
(1964) 07 KL CK 0010
In the High Court Of Kerala

P.K. Varghese and Sons

APPELLANT

Vs

Sales Tax Officer

RESPONDENT

Date of Decision : 13-07-1964

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 7, 8

Citation : (1964) KLJ 1160 : (1964) KLJ 1134 : (1965) 16 STC 323

Hon'ble Judges : Mathew P. Muricken, J

Bench : Single Bench

Advocate : C. George, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.K. Mathew, J.—The petitioner in this writ petition is a firm registered under the Indian Partnership Act. The affidavit on behalf of the petitioner has been filed by the senior partner of the firm. The petitioner is doing business in rice, sugar, chillies, chemicals, paints and other goods. The petitioner applied for registration u/s 7 of the Central Sales Tax Act, 1956, to the Sales Tax Officer, Ernakulam. That was granted and a certificate, marked exhibit P-1, was issued in favour of the petitioner. Exhibit P-1 states:

The class(es) of goods specified for the purposes of Sub-section (1) of Section 8 of the said Act is/are as follows and the sales of these goods in the course of inter-State trade to the dealer shall be taxable at the rate specified in that sub-section subject to the provisions of Sub-section (4) of the said section.

(a) For sale.

Provisions, rice, sugar, chillies, etc.

In the course of the assessment proceedings for the year ending 31st December, 1962, the respondent issued a notice dated 29th December, 1962 (a copy of which is marked exhibit P-2 in the case), to the firm stating that the firm has

during the year 1961-62 used "C" Form declarations for inter-State purchase of certain goods which are not covered by the class or classes of goods specified in the certificate of registration and has thereby committed an offence u/s 10(b) of the Central Sales Tax Act. Exhibit P-2 notice states:

You have thus used "C" Form declarations for the inter-State purchase of goods which are not covered by the class or classes of goods specified in the certificate of registration issued to you under the Central Sales Tax Act and have thereby committed an offence punishable u/s 10(b) of the Central Sales Tax Act, 1956. It is therefore proposed to impose on you u/s 10A of the said Act, a penalty of Rs. 23,170-35 which is equal to 10% per cent. of the cost price of the goods you purchased inter-State by the unauthorised use of the "C" Form declarations.

The petitioner submitted its objection to the proposed penalty by a reply dated 7th January, 1963, a copy of which is marked exhibit P-3. In exhibit P-3 it was stated that the addition of the word "etc" in exhibit P-1, was intended to include all categories and classes of goods in which the petitioner-firm was doing business. The goods mentioned in exhibit P-2 notice as having been purchased by the firm by unauthorised use of the "C" Form declarations are:

It was further stated in the reply that even if, as a matter of fact, these goods would not come within the category of goods mentioned in exhibit P-1, since the firm was under the bona fide belief that these goods were covered by the registration certificate it has not committed any offence and that even if an offence has been committed, the penalty proposed was excessive. The respondent by his order exhibit P-4 has found that the goods purchased by the petitioner were not covered by exhibit P-1 certificate and that the word "etc." can only take in items that can be classed among provisions as sugar and chillies and not items like paints and varnishes, and that even if these statements in the "C" Form declarations were made negligently or inadvertently, with no intention to defraud or cheat, the petitioner would be liable for the penal consequences envisaged by the section. He therefore held that the petitioner was guilty of an offence u/s 10(b) of the Act and imposed a penalty of one per cent. of the cost of the goods purchased instead of 10% per cent as proposed in the notice and levied a penalty of Rs. 2,206-70.

2. It is alleged in the affidavit in support of the writ petition that the partners in the firm believed that exhibit P-1 registration certificate was comprehensive enough to include all categories and classes of goods which the firm was purchasing from outside the State, and that it was in that belief that the firm was making the purchases of paints and other allied goods from outside the State under the "C" Forms issued. It is further stated in the affidavit that these purchases have been from month to month and year to year brought to the notice of the successive Sales Tax Officers and that these officers have also proceeded on the footing that exhibit P-1 registration certificate was intended to cover all categories and classes of goods which the petitioner-firm was purchasing for the purpose of its business.

3. The main submission made by counsel on behalf of the petitioner was that even assuming that the goods purchased were not covered by exhibit P-1 certificate, the partners in the firm were under the bona fide belief that they were so covered and therefore they had no metis rea in issuing the "C" Form declarations. The relevant portion of Section 10(b) of the Central Sales Tax Act reads as follows:

10. If any person--

(b) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration; or

he shall be punishable with simple imprisonment which may extend to six months, or with fine or with both; and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

Section 10A of the Act reads as follows:

If any person purchasing goods is guilty of an offence under Clause (b) or Clause (c) or Clause (d) of Section 10, the authority who granted to him or, as the case may be, is competent to grant to him a certificate of registration under this Act may, after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one and a half times the tax which would have been levied under this Act in respect of the sale to him of the goods if the offence had not been committed:

Provided that no prosecution for an offence u/s 10 shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

The use of the words "falsely represents" in Clause (b) of Section 10 is significant. I think, it must be proved that the dealer made the representations that the goods purchased were covered by the registration certificate with the knowledge that they were not so covered. It is only when a representation which was false to the knowledge of the firm, which means, to the knowledge of the partners, is made that there would be liability under the section. I do not think that there can be any doubt that, as a matter of fact, the goods purchased were not covered by exhibit P-1 certificate.

4. Then the question for consideration is whether the belief of the partners that the goods were covered by the certificate would exonerate them from the penal consequences of the representations made by them by issuing "C" Form declarations. It might be asked what if the partners entertained the belief negligently or unreasonably? Would there be no liability even then under the section? If the belief was entertained by the firm on account of its inadvertent negligence, is the firm not liable for the penal consequences simply because the partners entertained the belief? If the firm, though through want of care, but honestly, thought that the goods were covered by exhibit P-1 certificate, it appears to me that the firm would not be liable under the section. It is not one of

those statutory offences where mens rea is not a constituent element of the offence and the mens rea that is required by Clause (b) of the section is the knowledge that the representations contained in the "C" Form declarations were false. In *Brend v. Wood* (1946) 62 T.L.R. 482. (D.C.) Lord Goddard, C.J., said:

It is of the utmost importance for the protection of the liberty of the subject that a court should always bear in mind that, unless a statute, either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, the court should not find a man guilty of an offence against the criminal law unless he has a guilty mind.

Wright, J., in *Sherras v. De Rutzen* (1895) 1 Q.B. 918, 921 said:

There is a presumption that mens rea, an evil intention, or knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered.

These formulations were cited with approval by Lord Evershed in *Lin Chin Aik v. The Queen* [1963] A.C. 160. I think, here, the language used in Section 10, Clause (b), makes it clear that mens rea is an essential ingredient for the commission of an offence.

5. In *Deny v. Peek* 14 App. Cas. 337, at 352, which decided that deceit cannot be committed by inadvertent negligence, even though gross, Lord Herschell said:

To make a statement careless whether it be true or false, and therefore without any real belief in its truth, appears to me to be an essentially different thing from making, through want of care, a false statement, which is nevertheless honestly believed to be true.

The former could be called reckless because the person making the statement would know that it might be false; the latter, involving no such knowledge, is not reckless in law. If this is true for civil law, it would seem a fortiori to be so for criminal law. Ignorance is the genus of which simple ignorance and mistake are the species. Either simple ignorance or mistake is sufficient to destroy the intentional nature of an act as to the unknown circumstances. The question whether the belief of the partners in the representation should have been reasonable in order to exculpate them from the penal liability is not free from difficulty. It would be possible to cite conflicting judicial dicta on the requirement of reasonableness of the belief in a matter like this.

6. In *Bank of New South Wales v. Piper* [1897] A.C. 383, at 389, it was observed:

On the other hand, the absence of mens rea really consists in an honest and reasonable belief entertained by the accused of the existence of facts, which, if true, would make the act charged against him innocent.

The question of reasonableness was not in issue on the facts of that case and it

was perhaps inserted either from excess of caution or from confusion between evidence and fact. Lord Bramwell said in a somewhat different connection in *Berry v. Peek* 14 App. Cas. 337, at 352:

I think, with all respect, that in all the judgments there is, I must say it, a confusion of unreasonableness of belief as evidence of dishonesty and unreasonableness of belief as of itself a ground of action.

In *Thorne v. Motor Trade Association* [1937] A.C. 797 at 809, Lord Atkin said:

I do not think that doubt should exist upon a well-established proposition in criminal law that normally a genuine belief in the existence of facts as apart from law, which if they existed would constitute a defence, is itself a sufficient defence.

In the case of *Younghusband v. Luftig* [1949] 2. K.B. 354, 369, it was held that a person could not be convicted for wilfully and falsely using a description implying that his name was on the Medical Register established under the Medical Act of 1858 if he believed that he was within his rights in acting as he did. But Lord Goddard, C.J., remarked that he must of course have a reasonable ground for his belief. This is what the learned Chief Justice said:

He must of course have a reasonable ground for his belief. A person who has passed no examination and has received no qualification from a genuine teaching body cannot adopt one of the titles mentioned in the section and be heard to say that he believed he had such skill as would entitle him so to describe himself. We can sum up this part of the case by saying that there must be mens rea and the presence or absence of that state of mind must be tested on ordinary principles and in the light of common sense.

This was when the question was not directly before the court. But when it arose pointedly in the later case reported in *Wilson v. Inyang* [1951] 2 K.B. 799, the learned Chief Justice seems to have explained that he had meant only that the belief must be honest and that reasonableness was evidence of honesty in the belief. Lord Goddard, C.J., said:

a man may honestly believe that which no other man of common sense would believe. If he has acted without any reasonable ground, and has refrained from making any proper inquiry, that is generally very good evidence that he is not acting honestly. But it is only evidence, and I do not think that it would be right for a moment to say that we qualified that part of our judgment in *Younghusband v. Luftig* [1949] 2. K.B. 354, 369 where we emphasised that the question for the Magistrate was whether the defendant acted honestly by saying that he cannot have acted honestly if had no reasonable grounds for his belief. What we were painting out was that, in considering whether a defendant has acted honestly, the Magistrate ought to take into account the presence or absence of reasonable grounds of belief.

This is supported by cases on claim of right in theft or criminal trespass. A claim of right may result either from a mistake of fact or from a mistake of law. In

either event it negatives mens rea whether or not the mistake is reasonable. Whatever that be, there is no finding here that the "C" Form declarations were made falsely, that is with the knowledge and in the belief that the goods purchased were not covered by exhibit P-1 certificate. Exhibit P-4 order states:

It may be that the dealer had no intention of cheating or defrauding and that the wrong certificate was given negligently or inadvertently. But I am of the view that such negligent or inadvertent behaviour will also come under the ambit of Section 10 and Section 10A.

I think here there is an error of law apparent on the face of the record. There is a clear distinction between a representation which is negligent and one which is fraudulent. The section, as I have already said, requires that the representation must have been made falsely, viz., without any belief in its truth. A representation, however negligent, is not fraudulent. In *Deny v. Peek* 14 App. Cas. 337 at 375 Lord Herschell said:

In my opinion making a false statement through want of care falls far short of, and is a very different thing from, fraud, and the same may be said of a false representation honestly believed though on insufficient grounds.

7. There is no finding that the representations made by the petitioner were false, namely that the "C" Form declarations were issued without the belief that the goods purchased were covered by exhibit P-1. I therefore quash exhibit P-4 order and allow the writ petition. I make no order as to costs.