

(1957) 02 AP CK 0003

In the Andhra Pradesh High Court

Case No : S.T.C. No. 49 of 1955 and Criminal Revision Case No. 324 of 1955

Katam Chinna Veeraiah and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-02-1957

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 435, 439

Citation : (1957) 8 STC 686

Hon'ble Judges : Syed Qamar Hassan, J

Bench : Single Bench

Advocate : K. Jayachandra Reddy and D. Munikanniah, for the Appellant;

Final Decision : Allowed

Judgement

Syed Qamar Hassan, J.—There is a firm run under the name and style of Katam Ayyanna Chetty & Co. Admittedly its partners are the father of the first accused and Pindikoona Narayanaswami. The firm was assessed to sales tax amounting to Rs. 1, 540-6-9 due to the State. The case for the prosecution was that both the accused failed to pay the sales tax despite the fact that they received demand notices on 28th March, 1955.

2. One of the defences raised before the trial Court was that the complaint was bad because all the partners of the said firm were not made parties to the complaint. The learned Sub-Divisional Magistrate, Cuddapah, overruled the plea and sentenced the petitioners to pay a fine of Rs. 50 each or in default to undergo simple imprisonment for a month each.

3. The learned advocate for the petitioners urged before me that the Court below had erred in holding the first accused a partner of the firm. It is an admitted fact that the father of the first accused is the real partner and that because of his illness, the management of the firm has been left to the first accused. To substantiate his argument that the complaint was bad, the learned advocate relied upon P. Hanumanthiah v. The Deputy Commercial Tax Officer (1956 7

S.T.C. 19; AIR 1956 Mad. 219). In this authority after referring to cases reported in The Public Prosecutor Vs. K. Jacob Nadar, and In Re: Behara Lachanna Patnaick one of the partners of Behara Lachanna Patnaick and Sons and Kallepalli Chiranjeevi, , Somasundaram, J., has laid down :-

"Under the Act, if a firm is assessed to tax, it is the firm that must be proceeded against and prosecuted for non-payment of tax But, not to stand on mere technicalities, if the entire partners had been brought on record, there is no objection to treating the entire partners as partners of the firm and the firm being represented by its partners If the firm as such is prosecuted under its name and style, then it does not matter whether all the partners are before the Court or only some of them are before the Court."

4. I find that the Court below has proceeded on the assumption that inasmuch as the father of the first accused was suffering from paralysis and the first accused was carrying on and managing the business of the firm he ought to be deemed to be a de facto partner and therefore he as such would be liable to be punished for contravention of section 15(b) of the Madras General Sales Tax Act. I have not been able to appreciate the distinction made by the Court below between a de facto partner and a de jure partner. The Partnership Act does not make any such distinction. One test to find out whether the first accused can be said to be a partner is to see whether he can successfully bring a suit for dissolution of partnership and for accounts in his own name. It is well-settled that if the manager of a joint family enters into a partnership with another firm or with any other individual, the whole family would not become a partner in the partnership thus created. Simply because the son is acting on behalf of his father and helping him in the management of the affairs of the partnership, he can by no stretch of imagination be said to have become a partner in any sense of the term. In this state of affairs, I find force in the contention raised on behalf of the petitioners. The learned Public Prosecutor frankly conceded that the position taken by the lower Court was unsustainable in law.

5. I, therefore, allow the revision petition, set aside the conviction and sentence passed on the petitioners and acquit them. The fine if paid by the petitioners will be refunded to them.