

(1967) 10 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1551 of 1967

Phul Bus Service

APPELLANT

Vs

Financial Commissioner, Taxation and Others

RESPONDENT

Date of Decision : 17-10-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Motor Vehicles Act, 1939 — Section 22, 24, 31
Punjab Passengers and Goods Taxation Act, 1952 — Section 9(1), 9(2), 9(3), 9(5), 9(6)

Citation : (1968) ACJ 57

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : P.S. Jain, for the Appellant; R.S. Mongia, for the Respondent

Final Decision : Allowed

Judgement

R.S. Narnla, J.—The straight question to be answered in this case under Articles 226 and 227 of the Constitution is whether transfer of ownership of a motor vehicle is not completed in the same manner in which a transferee of any other movable property becomes its owner under the Sale of Goods Act, because of any provision to the contrary contained in the Motor Vehicles Act, 1939 (4 of 1939), or any other law for the time being in force. The circumstances in which this question has arisen may first be noticed. Some arrears of passengers and goods tax were due to the State from the Patiala Transport & Engineering Company Limited Rampura Phul, District Bhatinda (Respondent No. 5). In recovery proceedings for the same under the Punjab Land Revenue Act, bus No. PNB 1180 was attached on December 2, 1965 from the custody of the Petitioner, Messrs. Phul Bus Service (Registered), which is a partnership concern. The Petitioner submitted written objections to the attachment (Annexure "A") on the ground that the bus in question had been purchased by the Petitioner from Respondent No. 5 in April, 1964 and that even a joint application, for transfer of the permit in respect of the said vehicle was pending before the Regional

Transort Authority. It was claimed by the Petitioner in the said objection petition that whatever tax had been levied on Respondent No. 5, pertaining to the period prior to the transfer of the bus to the Petitioner was not recoverable by the attachment and sale of the bus in dispute. The objection petition was disposed of by the order of the Excise and Taxation Officer, Bhatinda, dated January 21, 1966 (Annexure "B "). It was held that even if it could be admitted that the bus had been purchased by the Petitioner in April, 1964, it could not be argued that the arrears due from Respondent No. 5 could not be realised by distraint and sale of this very-bus. The ground on which the objections were dismissed was that when the assessment orders, in pursuance of which the recovery was sought to be made, were announced, the bus in dispute was the property of Respondent No. 5 "and its registration" still stood in the name of that very Respondent. It was held that the Petitioners had failed to prove that the abovesaid bus belonged to them.

2. The Petitioner's appeal to the Collector, Bhatinda, against the above-said order was dismissed by his order dated May 31, 1966 (Annexure "C"). He took notice of the contention of the Taxation Inspector to the effect that in accordance with Section 9(7) of the Punjab Passengers and Goods Taxation Act, 1952 (hereinafter called the "Taxation Act") when any owner transfers any motor vehicle, the transferee is liable to pay tax and penalty, if any, remaining unpaid by the transferer upto the date of transfer and the transferee is not allowed to ply the motor vehicle without getting himself registered or getting the registration certificate amended Enforcement of the liability of Respondent No. 5 against the bus in dispute was, therefore, claimed to be legal on that basis Without deciding that particular point, the Collector went into the question of the quantum of liability and held that the proper forum for raising that dispute was the Deputy Excise and Taxation Commissioner who could hear an appeal against the order of the Excise and Taxation Officer. Not satisfied with the Collector's order, the Petitioner went in revision to the Commissioner, Patiala Division. The revision petition was dismissed by the order of the Commissioner dated January 10, 1967 (Annexure "D") with the following observations:

The registration of the vehicle, it is admitted, still shows that it belongs to the Patiala Transport and Engineering Company Ltd., Rampura Phul. The affidavits such as those whose copies have been produced have little meaning in the presence of the registration certificate. Moreover, the passenger tax assessment orders for their relevant period including the year 1964 show that this vehicle was the property of the Assessee Messrs Phul Bus Service, Rampura Phul.

The last order passed in these proceedings was by Mr. H. B. Lal, the Financial Commissioner. In his order dated July 4, 1967 (Annexure "E"), it was held that since the formality of transfer by registration in the name of the Petitioner had not yet been completed, the Petitioner could not be considered to be the full-fledged owner of the vehicle. It was further held that the arrears of the tax related to the period prior to the so-called purchase by the Petitioner and, therefore, the attachment of the vehicle could not be objected to. All the above-

said orders (Annexure "B" to "E"), have been impugned in this petition.

3. The Excise and Taxation Officer, Bhatinda has filed his affidavit dated 6th October, 1967, as return to the rule issued to Respondents 1 to 4. It has been admitted that Respondent No. 5 purchased the bus in question in 1962 but it has been submitted that the ownership of the bus still stood in the name of the said Respondent. It has also been admitted that the bus in question was attached on December 2, 1965 in execution of the warrant of distraint issued on 29th November in that year. The bus is claimed to have been attached as being the property of Respondent No. 5. In paragraph 9, it has again been emphasised that u/s 9(7) of the Taxation Act, even if a vehicle is transferred, the transferee is liable to pay tax and penalty, if any, remaining unpaid by the transferer. On that basis, it has been submitted in the written statement that "the amount of tax can, therefore, be recovered from the Petitioner even by treating him a transferee" under the provisions of the Taxation Act. In sub-para (c) of para 11 of the written statement, it has been added that the Petitioner cannot be considered full-fledged owner of the vehicle in question as the formalities of transfer had not been completed, simply because the ownership still lies in the name of the Respondent No. 5 because of the fact that the registration certificate continues to be in the name of that Company.

4. Application of the Petitioner (Civil Miscellaneous No. 3069 of 1967) dated September 7, 1967, praying for summoning records of the bus in dispute so as to find out the amount of arrears of tax due in respect of it, was allowed as prayed, by the ex-parte order of Tek Chand, J. dated 11th September, 1967 at the Motion stage. Mr. R. S. Mongia, learned Counsel for Respondents 1 to 4, has taken exception to the ex-parte order on the ground that the quantum of arrears of passenger tax due in respect of the vehicle in dispute is wholly irrelevant, as the State attached this bus for recovery of the arrears of tax due from Respondent No. 5 in respect of its entire fleet and not necessarily in respect of arrears of tax due on this particular bus. Objection is also taken to the ex-parte order on the ground that once it is admitted by the Petitioner that some amount was due in respect of this bus, the attachment of the bus cannot possibly be objected to even if the Petitioner is able to prove that the bus had passed out of the ownership of Respondent No. 5 prior to its attachment. Mr. Mongia has fairly and frankly conceded that if it is held that the ownership of the bus had in law passed to the Petitioner before the date of the attachment, the objections of the Petitioner must succeed in so far as they relate to realisation of arrears of tax due on other vehicles of the transferer. It is, however, maintained by Mr. Mongia that even if the Petitioner had become the absolute legal owner of the bus in dispute prior to the date of attachment the Government could still attach this bus for recovery of the amount of tax due in respect of this particular bus for the period prior to its transfer u/s 9(7) of the Taxation Act. I allow the objection raised by Mr. Mongia against the ex-parte order obtained by the Petitioner inasmuch as this writ petition can be disposed of without going into the question of quantum of arrears of tax due in respect of the vehicle in dispute, once it is admitted, as is

indeed done by the learned Counsel for the Petitioner in this case, that some amount was due from Respondent No. 5 in respect of the vehicle in dispute for the period prior to its attachment and that some much larger amounts were due to the State from Respondent No. 5 for the same period in respect of other vehicles.

5. Section 9 (1) of the Taxation Act provides that a registration certificate shall be granted in the prescribed manner to any owner applying therefor to the prescribed authority on payment of the prescribed fee. Under Sub-section (2) every such registration certificate remains valid without renewal till it is cancelled or suspended. Sub-section (3) prohibits the grant of a certificate under Sub-section (1) to any person who has not registered his motor vehicle under the Motor Vehicles Act, 1939. The said Sub-section further provides that if any registration under the Motor Vehicles Act is suspended or cancelled, the registration certificate granted under the Taxation Act shall be deemed to have been automatically suspended or cancelled. Sub-section (5) of Section 9 enjoins upon the owner of any vehicle who has once got a certificate of registration under Sub-section (1) a duty to inform the prescribed authority of any transfer of the vehicle within thirty days of his doing so. The authority is required by that Sub-section to cancel the registration certificate from the date of the transfer. Sub-Section 6 deals with the cases of death of the original owner. Sub-section (7) then lays down as below:

When any owner transfers any motor vehicle, the transferee shall be liable to pay tax and penalty, if any, remaining unpaid by the transferor up to the date of transfer as if he was the registered owner, and transferee shall not ply the said motor vehicle without getting himself registered or getting his registration certificate amended, if he is already registered.

The above quoted Sub-section appears to confer a statutory right on the State and statutory liability on the transferee of a motor vehicle. The right conferred on the State is that the amount of arrears of any tax under the Taxation Act due in respect of a particular motor vehicle is made a charge on the vehicle itself in the sense that irrespective of the transfer of its ownership, the arrears of tax due in respect of that particular vehicle for the period prior to its transfer is made the liability of the transferee. For the purposes of the said liability, it is assumed that in spite of registration under Sub-section (1) of Section 9 being in the name of the transferor or even being cancelled on intimation of the transfer, the transferee is the registered owner of the vehicle under Sub-section (1) of Section 9 of the Act. The liability imposed by Sub-section (7) of Section 9 on the transferee is that he is not permitted to ply his motor vehicle obtained by him on transfer, without first getting himself registered under Sub-section (1) or getting his registration certificate under that "Sub-section amended suitably. If the vehicle has not been transferred to the Petitioner no objection can at all be taken by the Petitioner to its attachment. If, however, I find, as I propose to do, that the vehicle had in fact been transferred to the Petitioner prior to the date of its

attachment, the Petitioner would still be liable by operation of Sub-section (7)"of Section 9 of the Taxation Act to pay to the State all arrears of passengers and goods tax which had become due to the State in respect of this particular vehicle prior to the date of its transfer to the Petitioner in April, 1964. The learned Counsel for the Petitioner submitted that the liability in respect of this vehicle does not exceed Rs. 200/- and that the Petitioner has at all times been ready and willing to pay the said amount. In the view I am taking of the matter, the attachment of the vehicle in dispute for the recovery of any amount which was not due in respect of this particular vehicle for the period prior to its transfer would indeed be invalid.

6. On objection about the ownership of the vehicle vesting in the Petitioner having been raised, it was no doubt open to the authorities to decide the question of fact on the evidence produced before it as to whether the vehicle had in fact been sold by Respondent No. 5 to the Petitioner or not and if so when. The authorities have, however, finally decided the question of the liability of the Petitioner for arrears of tax due in respect of other vehicles of Respondent No. 5 on the assumption that though factual transfer according to law relating to the sale of goods had taken place, the registration of the vehicle under the Motor Vehicles Act had not been transferred to the Petitioner. I, therefore, proceed to decide the main question of law posed in the opening sentence of the judgment on those very two assumptions. The argument of Mr. Mongia is that the transferee of a motor vehicle does not become its owner unless and until his name is entered in the registration certificate of the vehicle, irrespective of the fact that he may have paid out the entire price to the transferor and may have obtained actual possession of the vehicle, because of the provisions of Section 31 of the Motor Vehicles Act. The said section reads as follows:

Section 31. Where the ownership of any motor vehicle registered under this Chapter is transferred--

(a) the transferor shall, within fourteen days of the transfer, report the transfer to the registering authority within whose jurisdiction the transfer is effected and shall simultaneously send a copy of the said report to the transferee.

(b) the transferee shall, within thirty days of the transfer, report the transfer to the registering authority within whose jurisdiction he resides and shall forward the certificate of registration to that registering authority together with the prescribed fee and a copy of the report received by him from the transferor in order that particulars of the transfer of ownership may be entered in the certificate of registration.

(2) A registering authority other than the original registering authority making any such entry shall communicate the transfer of ownership to the original registering authority.

Registration of a vehicle under the Motor Vehicles Act is made compulsory by Section 22 of that Act, which is in the following terms:

Section 22. No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner.

After carefully considering the above-said two provisions of the Motor Vehicles Act I am of the opinion that the argument of the learned Counsel for the State is misconceived. Section 22 of the Motor Vehicles Act prohibits inter alia "the owner of a motor vehicle" from causing or permitting the vehicle to be driven in any public place either for the purpose of carrying passengers or goods without the vehicle being registered in accordance with the provisions of Chapter III of the Motor Vehicles Act. The section itself postulates ownership of a motor vehicle being vested in a person before he applies for its registration u/s 24. Section 24 provides that an application by or on behalf of the owner of a motor vehicle" for registration has to be made in a particular form. It cannot, therefore, be successfully argued that ownership of a motor vehicle is not complete without its registration. The ban imposed by Section 22 of the Motor Vehicles Act is against the user of the vehicle without registration. No provision in the Act has been shown to the which prohibits a motor vehicle being owned without its first being registered. If this were so, the manufacturers of motor vehicles and the dealers who acquire them from the manufacturers and sell them in the market, would not be owners of the vehicles before they sell the same to the consumers. If this proposition were to be correct, a consumer would never be able to obtain the ownership of a motor vehicle because he cannot get better title to the vehicle than his transferor, that is the dealer. Section 31 of the Motor Vehicles Act also presupposes a completed transfer of the ownership of a vehicle before transferor and the transferee are required to intimate and report the transfer to the registering authority concerned. I am, therefore, of the considered opinion that registration under the Motor Vehicles Act is not a necessary ingredient of a completed title of ownership of a motor vehicle. Mr. Mongia referred to the following observations from the judgment of the learned Single Judge of the Delhi High Court in *Vimal Rai and Ors. v. Gurcharan Singh and Ors.* 1967 A.C.J. 115:

There is another aspect of this matter. To my mind, the sale of a motor vehicle will not be governed by the ordinary law relating to sales of movable property. The Motor Vehicles Act, 1939 makes it compulsory for every owner of a motor vehicle to get the motor vehicle registered with the Registering Authority (vide Section 22). The Act prescribes by Section 24 the method of registration of a motor vehicle and by Section 31 of the transfer of ownership of a motor vehicle. A perusal of the various provisions of the Act leads to only one conclusion that ownership of a motor vehicle is to be evidenced by the registration as such with the motor Registration Authority and the registration book which is supplied is the document of title. I think the Act proceeds on the basis that it is only the

ostensible owner who is entered as such in the registration books, who is to be considered to be the owner of the motor vehicle irrespective of the fact that the real ownership may be with somebody else.

and relying on the last lines of the quotation argued that though the real ownership may have vested in the Petitioner the ostensible ownership continued to reside in Respondent No. 5 so long as the registration certificate of the vehicle was not amended so as to show therein the Petitioner as the registered owner of the vehicle. There is nothing in Sub-section (7) of Section 9 of the Taxation Act which may be used as a basis for drawing a distinction between an ostensible owner and a real owner of a motor vehicle. As already stated, it has been conceded that the liability of the transferee under Sub-section (7) of Section 9 of the Taxation Act relates only to the arrears of tax due in respect of the vehicle in question. The second part of Sub-section (7) of Section 9 deals with an entirely different subject, that is regarding the prohibition of plying the motor vehicle without the transferee getting himself registered or getting his registration certificate amended. No exception to the general law relating to sale of goods has been shown to have been made by any statutory provision in respect of a motor vehicle. The judgment of the Delhi High Court relates to the question of liability of an insurer under the Motor Vehicles Act in respect of a claim for damages in the third party action. The precise question which has arisen before me in relation to the Taxation Act did not arise in Vimal Rai's case 1967 A. C.J. 115. Moreover, I am inclined to think with the greatest respect to the learned Judge of the Delhi High Court that neither Section 22 nor Section 31 of the Motor Vehicles Act prescribes the registration of a motor vehicle in the name of the transferee as a condition precedent for the transferee being treated as an owner of the vehicle which the transferee may have otherwise fully acquired. There is no doubt that the person named as owner in the registration certificate of a motor vehicle can be presumed to be its owner, but the presumption is always rebuttable and is not absolute. According to law, the name of the real owner is expected to be entered in the Registration Book and not of the ostensible owner. At the same time, the person entered as owner in the registration certificate would no doubt be at least the ostensible owner thereof though he may or may not be the real owner. In order to lawfully attach the property of defaulter (in the absence of a statutory provision to the contrary) the defaulter should be the real owner of the property in question and not merely its ostensible owner. It can hardly be argued that if it were to be found as a fact that the defaulter holds certain property as a mere benami or as a mere ostensible owner, it would still be liable to be proceeded against though it is found as a fact that the real owner of the property is one against whom the liability cannot be enforced. For all these reasons I hold that ownership of motor vehicle is transferred in the same manner and subject to the same limitations and rules as apply to all other movable property and that an absolute transferee of a motor vehicle does not cease to be an owner thereof merely because his name has not yet been substituted for the name of the transferor in the registration certificate of the vehicle issued under

the Motor Vehicles Act. In this view of the matter, the attachment and distraint of the motor vehicle in dispute for recovery of amounts due from Respondent No. 5 in respect of vehicle other than the one in dispute was wholly unauthorised and illegal. At the same time, the State was not acting without jurisdiction in attaching the bus for recovery of the amount, whatever it may be, which was due as arrears of passenger tax in respect of the vehicle in dispute itself for the period prior to the date of its transfer. I am given to understand by Mr P. S. Jain, learned Counsel for the Petitioner, that the vehicle in question has been disposed of by the Government during the pendency of this writ petition. Mr. Mongia has no instructions on this subject.

7. I, therefore, allow this writ petition and direct that on payment of only that much amount which is found to be due as arrears of passenger tax in respect of the vehicle in dispute for the period prior to April, 1963 by the Petitioner, the vehicle (PNB 1180) shall be returned to the Petitioner forthwith. I further direct that if the vehicle has in the meantime been disclosed of, balance of its net sale proceeds after deducting therefrom the amount specified in the preceding sentence should be paid out to the Petitioner immediately. I make no order as to costs.