(2006) 11 AP CK 0100

In the Andhra Pradesh High Court

Case No : Criminal P No. 5228 of 2003

Ippagunta Koteswari APPELLANT

Vs

State of A.P. and Another RESPONDENT

Date of Decision : 10-11-2006

Acts Referred:

Andhra Pradesh Gram Panchayats Act, 1964 — Section 60, 60(1), 60(4), 70, 72
Andhra Pradesh Gram Panchayats Rules, 1964 — Rule 10, 11, 12, 13, 14
Andhra Pradesh Panchayat Raj Act, 1994 — Section 211, 261, 268, 269, 61
Cattle Trespass Act, 1871 — Section 20
Civil Procedure Code, 1908 (CPC) — Section 60
Criminal Procedure Code, 1973 (CrPC) — Section 2, 482

Citation : (2007) 1 ALD 351 : (2007) 1 ALD(Cri) 1 : (2007) 2 ALT(Cri) 259

Hon'ble Judges : G. Yethirajulu, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : M. Ravindranath Reddy, for the Appellant; Public Prosecutor for Respondent No. 1 and M. Vinkata Narayana, for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.—The question arises for consideration in this petition is: Whether non-payment of house tax due to a Gram Panchayat is an offence punishable under the provisions of Andhra Pradesh Panchayat Raj Act, 1994 (for short "the Act") and the rules made thereunder and whether the Magistrate can take cognizance of the offence on the complaint so filed by the Executive Officer/ Sarpanch of the Gram Panchayat, as the case may be?

2. When the criminal petition came up for hearing before a learned Single Judge of this Court, the learned Judge appears to have been felt that the matter should be decided by a Division Bench and accordingly directed the Registry after obtaining necessary orders from the Honourable Chief Justice matter be listed before a Division Bench. Therefore, the petition thus, listed before us.

3. Briefly stated the facts leading to filing of the petition u/s 482 Cr.P.C. are thus:

The Sarpanch of Pottepalem Gram Panchayat filed a complaint under Sections 70 and 72 read with Rules 34(2) and 41(1) of Schedule of Andhra Pradesh Gram Panchayats Act, 1964 before the Court of IV Additional Judicial First Class Magistrate, Nellore, alleging that an amount of Rs. 40,176-90 is due from Siri Cold Storage, Pottepalem Village, Nellore Rural Mandal and District towards the house tax on Assessment No. 525 for the years 1999-2000, 2000-2001 and 2001-2002 Rs. 13,392-30 each. A demand notice was served on the petitioner/ accused on 26-11-2001 demanding the house tax due, and on failure to pay the house tax within the stipulated time, a warrant was taken on for distraining the property of the accused under Rule 84(1) of Schedule of the A.P. Gram Panchayats Act, 1964. The distraint of defaulters property was found impracticable. Thus, the accused wilfully omitted to pay the amount of Rs. 40,176-90 towards house tax and has committed offences punishable under Sections 70 and 72 of the A.P. Gram Panchayats Act, 1964. On filing the above complaint, the learned Magistrate took the case on file under Sections 70 and 72 read with Rules 34(2) and 41(1) of Schedule of the A.P. Gram Panchayat Act, 1964 and issued process. Questioning taking cognizance of the offence by the Magistrate the petitioner who is the Managing Director of Siri Cold Storage invoked the jurisdiction of this Court u/s 482 Cr.P.C. for quashing the proceedings pending on the file of the Magistrate contending that Rule 33(1) of the Rules does not make the non-payment of the house tax due to. a Gram Panchayat as an offence punishable under the provisions of the Act and rules framed thereunder, therefore the very prosecution launched has no basis. The second respondent-complainant straightway laid charge-sheet purporting to it under Sections 70 and 72 read with Rules 34(2) and 41(1) of Schedule of the A.P. Gram Panchayat Act, 1964. In the absence of any authority under which the Sarpanch himself would have investigated into the nonpayment of the house tax by treating the same as an offence, the Magistrate ought not to have taken it on file.

4. Sri M. Ravindranath Reddy, learned Counsel for the petitioner submits that in the absence of any provision which makes non-payment of house tax to a Gram Panchayat is a penal offence under the Act or rules framed thereunder, launching prosecution by the Sarpanch is an abuse of process and taking it on file by the Magistrate is not at all sustainable. In support of his submission, he placed reliance on the judgment of this Court in K. V.S.S. Sambhu Prasad v. E.O. Gram Panchayat Chinthaparru, W.G. District and Anr. 2002 (1) ALD (Crl.) 400 (AP) : 2002 (1) LS 211. He further contends that Sub-rule (1) of Rule 26 of the Rules called Rules relating to certain taxes and other lodging of moneys received by the Gram Panchayat and payment of money from the Gram Panchayat Fund issued under G.O. Ms. No. 30, PR & RD & R dated 20-1-1995 (for short "the Rules") provides recourse to recover the amount due towards house tax by issuing distraint warrant. Section 61 of the Act provides the manner in which house tax can be levied but does not make it penal, unlike Section 211 which prescribes election offences. By drawing attention to the definition of "offence" under the Code of Criminal Procedure, learned Counsel would contend that

unless the same is punishable under law, the Magistrate cannot take cognizance of the offence.

5. Learned Counsel for the complainant would contend that Rules 25 and 26 of the Rules provide for collection of house tax and Sub-rule (2) of Rule 26 authorizes the Executive Authority to prosecute the defaulters for non-payment of house tax. Rule 33 prescribes that every person who is prosecuted under Sub-rule (2) of Rule 26 is liable to pay a fine not exceeding twice the amount which may be due on account of the property distrained. He further contends that Schedule II of Criminal Procedure Code prescribes classification of offences against other laws, where offence punishable with imprisonment for less than three years or with fine only for the offence is non-cognizable and bailable and any Magistrate is entitled to try the said offence, who rightly took the case on file and issued process, which do not require any interference.

6. Learned Additional Public Prosecutor while sustaining the issuance of process by the Magistrate contended that as per Schedule-II of Code of Criminal Procedure, the Magistrate is competent to try the offences against other laws.

7. Before we answer the submissions made by the respective Counsel, it is appropriate to notice the statutory provisions.

8. Chapter III of the Act deals with Taxation and Finance. Section 60 deals with taxes leviable by Gram Panchayats. Section 60(1)(a) provides a Gram Panchayat shall levy in the village a house tax. Section 61 deals with house tax referred to in clause (a) of Sub-section (1) of Section 60 shall, subject to such rules as may be prescribed, be levied on all the houses in the village on any one of the following basis, namely: (a) annual rental value; or (b) capital value; or (c) such other basis as may be prescribed. Sub-section (3) of Section 61 envisages levy of house tax every year, save as otherwise expressly provided in the rules made under Sub-section (1) be paid by the owner within thirty days of the commencement of the year and shall be levied at such rates as may be fixed by the Gram Panchayat, not being less than the minimum rates and not exceeding the maximum rates, prescribed in regard to the basis of levy adopted by the Gram Panchayat. Sub-section (4) of Section 60 authorizes the Government to make rules providing for exemption of special classes of houses from the tax and manner of ascertaining the annual or capital value of houses etc.

9. Section 269 prescribes penalties for breach of rules, which reads as under:

Section 269. Penalties for breach of rules:- A rule under this Act may provide that a breach thereof shall be punishable with fine which may extend to fifty rupees, or in case of continuing breach with fine not exceeding five rupees for every day during which the breach continues for conviction for the first breach.

Section 270 deals with making of bye-laws and penalties for their breach, which needs no elaboration. In exercise of powers conferred under rule making provision, namely, Section 268 of the Act, the Rules as referred to above were framed. Rules 4 to 15 deal with assessment of the house tax and Rules 25 to 36 provide for collection of house tax.

10. It is relevant to note Rule 25(1) and Rule 26(1)(2) of the Rules, which govern the issue involved in the petition.

25. (1) When a house tax is due from any person, the Executive Authority of the Gram Panchayat shall serve upon such person a bill for the sum due before he proceeds to enforce the provisions of Rule 26.

(2) to (4) x x x x.

26. (1) If the amount of the tax demanded is not paid within fifteen days from the service of the bill or the giving of the direction referred to in Rule 11 or notice under Rule 14 and if the person from whom the tax is due has not shown cause to the satisfaction of the Executive Authority why it should not be paid, the Executive Authority may recover by distraint under his warrant and sale of the movable property of the defaulter, the amount due on account of the tax together with the warrant fee and the distraint fee and with such further sum as will satisfy the probable charges that will be incurred in connection with the detention and sale of the property so distrained:

Provided always that the movable property described in the proviso to Section 60 of the Code of Civil Procedure, 1908, shall not be liable to distraint.

(2) If for any reason the distraint or a sufficient distraint of the defaulter''s property is impracticable, the Executive Authority may prosecute the defaulter.

(3) and (4) x x

Rule 27 deals with seizure of movable property on issuance of distraint warrant and allowing period of seven days for paying the amounts due and redeeming the property seized. Rule 28 deals with sale of distraint property on expiry of seven days if the assessee failed to pay the amount for which distraint warrant is issued, and postponement of the sale pending investigation of the objections, if any made by the defaulter. Rule 33 deals with liability of the person who has been prosecuted under Sub-rule (2) of Rule 26 on proof to the satisfaction of the Court that he wilfully omitted to pay the amount due or that he wilfully prevented distraint or a sufficient distraint to pay a fine not exceeding twice the amount which may be due by him on account of (a) the tax and warrant fee, if any; and (b) if distraint has taken place, the distraint fee and the expenses incidental to the detention and sale, if any, of the property distrained. Sub-rule (2) of Rule 33 authorizes the Court that whenever any person is convicted of an offence under Sub-rule (1), in addition to any fine which may be imposed, recover summarily and pay over to the Gram Panchayat the amounts, if any, due under the heads specified in Clauses (a) and (b) of Sub-rule (1) and also recover summarily and pay the Gram Panchayat such amount, if any, as he may fix as the costs of the prosecution.

11. A conjoint reading of the above statutory provisions and rules framed for collection of house tax makes it clear that any violation of the rules made under the Act is penal and shall be punishable with fine as specified u/s 261 of the Act.

12. It is now well settled principle of law that rules validly framed become part of the statute, such rules are, therefore, required to be read as part of the main enactment. It is also well settled principle of law that for the interpretation of statute, attempt must be made to give effect to all provisions under the rules. No provision should be considered as surplus age.

13. Rule 25 prescribes service of bill for the sum due before proceeding to enforce the provision under Rule 26 and same was served on the petitioner. If the amount of the tax demanded is not paid within 15 days from service of bill, and the person from whom tax is due has not shown cause to the satisfaction of the Executive Authority why it is not paid, the Executive Authority may recover by distraint under his warrant and sale of the movable property of the defaulter. After issuance of distraint warrant, if the Executive Authority feels for any reason the distraint or a sufficient distraint of the defaulter''s property is impracticable, the Executive Authority may prosecute the defaulter for non-payment of amount, so demanded, apart from proceeding to sale of the property seized under Rule 27 or in the procedure prescribed under Rules 28, 31, 32. Rule 33 prescribes the liability of the person who is prosecuted under Sub-rule (2) of Rule 26, on proof to the satisfaction of the Court that he wilfully omitted to pay the amount due by him or that he wilfully prevented distraint, or a sufficient distraint, to pay a fine not exceeding twice the amount which may be due by him on account of tax. Whenever any person is convicted of an offence under Sub-rule (1), the Court shall, in addition to any fine which may be imposed, recover summarily and pay over to the Gram Panchayat the amounts, if any, due under the heads specified in Clauses (a) and (b) of Sub-rule (1) of Rule 33 may in his discretion also recover summarily and pay the Gram Panchayat such amount, if any, as he may fix as the costs of the prosecution.

14. Section 269 of the Act has not been brought to the notice of this Court in K.V.S.S. Sambhu Prasad''s case (supra), on which much reliance was placed by the learned Counsel. Since it is recorded that no provision was brought to the notice of the Court, which makes nonpayment of house tax to a Gram Panchayat a penal offence punishable under the provisions of the Act and rules made thereunder, this Court proceeded on the premise that there is no provision which makes non-payment of house tax to the Gram Panchayat a penal offence punishable under the provisions of the Act and rules made thereunder. Further, Section 2(n) of the Code of Criminal Procedure defines "offence" which means "any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made u/s 20 of the Cattle Trespass Act, 1871." Schedule II of the Code of Criminal Procedure deals with offence punishable with imprisonment for less than 3 years or with fine only is non-cognizable and bailable and any Magistrate having jurisdiction over the

area can try such offence.

15. Further, it was contended that cognizance was taken under the old Act, which has been repealed by the new Act. Therefore, the same is liable to be quashed.

16. It is settled that if a latter statute again describes an offence created by the earlier statute and imposed different punishment, or varies the procedure, the earlier statute is repealed by implication. "If the statute deals with particular class of offence" said Martin, B. subsequent Act is passed which deals with precisely the same offences, and a different punishment is imposed by the latter Act, I think that, in effect, the Legislature is declared that the new Act shall be substituted for the earlier Act. R. v. Youle 1861 (158) ER 31. It was held by the Supreme Court in Om Prakash Gupta Vs. State of U.P., , that the above principle has no application where the offence described in the latter Act is not the same as described in the earlier Act, when the essential ingredients of the two offences are different.

17. Once the offence and the punishment under the old Act and the repealed Act is one and the same, though the cognizance was taken under the repealed Act, the same will not debar the Magistrate in proceeding with the case. However, the provision of law can be corrected for which cognizance has taken at any time before pronouncement of the judgment after due notice.

18. In view of the statutory provisions, as referred to above, once the petitioner failed to pay the house tax, so demanded, it is always open for the Gram Panchayat to launch prosecution before the Magistrate, having jurisdiction over the area, empowered to try such offences. In view of the same, we are of the opinion that taking cognizance of the offence by the Magistrate for the offences as referred to above do not suffer from any illegality warranting interference of this Court.

19. The criminal petition fails and is accordingly dismissed.