(1967) 09 MAD CK 0010

In the Madras High Court

Case No : Criminal App. No. 447 of 1965

Madras State Wakf Board APPELLANT

Vs

Tajmul Hussain RESPONDENT

Date of Decision : 27-09-1967

Acts Referred:
Criminal Procedure Code, 1898 (CrPC) — Section 342

Citation : (1968) LW(Cri) 35

Hon'ble Judges : Krishnaswami Reddy, J

Bench : Single Bench

Advocate : M.A. Sathar Sayeed, for the Appellant; R. Kamesh Amicus curiae, for the Respondent

Final Decision : Allowed

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 u/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 u/s 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 17th

December 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 u/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 u/s 342 , Code of Criminal Procedure, 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. The learned Counsel appearing for the Appellant contended that u/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 provision of Section 41(1)(b) and (i) of the

Act. It is true that in criminal prosecutions, normally, mens 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 mens 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 Section 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 Section 41(1) may be extracted hereunder:

41 (1): If a mutavalli fails.

(a) to apply for the registration of wakf;

(b) to furnish statement of particulars of accounts or returns 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.

5. He shall unless he satisfies the court that there was reasonable cause for his failure, be punishable with fine which may extend to one thousand

rupees. This provision makes it clear that mere failure to furnish statements or particular of accounts or returns is made Prima facie an 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. u/s 31 of the said Act, every Mutavalli of a wakf shall submit a budget every year to the Board for approval and u/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, there fore, 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 Sections 41(1)(b) and (i) of the Act. The order of the accused

by the lower court is sat aside and the accused is convicted u/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.

