

(1963) 08 MAD CK 0041

In the Madras High Court

Case No : Criminal Revision Case No. 169 of 1962 and Criminal Revision Petition No. 167 of 1962

M. Ayyasami Nadar and Others

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 07-08-1963

Acts Referred:

Evidence Act, 1872 — Section 14, 25

Citation : (1963) 14 STC 952

Hon'ble Judges : Kunhamed Kutti, J

Bench : Single Bench

Advocate : R.S. Venkatachari, for the Appellant; B. Sriramulu, for Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Kunhamed Kutti, J.—This revision case is against the conviction and sentence of the four petitioners by the Fourth Presidency Magistrate u/s 45(2) (a) of the Madras General Sales Tax Act, the sentence being a fine of Rs. 200 on each, in default two months" simple imprisonment.

2. The four petitioners are the partners of M. Ayyasami Nadar. There was one other partner by name Shanmugha Nadar. He died pending proceedings before the Presidency Magistrate and his name was struck off.

3. The firm of Ayyasami Nadar has been dealing in provisions at No. 172, Anna Pillai Street, with godowns at Kandappa Chetty Street. The Special Deputy Commercial Tax Officer (P. W. 1) inspected the shop and godown of the firm on 28th June, 1958, in the presence of Kandasami Nadar (A-3) when he took into custody a pocket note book exhibit P-1 containing entries of business transactions from Dharmalingam, an employee of the firm. Subsequently, on a report from P.W. 1, the Joint Commercial Tax Officer, P. W. 2, issued summons and A-3 produced regular accounts which on a comparison with exhibit P-1, were

found to contain several omissions. P. W. 2 then served a notice on A-3 who filed his objections. These objections were overruled and P. W. 2 passed an assessment order as per exhibit P-7 and the same was served on A-3. The assessee filed an appeal; but that was dismissed by the Tribunal and the assessee was disinclined to compound the matter. All the partners of the firm were, therefore, prosecuted u/s 45(2)(a) for wilfully submitting an untrue return. P. W. 1, who had inspected the shop with Assistant Commercial Tax Officers, gave evidence in support of the prosecution. A-3 had made a state ment, exhibit P-2, in the presence of P. W. 1 admitting the correctness of the entries in exhibit P-1. When verified with regular accounts, discrepancies were found in the items of purchases, 1/5th of which was uncovered by bills. Further, as per stocks in the godown, there were no purchase bills for 90 bags of pulav rice, 57 bags of rava, 75 bags of maida and 70 tins of cashewnuts.

4. The accused examined Dharmalingam (D.W. 1) to explain that exhibit P-1 was maintained by him to note the market rates of commo dities, that the entries made therein did not refer to purchases or sales, and that it was his personal note book that was seized from him.

5. The learned Magistrate was not prepared to accept this story. On the other hand, in view of the statement made by A-3 in exhibit P-2 he was satisfied that exhibit P-1 contained entries of transactions of the firm. It was next contended that exhibit P-2 was inadmissible in evidence and reliance was placed on the ruling in *State v. Kaikhushroo Merwan Irani* [1958] 9 S.T.C. 681. That was a case where the accused was charged with the offence of knowingly submitting false returns u/s 36 of the Bombay Sales Tax Act, 1953. The evidence that was produced to prove the charge was a statement admitting the offence made by the accused to the Sales Tax Officer who was authorised by the Collector to investigate the offence. The Bombay High Court held that the Sales Tax Officer would be a police officer within the meaning of Section 25 of the Indian Evidence Act and therefore the statement made to that officer, which amounted to a confession, was not admissible in evidence.

6. The learned Presidency Magistrate distinguished this case by stating that officers under the Madras General Sales Tax Act are not police officers within the meaning of Section 25 of the Evidence Act. He further relied on *Public Prosecutor v. Syed Rowther* 1961 M.W.N. (Cri.) 177, which has held that Section 14 of the Act does not invest the officers of the department with the powers of the police officers.

7. In *In Re: Mariyala Venkateswara Rao*, , *Panchapakesa Ayyar, J.*, had occasion to comment upon the practice of Commercial Tax Officers preparing state ments and obtaining signatures from parties whom they wanted to charge-sheet later relying on such statements as evidence. The learned Judge characterised this practice as highly objectionable and observed that a party cannot be compelled to sign such a statement against his will and that Rule 24 of the Madras General Sales Tax Rules giving the Assistant Commercial Tax Officer power to summon a

person to give evidence before him did not empower him to go to the dealer's premises and prepare a statement himself incriminating the dealer and compel him to sign it.

8. The position nevertheless is that exhibit P-2 is not an inadmissible document. But, having regard to the manner in which the said document was prepared and got signed by A-3, the evidentiary value to be attached on it may be a question. Standing by itself, it is hardly sufficient to sustain a conviction. Exhibit P-1, however, can be fully relied on. A scrutiny of exhibit P-1 would show that there has been suppression of the real stock in the accounts purported to have been regularly maintained by the firm. I am not impressed with the story that the entries in exhibit P-1 do not relate to the sales held by the firm and that they are not account books relating to firm transactions. It might have been kept in the personal custody of D.W. 1 ; but that does not make it the less an account book relating to firm transactions when admittedly D.W. 1 was a trusted employee of the firm and apart from entries relating to firm transactions, no other entries could have been made therein. I have, therefore, no doubt in my mind that a charge u/s 45(2) (a) has been satisfactorily made out.

9. The further contention is that in the circumstances of this case and having regard to the nature of the charge, the absentee partners, A-1, A-4 and A-5, who are not residents of Madras cannot be held guilty of the offence complained of when they have not signed the return submitted by A-3.

10. It has no doubt been held in *Peddayya Naidu v. Emperor* 1947 M.W.N. (Cri.) 139, that a demand notice addressed to the firm and served on one of the partners is sufficient notice to the firm and to all the partners and any partner could be made liable u/s 15(b) of the General Sales Tax Act (IX of 1939) for failure to pay the tax within the time allowed. But, this case has little relevance so far as the question with which we are now concerned, which is the wilful submission of an untrue return by one partner on behalf of others.

11. In *Ommar & Co. v. State* 1957 M.W.N. (Cri.) 123, *Somasundaram, J.*, had to construe the significance of the word "wilfully" in Section 15(2) (a) of Act IX of 1939 which in terms is identical with Section 45(2) (a) of Act I of 1959. Relying on the observations of *Govinda Menon, J.*, in *Jayarama Chettiar v. Emperor* 1948 M.W.N. (Cri.) 29, the learned Judge held that the word had been inserted in Section 15 to exclude cases of inadvertence or mistake but not cases where the omission was made due to wrong view of the law or ignorance of the law. He also referred to *Govindarajulu v. State*, 1951 M.W.N. (Cri.) 72 wherein *Subba Rao, J.*, as he then was, dealt with the same provision and observed that the submission of a false return cannot be wilful submission unless the dealer has deliberately made the return with the knowledge he was excluding a taxable item ; and the word "wilful" has been designedly used to express the mental element necessary to constitute the offence and excludes bona fides in respect of the return.

12. In the present case, the return which has been found to be false was

submitted on behalf of the firm ; but it was signed by A-3 alone. Since the section contemplates wilfulness and therefore *metis rea*, there can be no doubt that A-3 who submitted the false return is liable. But could petitioners 1, 4 and 5 who personally had nothing to do with the submission of the return be also held liable is the question. The principle as stated in Halsbury (vide Vol. 10, Simonds, 3rd Edition, page 275, para. 511) is when a particular intent or state of mind is of the essence of an offence, the person committing the act is not criminally responsible if he had no *metis rea* and the act was ordered or procured by another person ; but the person who ordered or procured the act is criminally responsible. It is a general principle of criminal law that there must be some blame-worthy condition of mind or *metis rea*. Therefore, on the reasoning in *Govindarajulu v. State* [1951] 2 S.T.C. 26, unless it is shown that accused 1, 4 and 5 knew about the exclusion of certain items from the return or of its falsity, there can be no question of wilfulness much less *metis rea* so far as they are concerned. They cannot, therefore, be held criminally liable. In this view of the matter, the other petitioners, namely petitioners 1, 3 and 4 are entitled to an acquittal in this case. They are accordingly acquitted. The conviction and sentence of A-3 (petitioner 2) are confirmed. The fine, if recovered from the petitioners A-1, A-4 and A-5, will be refunded to them.