(1996) 07 KAR CK 0078

In the Karnataka High Court

Case No : Criminal Rev. Petition No. 563 of 1993

M. Nagendrappa APPELLANT

Vs

Commercial Tax Officer, Harapanahalli RESPONDENT

Date of Decision : 30-07-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 421
Karnataka Sales Tax Act, 1957 — Section 13 (3) (b)

Citation : (1997) 1 ALT(Cri) 885 : (1997) CriLJ 164 : (1997) ILR (Kar) 507 : (1996) 103 STC 551

Hon'ble Judges : B.N. Mallikarjuna, J

Bench : Single Bench

Judgement

B.N. Mallikarjuna, J.—Revision petitioner challenges the order dated July 31, 1993 of the learned Judicial Magistrate, First Class, Kudligi, in Crl. M.C. No. 133 of 1991 sentencing the society to suffer simple imprisonment for 3 years and issuing non-bailable warrant for the arrest.

2. Heard the learned counsel for the revision-petitioner and learned Government Pleader.

3. The revision arises in the following circumstances :

The Commercial Tax Officer, Harapanahalli, made an application before the learned Magistrate u/s 13(3)(b) of the Karnataka Sales Tax Act, 1957 of recovery of a sum of Rs. 51,600 being the arrears of tax for the assessment year 1985-86. The learned Magistrate on receiving the application issued fine levy warrant for the recovery of the amount. The police, however, reported that revision petitioner-society did not possess either movable or immovable property. It is, therefore, on July 31, 1993, the learned Magistrate directs the revision-petitioner (Secretary of the society) to suffer imprisonment for 3 years in default of payment of the said amount and further directs issue of non-bailable warrant for his arrest.

4. The learned counsel for the revision-petitioner contended that the order is patently wrong and law did not permit the Magistrate to enforce the default clause against the respondent in a proceeding in a proceeding on an application u/s 13 of the Karnataka Sales Tax Act, 1957. There is force in the arguments of the learned counsel.

5. On an application u/s 13(2)(b) of the Karnataka Sales Tax Act by the assessing authority for the recovery of arrears due, the learned Magistrate is required follow the procedure contemplated u/s 421 of Cr.P.C., as if it were a fine. Clause (a) of sub-section (1) of section 421 provides for issue of levy warrant by attachment and sale of movable property. Clause (b) provides for issue of warrant by attachment and sale of movable property. Clause (b) provides for issue of warrant directing the Collector of district to realise the amount as arrears of land revenue. If in case the report of the officer to whom the warrant is entrusted is that the assessee did not possess either movable or immovable property, the learned Magistrate cannot proceed to introduce a new theory and impose a sentence which is nowhere provided, default clause can only be invoked in cases where an accused is sentenced to pay a fine and in default to suffer imprisonment and at any rate not in a case arising out of an application u/s 13 of Karnataka Sales Tax Act, 1957 for recovery of the arrears of tax due by the assessee. The order thus suffers both from illegality and irregularity and therefore not sustainable in law.

6. In the result, revision is allowed. Order impugned dated July 31, 1993 is hereby set aside. The matter is remitted back to the Magistrate with a direction to take the file in its original number and proceed to dispose it of keeping in mind the observations made during the course of the order and in accordance with law.

7. Petition allowed.

