of the said vehicle has not paid the tax due and payable in respect of the said vehicle for the period 1st April, 1967 to 30th September, 1967. The allegation that the petitioner was the registered owner of the vehicle was not disputed, but the defence put forth was that the; petitioner had sold the motor vehicle in question in November, 1965 to one Prafulla R. Dave, and therefore, the petitioner was not liable to pay tax and no offence is committed by him. Prafulla R. Dave was examined as a defence witness and he admitted having purchased the motor vehicle in question in November, 1965. The learned Magistrate was of the opinion that even though the petitioner has sold the motor vehicle bearing No. GJA 9418 to Prafulla R. Dave on 1-11-1965, yet as the transfer of the vehicle was not registered with the Regional Transport Officer,

the petitioner continued to be the registered owner of the vehicle in question on the date on which tax became due, namely on 1st April, 1967. The learned Magistrate was further of the opinion that looking to the provision contained in Sub-section (2) of Section 8 the liability of the petitioner to pay tax even after he had sold the vehicle in question remains unimpaired and accordingly convicted him for having committed an offence u/s 16 (1) (a) (i) of the Bombay Motor Vehicles Tax Act and sentenced him as above. The petitioner challenged this order of conviction and sentence in the present Criminal Revision Application.

3. When this revision application came up for hearing before our learned brother D. P. Desai J. it was contended on behalf of the petitioner that before any one can be convicted for having committed an offence u/s 16 (1) (a) (i) of the Bombay Motor Vehicles Tax Act, 1958, prosecution must prove that the person sought to be punished was in possession or had control over the motor vehicle either as a registered owner or otherwise and that there is no evidence in this case to show that either on 1st April, 1967 or at any time thereafter the petitioner was in possession of or had control over the motor vehicle in question, and therefore, charge is not brought home to him. This contention was sought to be repelled by the learned Assistant Government Pleader appearing for the State by relying upon two decisions one being of M. P. Thakkar J. in Criminal Appeal No. 480 of 1970 decided on 3-9-1970 (Guj) and another of A. D. Desai J. in Criminal Revn. Appln. No. 392 of 1970 decided on 16-11-1971 (Guj). Relying on the aforementioned two decisions it was contended on behalf of the State that once the petitioner is shown to be the registered owner of the vehicle in question during the period the tax became due and payable, his liability to pay arises in view of the provision contained in Section 4 and it continued unimpaired in view of the provision contained in Sub-section (2) of Section 8 and mere failure to pay the tax due would be sufficient to convict him for having committed" an offence u/s 16 (1) (a) (i). D. P. Desai, J. was of the opinion that the person who can be convicted u/s 16 (1) (a) (i) is the one who is in possession of or has control over, whether as a registered owner or otherwise of any motor vehicle used or kept for use in the State and who fails to pay the tax or the additional tax due in accordance with the provisions of the Act in respect of such vehicle, and that there was no evidence in the case that on the relevant day that is on 1st April, 1967 the petitioner had possession or control of the motor vehicle that is the scooter in question, and, therefore, the charge was not brought home to him. As D. P. Desai, J. was of this opinion, which would to some extent run counter to the view in the aforesaid two judgments, he has referred the matter to a Division Bench and that is how this matter has come up before us.

4. Bombay Motor Vehicles Tax Act, 1958 has been enacted to consolidate and amend the law relating to the taxation of motor vehicles in the State of Bombay and to provide for certain other matters. Section 2 (5) defines "registered owner" to mean the person in whose name a motor vehicle is registered under the Motor Vehicles Act, 1939. Section 4 (1) imposes liability on certain persons to pay tax levied under the Act. Relevant portion of Section 4 (1) reads as under:

4 (1) The tax leviable u/s 3 shall be paid in advance by every registered owner, or any person having possession or control of a motor vehicle.

Section 8 has been referred to for certain purpose. It reads as under:

8. (1) If the tax leviable in respect of any motor vehicle remains unpaid by any person liable for the payment thereof, and such person before having paid the tax has transferred the ownership of such vehicle or has ceased to be in possession or control of such vehicle the person to whom the ownership of the vehicle has been transferred or the person- who has possession or control of such vehicle shall also be liable to pay the said tax to the Taxation Authority.

(2) Nothing contained in this section shall be deemed to affect the liability to pay the said tax, of the person who has transferred the ownership or has ceased to be in possession or control of such vehicle.

Section 12 provides that any tax due, and not paid as provided by or under the Act shall, subject to other provisions of the Act be recoverable in the same manner as an arrear of land revenue. Section 16 (1) (a) (i) reads as under:?

16. (1) Whoever,?

(a) as a registered owner or otherwise, has the possession or control of any motor vehicle used or kept for use in the State without having paid the amount of the tax, or additional tax, due in accordance with the provisions of this Act in respect of such vehicle, or

(b) x x x x x (c) x x x x x

shall on conviction be punished?

(i) with fine which shall not be less than a sum equal to the quarterly tax payable in respect of such vehicle, and which may extend to a sum equal to the annual tax payable in respect of such vehicle.

Chapter III of the Motor Vehicles Act, 1939 provides for registration of different types of motor vehicles. Section 31 provides that where the ownership of any motor vehicle registered under Chapter III is transferred, the transferor shall, within fourteen days of the transfer, report the transfer to the registering authority within whose jurisdiction the transfer is effected and shall simultaneously send a copy of the said report to the transferee. A duty is also cast on the transferee to report transfer within 30 days to the registering authority.

5. The petitioner was admittedly a registered owner of the scooter in question. He sold it to Prafulla R. Dave on 1st November 1965. He has stated that he had intimated the transfer of ownership to the registering authority. At any rate, the vehicle is not transferred from the name of the petitioner to the purchaser by the registering authority and it appears that during the period between 1-4-1967 and 30-9-1967 petitioner, continued to be the registered owner of the vehicle.

6. Section 4 imposes an obligation on the registered owner to pay the tax in respect of a motor vehicle of which he is the registered owner. The liability to pay tax in respect of the motor vehicle is cast upon two persons, one being the registered owner and the other, the person who is having possession or control of the vehicle in question. It becomes crystal clear from the language employed in Section 4 (1) that even if the person who is in possession or has control over the motor vehicle is not the registered owner of the motor vehicle, liability is cast upon him to pay tax in respect of the motor vehicle which is either in his possession or under his control. The registered owner would continue to be liable to pay the tax notwithstanding the fact that he has transferred the ownership of the vehicle in view of the provision contained in Section 4 (1) read with Section 8 (2). In order to be free from the liability of payment of tax the registered owner on transfer of the vehicle must get the transfer notified as required by Section 31 and to get the vehicle transferred to the name of the transferee. Till that is done, the registered owner would continue to be liable for payment of tax. There is no escape from this position in view of the provision contained in Section 4 (1) read with Section 8 (2).

7. Section 8 makes the transferee liable for the tax even for the period before the transfer if the transferor as a registered owner had not paid tax before transfer. Section 8 (1) makes the transferee of motor vehicle liable to pay tax which has remained unpaid before transfer by the registered owner. By Sub-section (2) the liability of the registered owner for the tax which has remained unpaid for the period before transfer has been kept intact. Section 8 only provides for liability in respect of tax in arrear between transferor and transferee. In view of the provisions contained in Section 8 (1), the transferee cannot contend that he would not be liable to pay tax which had become due prior to the transfer. For such tax both transferor and transferee would be liable. That is the effect of the provisions contained in Sections 8 (1) and 8 (2). In fact Section 8 (2) merely reinforced what has been enacted in Section 4 (1) namely the liability of the registered owner to pay tax, till he continues to be shown as registered owner notwithstanding the fact that the vehicle was transferred by him unless the transfer is reflected in the records maintained under Chapter III of the Motor Vehicles Act.

8. The question that falls to be determined is whether every registered owner who is liable to pay tax either in view of the provisions contained in Section 4 (1) or Section 8 (2) is also criminally liable for his failure to pay tax and can be prosecuted and convicted for an offence u/s 16 (I) (a) (i). Before any person can be convicted for having committed an offence u/s 16 (1) (a) (i) the prosecution will have to prove that that person was in possession or had control of any motor vehicle used or kept for use in the State either as a registered owner or otherwise without having paid the amount of the tax or additional tax due in accordance with the provisions of the Act in respect of such vehicle. The most important ingredient of Section 16 (1) (a) (i) is "has the possession or control of any motor vehicle." If a registered owner who is made liable to pay tax u/s 4 (1)

or Section 8 (2) was also to be criminally liable, it was not necessary to provide that such registered owner who has the possession or control of a motor vehicle would be committing an offence u/s 16 (1) (a) (i) if tax in respect of such vehicle has remained unpaid. Section 4 (1) imposes liability on two different persons for payment of tax, namely, the registered owner, or the person who is in possession or control of it. There can be two different persons liable to pay tax in respect of the same vehicle; (i) the registered owner and (ii) the person who has possession or control over the vehicle. The registered owner may not be in possession or may not have control over the vehicle. The person who is in possession or has control of vehicle may not be the registered owner, yet both would be liable to pay tax in respect of such vehicle u/s 4 (1). But if any one is to be prosecuted for the failure to pay tax, that person must be one who has the possession or control of such motor vehicle and no other. The person may be in possession or has control over the vehicle either as a registered owner or otherwise. But before such person can be convicted for an offence u/s 16 (1) (a) (i) he must be the person in possession of or control of such motor vehicle. That is the gravamen of the charge and that is the essential ingredient of the offence. There is purpose behind providing this very important ingredient while enacting criminal liability for failure to pay tax.

9. The registered owner undoubtedly is liable to pay tax. The Legislature however is conscious that after transferring the vehicle the registered owner either through inadvertence or negligence might have failed to notify transfer to the appropriate authority. The liability of such person to pay tax would continue and tax can be recovered from him as provided in Section 12. But the Legislature never wanted such person to be criminally liable. In fact when it came to enact criminal liability, the Legislature specifically provided that that person who is in actual possession or has control over that vehicle must answer the charge. The reason behind making such provision is quite discernible. The person who has such vehicle in his possession would immediately be conscious of the fact that there is a vehicle in his possession in respect of which tax has remained unpaid. Existence of the vehicle in his possession would be a constant reminder of the liability to pay tax. In the case of the registered owner who has parted with possession, he may either through inadvertence or negligence completely forget to pay the tax, or the very idea to pay tax may become obliterated from his mind as the vehicle is not with him. Therefore, this person in possession or one who has control over the vehicle in respect of which tax has remained unpaid would be liable to punishment u/s 16 (1) (a) (i). The only important ingredient of the offence u/s 16 (1) (a) (i) is possession or control of any motor vehicle in respect of which tax has remained unpaid.

10. If the registered owner who is liable u/s 4 (1) to pay tax was also to be criminally liable as contended by Mr. K. M. Chhaya, learned Assistant Government Pleader, obviously there was no reason for the Legislature to provide that such a registered owner who has possession or control of motor vehicle in respect of which tax has remained unpaid would be liable for punishment. A very

simple section could have been drafted instead of an elaborate Section 16 (1) (a) (i) providing that anyone who is liable to pay tax u/s 4 (1), if the tax has remained unpaid, shall, on conviction be punished in the manner provided in Section 16. It was not necessary to make such an elaborate provision and especially to add ingredient that that person who is sought to be prosecuted must be one who has possession or control over such motor vehicle. On examining the scheme of the various provisions, it appears that Section 4 (1) enacts liability to pay tax. Section 12 provides for recovery of tax from the person liable to pay tax. Section 8 extends the liability to the transferee simultaneously keeping intact the liability of the transferor for the tax that remained unpaid prior to transfer and Section 16 provides punishment for that person who has possession or control over the vehicle in respect of which tax has remained unpaid.

11. In Criminal Appeal No. 480 of 1970 decided by M. P. Thakkar, J. the accused was convicted for having committed an offence u/s 16 (1) (a) (i) and his defence was that he had already transferred the vehicle before the tax became due and payable. The question considered was whether the liability to pay tax upon the registered owner had ceased on the transfer of the vehicle and this contention was negatived relying on Sub-section (2) of Section 8 of the Act. The question whether the accused had at the relevant time in his possession or control the vehicle was not argued at all in that case. In Criminal Revision Application No. 392 of 1970 it was held that as the accused in that case was shown to be the registered owner of the vehicle during the relevant period, his liability to pay tax remained intact. The matter was not approached from the angle from which it was placed before D. P. Desai, J. and before us.

12. The petitioner, though a registered owner was not shown to be in possession or control of the vehicle in question during the relevant period and therefore, he cannot be convicted for having committed an offence u/s 16 (1) (a) (i) and conviction is unsustainable.

13. Mr. Chhaya urged that the interpretation which we seek to place on Section 16 would encourage defaulters in payment of tax and that the State would be without remedy to recover tax. It was also urged that the entire removal of the penal sanction would encourage default in payment of tax and it would be very difficult for the tax recovering machinery to realise the tax. In fact tax is ordinarily recovered by a procedure prescribed in the statute and Section 12 is a complete answer to the same. It is always not necessary that the defaulter in payment must necessarily be criminally liable. Mr. Chhaya then urged that if the case of the petitioner does not fall u/s 16, it would certainly fall u/s 17. There is reference to Section 17 in the referring judgment. Section 17 reads as under :

17. Whoever contravenes any of the provisions of this Act, if no other penalty is elsewhere provided therein for such a contravention, shall, on conviction, be punished with fine which may extend to one hundred rupees, and in the event of such person having been previously convicted of an offence under this Act with

fine which may extend to two hundred rupees.

It was urged that if the petitioner as a registered owner was liable to pay tax and he has not paid tax, he has contravened the provision contained in Section 4 (1) and as no other penalty is elsewhere provided for such contravention, he can be prosecuted and punished u/s 17. This approach ignores the very purpose for which Section 16 (1) (a) (i) was enacted. In fact, the Legislature never wanted any one to be punished for failure to pay tax except the one who is in actual possession of the vehicle. While imposing liability on the registered owner to pay tax and he continued to remain liable even after transfer of the vehicle, if the transfer is not notified to the appropriate authority, the Legislature never wanted such person to be criminally liable. If the Legislature ever intended to make the registered owner even after transfer of the vehicle to be criminally liable for the tax that remained unpaid after transfer, there was no reason to enact Section 16 (1) (a) in the language in which it is enacted. There is legislative exposition in the language employed in Section 16 (1) (a). Once proper meaning is assigned to Section 16 (1) (a), it would be against all known canons of construction to so interpret Section 17 as to provide criminal liability for defaulting registered owners. The interpretation sought to be placed on Section 17 would render Section 16 (1) (a) nugatory. If the legislature wanted that every registered owner notwithstanding the fact that he has parted with possession, should be criminally liable for the default in payment of tax, there was no reason for enacting Section 16 (1) (a) in the language in which it is enacted and then to include them into Section 17. The specific provision in Section 16 (1) (a) would give clue to the legislative intendment, namely, that the Legislature never wanted to impose criminal liability for failure to pay tax in respect of the motor vehicle on any one except the one who is in possession or has control over it. Therefore. Section 17 cannot be invoked on the specious pica that as the petitioner as a registered owner was liable to pay tax and as the tax has remained unpaid, he has contravened Section 4 (1) and as no other penalty is elsewhere provided for this default, he should be convicted for an offence u/s 17, and the contention must be negated.

14. Accordingly, this revision application is allowed and conviction of the petitioner for having committed an offence u/s 16 (1) (a) (i) of the Bombay Motor Vehicles Tax Act, 1958 and sentence of fine of Rs. 50/- in default to suffer simple imprisonment for seven days are set aside. Fine if paid is ordered to be refunded. Rule made absolute.