(1967) 09 MAD CK 0029

In the Madras High Court

Case No : Criminal Appeal No. 447 of 1965

Madras State Wakf Board — APPELLANT

Vs

Tajmul Hussain — RESPONDENT

Date of Decision : 26-09-1967

Acts Referred:
Waqf Act, 1954 — Section 31, 32, 41(1)

Citation : AIR 1968 Mad 332 : (1968) 1 MLJ 354

Hon'ble Judges : Krishnaswami Reddy, J

Bench : Single Bench

Judgement

Krishnaswami Reddy, J.—This appeal has been preferred by the complainant, the Madras State Wakf Board, against the order of acquittal

of the accused, Tajmul Hussain, by the Sixth Presidency Magistrate, Saidapet, Madras. The accused is the Mutavalli of the wakf known as Nabhi

Khan Gatak mosque alias Kasab Kadai mosque at Courtalam road Tirunelveli town. The accused as the Mutavalli of the mosque is required under

S. 32 of the Wakf Act, 1954 (hereinafter called ''the Act'') to furnish statement of accounts to the complainant Board. But he failed to submit the

accounts for the years 1956-57 to 1962-63. He was prosecuted under Sec. 41(1)(b) and (i) of the Act.

2. P.W. 1, the legal assistant to the Board, stated in evidence that the accused had not submitted accounts even though by notice dated 17-12-

1964 he was asked to submit the accounts from 1956-57 to 1962-63. The accused also did not submit the budget estimates as required under S.

31 of the Act. Ex. P-3 is the notice issued by the complainant to the accused and Ex. P-4 is the postal acknowledgment.

3. The accused, when questioned under S. 342, Criminal P. C., stated that for the

years 1956 and 1957 to 1959 he could not keep accounts and

hence he did not send accounts. He further stated that in the year 1960 he sent the accounts and the accounts of 1961 were checked by the

Inspector. According to him, since 1962, because of the meagre income and the stoppage of allowance, he did not submit accounts. He also

added that after 1962, no expenses were incurred. He contended that there has been no wilful default on his part.

4. The learned Magistrate acquitted the accused mainly on the ground that the prosecution has failed to prove that the failure of submission of

accounts by the accused was wilful.

5. The learned counsel appearing for the appellant contended that, under S. 41 of the Act, it is not necessary that the failure to submit the accounts

must be wilful. As a matter of fact, the word ''wilful'' is not found in the provisions of S. 41(1)(b) and (i) of the Act. It is true that in criminal

prosecutions, normally, means rea is necessary to attribute culpability to the accused. In certain statutory offences, where persons are prosecuted

for violation of rules or conditions, what is required in the absence of any means rea provided under the relevant provisions, is that such violation

was conscious and deliberate. The word ''wilful'', when used in statutes, connotes different concepts. In certain cases ''wilful'' may mean

''wantonly''. In certain other cases, it may mean ''intentionally'', or ''deliberately'' and in other cases, it may merely mean ''consciously''. I do not

think to prove an offence falling u/s 41(1) of the Act, it (offence) must be proved to have been committed ''wilfully'' in the sense that such failure to

submit accounts was ''deliberate'' or ''intentional''. Even though the word ''wilful'' is not used in S. 41 of the Act, it must be proved by the

prosecution that such failure of submission of accounts was a ''conscious'' failure. Otherwise, no act can be attributed to any person if it had not

been done consciously. The relevant provisions in S. 41(1) may be extracted hereunder:

41(1). If a mutavalli fails

(a) to apply for the registration of a wakf;

(b) to furnish statement of particulars of accounts or return as required by this Act;

(c) to (h)..................................

(i) to do any other act which he is lawfully required to do by or under this Act, he shall, unless he satisfies the Court that there was reasonable

cause for this failure, be punishable with fine which may extend to one thousand rupees.

This provision makes it clear that mere failure to furnish statements of particulars of accounts or returns is made prima facie and offence and a

protection is given to the person charged, in the same provision to satisfy the Court that there was a reasonable cause for his failure.

6. Under S. 31 of the said Act, every Mutavalli of a wakf shall submit a budget every year to the Board for approval and under S. 32 of the Act,

he shall submit a full and true statement of accounts of moneys received and expended by him to the Board. The Mutavalli is, therefore, bound by

these provisions and should submit the budget report and the accounts mentioned in the above two sections. In my opinion, it is not necessary for

the prosecution to show that the failure to submit accounts or budget was wilful in the sense that they are deliberate or intentional. It has been found

by the learned Magistrate that at least from 1962, the accused had not submitted accounts, the reason being that he did not spend moneys and

hence there was nothing to be submitted. Even if he had not spent moneys and the income was meagre, he is bound under the law to produce the

accounts and the budget estimates periodically every year. However, the Magistrate has not agreed with the reasons given by him. But as already

stated, he acquitted the accused on the ground that the prosecution has failed to show that the failure of submission of accounts was wilful on the

part of the accused.

7. For the foregoing reasons, I find that the accused has committed offences under Ss. 41(1)(b) and (i) of the Act. The order of acquittal of the

accused by the lower Court is set aside and the accused is convicted under S. 41(1)(b) and (i) of the Act. In the circumstances of the case, I

sentence the accused to pay a fine of Rs. 5 (five) under each of the two counts, in default to undergo simple imprisonment for one week. Two

weeks'' time from this date is granted for payment of the fines. I wish to place on record the assistance rendered by Sri R. Kamesh, advocate

amicus curiae appointed in this case.

8. Appeal allowed.

