(1979) 03 CAL CK 0011

In the Calcutta High Court

Case No : Criminal Revision No. 1940 of 1978

Jugal Kishore Popli and Others — APPELLANT

Vs

The State of West Bengal — RESPONDENT

Date of Decision : 14-03-1979

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 468, 473

Citation : (1979) 44 STC 283

Hon'ble Judges : P.C. Barooah, J;A.N. Banerjee, J

Bench : Division Bench

Advocate : Dilip Kumar Dutta and Biswanath Sanyal, for the Appellant;Arun Kumar Mukherjee, for the Respondent

Judgement

A.N. Banerjee, J.—In this rule, the four petitioners, who are partners of M/s. Jugal Kishore Popli and Company, carrying on its business at 118, Mahatma Gandhi Road, Calcutta, and which firm is a registered dealer under the Bengal Finance (Sales Tax) Act, 1941, pray for quashing of a proceeding pending against them in the court of the learned Metropolitan Magistrate, 14th Court, Calcutta.

2. On 15th October, 1976, the police submitted a challan against the petitioners on their failure to deposit the security deposit of Rs. 15,000 within 7 days from the date of the service of the memo issued by the Additional Commissioner of Commercial Taxes, West Bengal, u/s 7(4a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, and thereby committing an offence u/s 22(1)(b) of the aforesaid Act. On the basis of such challan, the learned Additional Chief Metropolitan Magistrate, before whom it was filed, took cognisance against the petitioners and, subsequently, the case was transferred to the 14th Court of the Metropolitan Magistrate, Calcutta. The petitioners filed an application before the learned Metropolitan Magistrate, 14th Court, Calcutta, praying for their discharge on the ground that the cognisance was bad and illegal inasmuch as it was barred by limitation. The learned Magistrate rejected such application. Thereafter, the petitioners moved this Court and obtained the present rule.

3. Mr. Dilip Kumar Dutta, the learned Advocate appearing on behalf of the petitioners, took twofold objections to the continuation of the proceedings. His first objection was that, since the registered firm, viz., Jugal Kishore Popli and Company, has not been made an accused, the partners of that firm could not be sued on the allegation that they failed to comply with the demand made by the Additional Chief Commissioner of Commercial Taxes, West Bengal, u/s 7(4a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, to deposit the security deposit of Rs. 15,000 within 7 days from the date of service of his memo dated 27th January, 1965. Mr. Dutta contended that the aforesaid firm was the registered dealer and has had legal entity of its own and without impleading the said firm the partners of it could not be prosecuted for violation of the aforesaid order of the Additional Chief Commissioner of Commercial Taxes for deposit of the security deposit of Rs. 15,000, which was served on the firm. The second contention of Mr. Dutta was that, in any event, the learned Additional Chief Metropolitan Magistrate acted illegally and without jurisdiction in taking cognisance of the offence u/s 22(1)(b) of the Bengal Finance (Sales Tax) Act long after the alleged commission of the offence particularly when the challan itself shows that the offence was committed during the period between 3rd February, 1965, and 25th August, 1972.

4. Mr. Arun Kumar Mukherjee, the learned Advocate appearing on behalf of the State, drew our attention to the provisions of Section 11A of the Bengal Finance (Sales Tax) Act, 1941, and submitted that since the petitioners were admittedly the partners of the firm of M/s. Jugal Kishore Popli and Company, action could be taken against the partners for commission of an offence u/s 22(1)(b) of the aforesaid Act. It was also contended by Mr. Mukherjee that failure to deposit the security deposit as demanded u/s 7(4a) of the said Act was a continuing offence and, as such, Section 473 of the Code of Criminal Procedure, 1973, would be attracted, and cognisance would not be barred by limitation. Having regard to the submissions made by the learned Advocates of the respective parties and on a consideration of the materials before us, we are inclined to agree with the contention of Mr. Dutta. A dealer has been defined in the Bengal Finance (Sales Tax) Act, 1941, as a person who carries on the business of selling goods in West Bengal and includes the Government. Under the explanation, co-operative societies or a club or any association or a firm, broker, commission agent, etc., come within the definition of "dealer". u/s 7(4a) of the Act, the Commissioner may, for good and sufficient reasons to be recorded in writing, demand from any "registered dealer" or any person who has applied for registration under this Act, after giving such dealer or person an opportunity of being heard, reasonable security for the proper demand of tax payable under the Act. It would be noticed that a registered dealer has been treated as a different entity from the person who has applied for registration under the Act. In the present case, M/s. Jugal Kishore Popli and Company is a registered dealer. It is also not in dispute that the demand to deposit the security deposit was made on the said firm. There is also no dispute to the fact that the petitioners are the partners of the aforesaid

registered firm, viz., Jugal Kishore Popli and Company. That being the position, we are of the view that the firm M/s. Jugal Kishore Popli and Company, which is a registered dealer, should have been made an accused and, in the absence of such an accused, the partners of it cannot be prosecuted for violation of the order of the Commissioner to deposit the security deposit. Section 11A of the Act contemplates of a proprietary business being carried on under a trade name, but it has no application to a partnership firm like Jugal Kishore Popli and Company, which is also a registered dealer. In such circumstances, Mr. Dutta was right in arguing that partners alone could not be made vicariously liable for the alleged commission of the offence by the firm and that, in the absence of the firm in the category of an accused, continuation of the proceeding against the partners would be an abuse of the process. We also agree with the contention of Mr. Dutta that the learned Additional Chief Metropolitan Magistrate acted illegally and without jurisdiction in taking cognisance of the offence when, on the face of the F.I.R. lodged by the Commercial Tax Officer, on the basis of which the police submitted a case, it indicates that the period of the offence was sometime between 1965 and 1972. We have already seen that the challan was submitted on 15th October, 1976, on which date cognisance was also taken by the learned Additional Chief Metropolitan Magistrate. It cannot be said that the alleged offence is a continuing one. As soon as the registered dealer failed to comply with the demand made by the Commissioner in accordance with the provisions of Section 7(4a) of the Bengal Finance (Sales Tax) Act, the registered dealer committed an offence, which is a completed one.

5. Accordingly, the alleged offence was barred u/s 468(1)(b) of the Code of Criminal Procedure and the learned Additional Metropolitan Magistrate acted illegally in taking cognisance of it.

6. In the result, the rule is made absolute. The proceeding pending against the petitioners is hereby quashed.

P.C. Barooah, J.

I agree

