

(1970) 12 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No's. 3611 and 3612 of 1970

Mohanlal Premchand

APPELLANT

Vs

Commercial Tax Officer, Bagalkot and Another

RESPONDENT

Date of Decision : 07-12-1970

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 32, 386
Mysore Sales Tax Act, 1957 — Section 13 (3), 13 (3) (b)

Citation : (1971) 1 MysLJ 72 : (1971) 28 STC 492

Hon'ble Judges : Jagannatha Shetty, J;G.K. Govinda Bhat, J

Bench : Division Bench

Advocate : K. Srinivasan and B.V. Katageri, as intervenor on permission of the court, for the Appellant; H.K. Vasudeva Reddy, Government Pleader, for the Respondent

Judgement

Jagannatha Shetty, J.—The petitioner-firm is an assessee under the Mysore Sales Tax Act, 1957 (hereinafter referred to as the "Act"). For the years 1963-64 and 1964-65, the petitioner was assessed to tax of Rs. 19,767.38 and Rs. 3,663.62 respectively. The petitioner having defaulted in making payment of the tax assessed, the Commercial Tax Officer, Bagalkot (respondent 1) filed Miscellaneous Petitions Nos. 34 of 1970 and 71 of 1970 before the First Class Judicial Magistrate, Badami (respondent 2) u/s 13(3)(b) of the Act, for the recovery of the tax due and other miscellaneous amounts payable under the Act. Respondent 2 issued warrants for attachment of the properties of the petitioner to recover the arrears of tax claimed as if it were a fine imposed by him. The petitioner has challenged the recovery proceedings in these writ petitions.

2. The main contention of Sri K. Srinivasan, counsel for the petitioner, is that the Magistrate has no jurisdiction to issue a warrant u/s 386 of the Code of Criminal Procedure and in any event, he cannot recover more than Rs. 2,000 as prescribed u/s 32 of the Code of Criminal Procedure.

3. In order to appreciate the contentions it is necessary to set out the provisions

of section 13(3) of the Act and section 386 of the Code of Criminal Procedure.

Section 13(3) of the Act reads :

"13. Payment and recovery of tax

(3) Any tax assessed, or any other amount due under this Act from a dealer, may without prejudice to any other mode of collection, be recovered -

(a) as if it were an arrear of land revenue, or

(b) on application to any Magistrate, by such Magistrate as if it were a fine imposed by him :

Provided that where a dealer or other person who has appealed or applied for revision of any order made under this Act and has complied with an order made by the appellate or the revising authority in regard to the payment of the tax or other amount, no proceedings for recovery under this sub-section shall be taken or continued until the disposal of such appeal or application for revision."

Section 386 of the Code of Criminal Procedure reads :

"386. Warrant for levy of fine. - (1) Whenever an offender has been sentenced to pay a fine, the court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may -

(a) issue a warrant for levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district authorising him to realise the amount by execution according to civil process against the movable or immovable property, or both, of the defaulter :

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue such warrant unless for special reasons to be recorded in writing it considers necessary to do so.

(2) The State Government may make rules regulating the manner in which warrants under sub-section (1), clause (a), are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under sub-section (1), clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to execution of the decree shall apply accordingly :

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender."

4. The Legislature has specified the mode of recovery of any dues from an assessee in section 13(3) of the Act. The assessing authorities under the Act have dual remedies against a defaulter. The dues under the Act can be recovered either by resorting to the procedure applicable for the recovery of arrears of land revenue, or by an application to any Magistrate who must recover the same as if it were a fine imposed by him. It is true that the Legislature has not specifically provided any machinery for the recovery of the amount by the Magistrate. But there is a sufficient indication in section 13(3)(b) of the Act.

5. Now, looking at section 13(3)(b) of the Act, it is clear that the application can be made to any Magistrate. The Magistrate entertains the application because he is an authority designated for the purpose. In *The State v. G. L. Udyawar and Another* [1963] 14 S.T.C. 628, a Bench of this court, while considering the character of the Magistrate and the nature of the proceedings before him, has observed thus :

"The power of the Magistrate to take proceedings for recovery of any tax assessed or any other amount due under the Act from a dealer, as if it were a fine imposed by him, accrues to the Magistrate by virtue of section 13(3)(b) of the Act and not under any provisions of the Code of Criminal Procedure. Such proceedings are mere recovery proceedings and the Magistrate does not function or exercise his authority under the Code of Criminal Procedure. Though the procedure for the recovery of such amount may be the same as for the recovery of any fine imposed by him, he is competent to recover the amount of tax, only because he is designated under the Act to recover the same."

In view of the above decision, which is binding on us, it is clear that the Magistrate exercising power u/s 13(3)(b) of the Act must be treated as a *persona designata* and not as an inferior criminal court.

6. The arguments of Sri Srinivasan is that if the Magistrate is a *persona designata* he cannot resort to the provisions of section 386 of the Code of Criminal Procedure, as that section applies only to the court passing a sentence of fine. There is no substance in this contention. The expression "as if it were a fine imposed by him" found in section 13(3)(b) of the Act is very significant. The direction of this section is to place the amount claimed in the application on par with a fine which the Magistrate is competent to impose and recover. He is enjoined to recover that amount in the same way as he recovers the fine imposed by him. What should be the procedure to be adopted by the Magistrate is also implicit in the premises. In our judgment, the legislative sanction for the recovery of the tax assessed or any other amount due under the Act, as if it were a fine imposed by the Magistrate, must necessarily invite the procedure prescribed u/s 386 of the Code of Criminal Procedure.

7. The next question for consideration is, whether the Magistrate could recover

any amount irrespective of the limits prescribed by section 32 of the Code of Criminal Procedure. We have already held that the Magistrate, acting u/s 13(3) (b) of the Act, is not a court but a persona designata, Therefore, the provisions of section 32 of the Code of Criminal Procedure are not directly attracted. Let us see whether his powers are limited by any other provisions.

8. The learned Government Pleader argues that the Magistrate recovers the tax because he is authorised u/s 13(3)(b) of the Act. That section authorises him to recover any amount as if it were a fine imposed by him. His powers, according to him, are not limited by any provisions of the Code of Criminal Procedure. He also draws support from the provisions of section 13(3)(a) of the Act, which provides for the unlimited recovery of tax as if it were an arrear of land revenue. It is difficult to accept this contention. Under the Land Revenue Act, there is no provision limiting the powers of the revenue authorities to recover the arrears of land revenue. But it is not so with regard to the powers of the Magistrates to recover a fine under the Code of Criminal Procedure. The assumption that the Magistrate recovers the tax only u/s 13(3)(b) of the Act is prima facie wrong. The Legislature has not made any provision in the Act authorising the Magistrate to recover any tax as if it were a fine. Section 13(3)(b) of the Act consists of two parts : (i) application to be made to any Magistrate, and (ii) such Magistrate to recover the tax as if it were a fine imposed by him. Apart from stating that the Magistrate to whom the application is made shall recover the tax as if it were a fine imposed by him, the Act does not provide the mode and manner of recovery. We will have therefore to look into the provisions of the Code of Criminal Procedure.

9. Any Magistrate may mean, a third, second or first class judicial Magistrate, or any Magistrate invested with special powers. The respective powers of the judicial Magistrates for the imposition of fine are prescribed u/s 32 of the Code of Criminal Procedure. A Magistrate of the First Class has a jurisdiction to impose a fine not exceeding two thousand rupees. His power to recover a fine is also limited to that amount, because section 336 of the Code of Criminal Procedure states that the court passing a sentence of fine may take action for the recovery of the fine in the manner prescribed therein. The power to recover the fine is, therefore, circumscribed by the limits of the power to impose a fine.

10. We, therefore, hold that by resorting to the procedure u/s 386 of the Code of Criminal Procedure, a Magistrate designated u/s 13(3)(b) of the Act, in the absence of any other provision, cannot recover any amount as if it were a fine, in excess of the limits prescribed u/s 32 of the Code of Criminal Procedure. The warrants issued by the second respondent for the recovery of the amounts in the instant cases being in excess of his powers, must be held to be without jurisdiction.

11. For the reasons stated above, these petitions are allowed. The recovery warrants issued by the second respondent are quashed.

12. In the circumstances, there will be no order as to costs.

13. Petitions allowed.