(1971) 06 KAR CK 0004

In the Karnataka High Court

Case No : S.T.R.P. No. 1 of 1971

N. Annaiyappa — APPELLANT

Vs

Assistant Commercial Tax Officer, II Additional Sub-Circle, Bangalore District, Bangalore — RESPONDENT

Date of Decision : 23-06-1971

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 386 (1) (a)
Mysore Sales Tax Act, 1957 — Section 13 (3) (b), 13 (4)

Citation : (1971) 2 MysLJ 599 : (1971) 28 STC 549

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

Bench : Division Bench

Advocate : B.P. Gandhi, for the Appellant; S.R. Rajasekhara Murthy, High Court Government Pleader, for the Respondent

Judgement

Jagannatha Shetty, J.—This is a revision petition u/s 13(4) of the Mysore Sales Tax Act, 1957, against the order dated 21st November, 1970, by which the learned Second Magistrate, Bangalore, issued a warrant for the attachment of movables belonging to the petitioner for recovery of arrears of sales tax for the years 1967-68 and 1968-69 amounting to Rs. 496.60. The said sum represents the tax determined under final assessment for the year 1967-68 and the tax provisionally fixed for the year 1968-69, besides penalty.

2. It is stated from the Bar that even for the year 1968-69, the petitioner was finally assessed as per the assessment order dated 18th November, 1970. Mr. Gandhi, learned counsel for the petitioner, therefore, contended that when once a final assessment was made, the demand made under the order of provisional assessment could not be enforced. Mr. S. R. Rajasekhara Murthy, learned counsel for the State, does not dispute this proposition. He also brought to our notice a memo. filed by the respondent before the Magistrate, which reads thus :

"I submit before the Honourable Court that consequent to the finalisation of assessment for 1968-69 in the case of Sri N. Annaiyappa, Gowrishankar Bakery, Konena Agrahara, the provisional demand raised for that year and included in the recovery application filed before the Honourable Court in C. Misc. No. 55/70 is reduced completely and, hence, the said recovery application relates only for recovery of tax due towards final assessment made for 1967-68. The amount covered by this recovery application is specified hereunder. 1967-68 - Sales tax Rs. 120.00 Penalty Rs. 21.60 --------------- Rs. 141.60."" ---------------

In view of the memo. filed, the contention of the learned counsel for the petitioner does not survive.

3. The next contention of Mr. Gandhi relates to the validity of the warrant issued by the Magistrate for the levy of the amount by attachment of movables. The warrant was admittedly issued under clause (a) of sub-section (1) of section 386 of the Code of Criminal Procedure. According to him, clause (a) applies only to the offender against whom a sentence of fine is awarded by the Magistrate whereas the recovery of dues from a defaulting assessee could be made only by a warrant issued under clause (b) of the section. Section 386 so far as it is relevant provides :

"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 the 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."

4. The only basis for the distinction drawn by the learned counsel is that clause (a) refers to an offender and clause (b) to a defaulter. Since the petitioner is only a defaulter and not an offender, the warrant has to be issued only to the Collector of the District, under clause (b). This distinction appears to us to be baseless and if accepted, it renders the main provisions of sub-section (1) of section 386 nugatory. Sub-section (1) provides for the recovery of fine in either or both of the ways specified under clause (a) or (b). When an application is made to a Magistrate u/s 13(3)(b) of the Mysore Sales Tax Act, the Magistrate can recover the dues under the said Act as if it were a fine imposed by him. By the fiction created u/s 13(3)(b), the petitioner is in the position of an offender or a defaulter for the purpose of recovery of fine. The contention of Mr. Gandhi, therefore, deserves to be rejected.

5. The revision petition, therefore, fails and is dismissed. No costs.

6. Petition dismissed.