

(1951) 08 MAD CK 0028

In the Madras High Court

Case No : Criminal Revision Case No"s. 787, 788 and 1327 of 1950 and Criminal Revision Petition No"s. 725, 726 and 1255 of 1950

In Re: P.P. Sivarama Pillai and Another

Date of Decision : 31-08-1951

Acts Referred:

Madras General Sales Tax Act, 1939 — Section 15
Tamil Nadu General Sales Tax Rules, 1959 — Rule 31

Citation : AIR 1952 Mad 54 : (1952) 22 CompCas 36 : (1951) 64 LW 1015 : (1952) 1 MLJ 7

Hon'ble Judges : Somasundaram, J

Bench : Single Bench

Advocate : Asst. Public Prosecutor, V. Sundaresan and K.V. Srinivasa Aiyar, for the Appellant;

Judgement

Somasundaram, J.—In this case the petitioner has been convicted u/s 15(b) , of the Madras General Sales-tax Act for not having paid the

tax due, viz., a sum of Rs. 643-8-11. In the notice issued he has been asked to pay either in cash or by cheque. The petitioner sent a cheque dated

29th June 1948, drawn on the South India Bank, Mathurai. It was drawn in favour of the Assistant Commercial Tax Officer, Mathurai II. It

appears to have been cashed by the peon on 21st July 1948 and the money appears to have been misappropriated. The sum was not therefore

credited to the account. Since the accounts do not bear evidence of payment by the petitioner, the petitioner was prosecuted. It was found by both

the Courts below that the cheque was sent as mentioned above and that it was cashed by the peon of the Assistant Commercial Tax Officer. There

was no question of the cheque not being met without funds being provided for by the party concerned. The only thing that is established is that the

amount has not been actually credited to the Government. It is, therefore,

contended by the prosecution that the cheque cannot be treated as final payment in view of the specific provision in the Treasury Code. Under Rule 31 framed under the General Sales-tax Act when any payment by cheque is permitted by the rules under the Act, the cheques shall be such as under the Madras Treasury Code are receivable by the Government Treasury concerned. According to the rule under the Treasury Code, a cheque received shall be treated as final payment only after it has been met and the amount has been actually credited to Government. The cheque that was sent was not a crossed cheque and it therefore facilitated the cashing of it by the peon. The cheque bears the stamp of the office receiving it. The contention of the petitioner's advocate is that he having sent a cheque in accordance with the notice sent to him and the cheque having been sent (cashed?) it cannot be said that he has not paid the amount. So far as payment is concerned, in law, in my opinion, it amounts to payment. If in the office of the Assistant Commercial Tax Officer a fraud was committed by some of the subordinate officers or by the menials, the petitioner is certainly not responsible for that. In the absence of any proof that the petitioner was a party to the fraud which is not suggested by the prosecution and on the finding of the lower Court that the cheque was certainly honoured and cash has been paid, I hold that the petitioner paid the amount due and therefore he is not guilty of the offence u/s 15 (b) of the Sales Tax Act. The conviction and sentence are therefore set aside and the amount if it has been paid shall be refunded to the petitioner.

2. Criminal Revision Case No. 788 of 1950 : In this case the amount Involved is Rs. 448-8-0/- and it has been paid by cheque dated 24-9-1948 which was cashed on 6-10-1948. For the reasons mentioned in my judgment in Criminal Revision Case No. 787 of 1950, the conviction and sentence of the petitioner are set aside and the amount if it has been paid shall be refunded to him.

3. Criminal Revision Case No. 1327 Of 1950: In this case the amount involved is Rs. 344 and it has been paid by the cheque dated 13-10-1948 which was cashed on 11-11-1948. For the reasons mentioned in my judgment in Crl. B. C. No. 787 of 1950 the conviction and sentence of the petitioner are set aside and the amount if it has been paid, shall be refunded to the petitioner.