

(1954) 10 AP CK 0007

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 629 of 1954 and Criminal Rev. Petition No. 585 of 1954

In Re: Desi Raju Vendata Krishna Sarma

Date of Decision : 29-10-1954

Acts Referred:

Companies Act, 1913 — Section 230(1), 6

Citation : (1955) 25 CompCas 32 : (1955) CriLJ 332 : (1954) 67 LW 1198

Hon'ble Judges : Chandra Reddy, J

Bench : Single Bench

Advocate : K. Krishnamurthy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

(1) The petitioner is a Managing Director of a Company called Messra, Uplands Trading Company Limited, Brodlepeta, Guntur. A complaint was filed before the Additional First Class Magistrate No. 1, Guntur, by the Assistant Commercial Tax Officer, Guntur, against the petitioner and other directors of the said company for failure to pay sales tax for the year 1948-49, an offence punishable under S. 15 (b), Madras General Sales Tax Act. The case against them was that the company exported groundnut oil through Messra. Raleigh Brothers, and in respect of that transaction, sales tax to the tune of Rs. 3285-6-3 was payable, that notice in form B demanding payment of the tax was served upon the petitioner, the Managing Director, on 16.3.1950, and that in spite of it, this amount was not paid within the time allowed.

(2) One of the defence put forward on behalf of the petitioner was that the company was not liable to pay the demanded as it was already collected from their agents, Messrs. Raleigh Brothers. The pleas raised on behalf of other accused are not material in this inquiry, as they have all been acquitted. This defence has been rejected as S. 16-A, Madras General Sales Tax Act, precluded an assessee from questioning the validity of the assessment in any criminal Court in any prosecution. In this view of the matter, he found the petitioner guilty of the offence charged and convicted and sentenced him to a fine of Rs. 100/-, with two months simple imprisonment in default. Besides, there was a

direction that the arrears of tax of Rs. 3285-6-3 should be recovered from him as if it were a fine. The other directors were acquitted as no notice of demand was served on them.

(3) The petitioner has not questioned his conviction under S. 1(b), Madras General Sales Tax Act, though the Andhra State Legislature while adopting this Act omitted S. 16-A. But he challenges the validity of the direction as regards the recovery of arrears of tax, as if it were a fine from him personally.

(4) In support of the contention that a personal liability cannot be imposed upon a Director of a Company, reliance is placed on two decisions of the Madras High Court -- The Public Prosecutor Vs. K. Jacob Nadar, (1) (A) and -- In Re: Behara Lachanna Patnaick one of the partners of Behara Lachanna Patnaick and Sons and Kallepalli Chiranjeevi, (B). In the first case, Subba Rao J. (as he then was) held that under the Madras General Sales Tax Act, a firm is a person for purposes of assessment and prosecution, and in default of payment of tax, was liable to be prosecuted and a partner who was not served with notice of demand of tax could not be prosecuted for default of the firm. That ruling is not apposite for the reason that in this case, it is the company that is prosecuted and not particular individuals alone. Further, the learned Judge has not decided the question whether an individual partner is personally liable for payment of taxes.

(5) To the same effect is the ruling in -- In Re: Behara Lachanna Patnaick one of the partners of Behara Lachanna Patnaick and Sons and Kallepalli Chiranjeevi, (B)". Somasundaram J. relied on -- The Public Prosecutor Vs. K. Jacob Nadar, (1) (A)" in support of his conclusion that some of the partners alone cannot be prosecuted for failure to pay taxes assessed on a firm. So these rulings do not in any way help the petitioner. On the other hand, there is an incidental remark in the judgment of Mr. Justice Somasundaram, that every partner is individually liable to pay the Tax. But these observations cannot apply to the present case for the reason that the position of Directors of a Company with limited liability is different from the partner of a firm. It must be mentioned and that the company in this case is one with limited liability. In the case of a partner of a firm, he is liable personally for the debts of the partnership. But different consideration arise in the case of the members of limited liability company which is a legal entity.

(6) Under S. 6 (iv), Companies Act, the liability of the members is limited to the amount payable on the shares. There can, therefore, be no personal obligation on the share-holders or even the directors in respect of the debts or even the taxes, revenue etc., due from the Company. It is only in cases where a statute creates a personal liability that it could be enforced, and that apart from the statute, no personal liability can be fastened upon a director of a company. There are provisions in the Indian Companies Act which requires the directors to do certain things and the failure to comply with these requirements involves certain penalties for which they are made personally liable.

(7) Payment of tax is not one of such requirements. The taxes are to be paid by

the company as such, and it is not the liability of the individual members.

(8) The company which is a body corporate can be made liable for the payment of taxes and in respect of taxes payable by it, the individuals constituting the company cannot be held responsible for the default in payment of such taxes. In this context, a passage from Lindley on Companies 6th edition at page 299 extracted at page 323 in -- Harihar Prasad Vs. Bansi Missir and Others, is apposite:

"The Society (speaking of an Industrial Provident Society spoken of as the Co-operative Societies in England, see Halsbury Laws of England Vol. 17 p. 3) being incorporated, must sue and be sued by its corporate name, and its members are individually liable for its debts and engagements only so far as the statute allows. As in the case of companies registered under the Companies Act, 1862, so in the case of societies registered under the Act now in question, the members are not liable to have executions issued against them in respect of judgments obtained against the society. The members can only be reached individually by the process of winding up."

(9) There is no statutory provision in the Companies Act which entitled either a creditor or even the Government to proceed against a director of a limited liability company in respect of taxes payable by the company. It is only the assets of the company that can be proceeded against, and if there is any unpaid share-money the members should be called upon to contribute with others.

(10) Another passage from the same book at page 363 extracted at page 323 in -- "Harihar Prasad v. Bansi Missir (C)" is also appropriate :

"If the company is not registered with limited liability the members are liable to the full amount of the company's debts and engagements, whatever they may be. The liability, however, is a liability to contribute with others and such liability can only be enforced upon the winding up and no execution can proceed against a member."

(11) It is thus clear that a personal liability cannot be fastened upon a director or even a managing director in respect of taxes payable by the company. It looks to me that in this regard there can be no difference between debts and taxes payable by the company.

(12) Section 230 (I), Indian Companies Act, makes the position clear. Section 230 (1) enacts :

"In a winding up there shall be paid in priority to all other debts all revenue, taxes, cesses and rates whether payable to the Union of India or a State, or to local authority, due from the company, at the date hereinafter mentioned and having become due and payable within the twelve months next before that date."

It is implicit in this section that even revenues, taxes, cesses and rates payable to the State are only recoverable from the assets of the company. Therefore, the

directors cannot be personally proceeded against in "respect of revenues", taxes etc.

(13) The learned Public Prosecutor sought to support the judgment of the lower Court on the basis of Ss. 8 (B) (2) and 15 (n), Madras General Sales Tax Act, and S. 386, Criminal P. C. I do not think these sections have any relevancy in this inquiry. All that S. 8-B (2) says is :

"Every person who has collected or collects any amount by way of tax under this Act, on or after 1.4.1947, shall pay over to the State Government within such time and in such manner as may be prescribed, all amounts so collected by him, if they are in excess of the tax, if any, paid by him for the period during which the collections were made ; and in default of such payment, the amounts may be recovered as if they were arrears of land revenue."

This only contemplates enforcement of payment of taxes by dealers, when they collect the sales taxes from purchasers and fail to pay them to the Commercial Tax Authorities. Nor has S. 15 (h), Madras General Sales Tax Act, or S. 386, Criminal P. C. any bearing on the present inquiry. Section 15 (h) only directs the Magistrate convicting a person for contravention of any of the provisions of the Act to specify in the order that the tax or fee which such convicted person has filed or evaded to pay, or wrongfully collected shall be recoverable, as if it were a fine. That does not enable a Magistrate to give such a direction in respect of tax which is not personally payable by a director. Section 386, Criminal P. C. provides only the mode of collecting the fine imposed. That also does not throw any light on the present inquiry.

(14) For these reasons, I must hold that the petitioner, the Managing Director, cannot be made personally liable for the arrears of tax due by the company. The taxing authorities could proceed against the assets of the company. If the tax has been collected from the petitioner personally, it will be refunded to him.

(15) Order accordingly.