
(1968) 10 AP CK 0007
In the Andhra Pradesh High Court

Public Prosecutor

APPELLANT

Vs

Jandhyala Pullamma and Others

RESPONDENT

Date of Decision : 09-10-1968

Acts Referred:

Evidence Act, 1872 — Section 92
Penal Code, 1860 (IPC) — Section 109, 62
Stamp Act, 1899 — Section 5, 62, 70

Citation : (1970) CriLJ 276

Hon'ble Judges : Kondaiah, J

Bench : Single Bench

Judgement

Kondaiah, J.—This appeal by the Public Prosecutor on behalf of the State of Andhra Pradesh is from the judgment of the Judicial Second Class Magistrate, Kovvur in C. C. No. 2074/65, acquitting the accused of the charge u/s 62(1)(b) of the Indian Stamp Act, holding that the document Ex. P-I appears to be a settlement deed but not a sale.

2. The brief and material facts that gave rise to this appeal lie in a short compass: A-I and her son-in-law had executed Ex. P-I on 12-12-1959 purported to be a "dakhal" or settlement deed in respect of schedule lands relating to the hereditary archakatwam service, in favour of accused 2 & 3 for a sum of Rupees 7,000/- and got the document registered at Kovvur before P. W. 3, the then Sub-Registrar, on payment of stamp duty of Rs. 105/-. P. W. 3, considering that the document in question was a plural transaction, partly a sale and partly a settlement, within the meaning of Section 5 of the Indian Stamp Act, had referred the matter for clarification to the then District Registrar, who passed an order of adjudication on May 7, 1960. holding that the document was partly a deed of sale and partly a deed of settlement and the requisite stamp duty payable thereon was Rs. 465/- and levied a penalty of Rs. 50/-. Thereafter, the accused 1 to 3 were directed to pay the balance of Rs. 360/- towards deficit stamp duty and Rs. 50/- towards penalty. As the amount has not been paid by the accused, P. W. 4, the present District Registrar and Collector within the

meaning of the Indian Stamp Act, sanctioned prosecution u/s 70(1) of the Indian Stamp Act, in Ex. P-9 dated 31-7-1965. The present complaint has been filed before the trial Magistrate pursuant to the order of P. W. 4 under Ex. P. 9.

3. The prosecution examined P. Ws. 1 to 4 in support of its case. P. W. 1. an L. D. C. in the office of the District Registrar, filed and proved Exs. P-I to P-7. P. W. 2, a document writer, is the scribe of Ex. P-I. P. W. 3 is the then Sub-Registrar of Kovvur who registered Ex. P-I and P. W. 4 is the District Registrar, West Godavari who sanctioned prosecution of the accused 1 to 3.

4. The plea of the accused is one of not guilty.

5. The trial Magistrate, on a consideration of the recitals in Ex. P-I and the other material on record, came to the conclusion that the document appears to be of a settlement rather than a sale and the stamp duty of Rupees 105/. paid thereon was correct, and acquitted the accused. Hence this appeal.

6. The learned Public Prosecutor contended that the order of the Court below is erroneous, illegal and untenable and in any event, the trial Magistrate is not competent to go into the question whether the document Ex, P-I was a deed of settlement or sale, as the competent authority under the statute had already adjudicated upon that question. Shri Subrahmanyam, appearing for the accused, contended contra.

7. On the facts and in the circumstances, the points that arise for determination are:

1) Whether a Criminal Court is competent and has jurisdiction in a proceeding u/s 62(1)(b) of the Indian Stamp Act, to go into the question of the nature of a document on a consideration of the recitals and other material on record?

2) Whether the order of acquittal in the present case is liable to be set aside on merits?

8. For a proper appreciation of the point No. 1, it is necessary and relevant at this stage to consider the scope and application of the provisions of Section 62(1)(b) of the Indian Stamp Act (hereinafter referred to as the Act) which read thus:

Any person executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, shall for every such offence be punishable with fine which may extend to five hundred rupees.

A reading of the section clearly indicates that the prosecution has a duty to prove beyond reasonable doubt that the accused person or persons have executed or signed the document in question chargeable to stamp duty but the same was not duly stamped. Unless and until the ingredients of Section 62(1)(b) of the Act have been established by the prosecution, the penal provisions of that section are not attracted. It is the cardinal and established principle of criminal jurisprudence that the burden is admittedly on the prosecution to prove all the

requisite ingredients of the offence punishable u/s 62(1)(b) in a prosecution launched against the accused persons. It has to be examined how far the prosecution has discharged the onus in the present case.

9. It is sought to be argued by the learned Public Prosecutor that the then District Registrar, the competent authority, on the matter being referred to him by P. W. 3, the Sub-Registrar, had already adjudicated upon the nature of the document in question as one of sale as well as settlement requiring an additional stamp duty of Rs. 360/-, after due enquiry, and hence, the question relating to the nature of the document and the stamp duty payable, cannot be gone into once again by the criminal court in this proceeding, as the decision of the District Registrar was allowed to become final. No doubt, the accused did not prefer any revision petition to the Board of Revenue against the orders of the District Registrar who acted in the capacity of Collector within the meaning of the Act, but I am unable to agree with the contention of the learned Public Prosecutor that the criminal Court has no jurisdiction in this proceeding to go into the nature of the document and the due and proper stamp duty payable by the parties, on a consideration of the material on record. I am of opinion that the finding of the District Registrar and his adjudication on the reference made by the Sub-Registrar are final only in so far as applicability of the provisions of the Act is concerned, but it cannot be said in view of the expression "instrument chargeable with duty without the same being duly stamped" in Section 62(1) of the Act, that the same cannot be gone into by the criminal Court in this proceeding.

10. No direct authority on this point arising under the Act has been cited before me. I shall presently consider some decisions arising under similar circumstances under District Municipalities Act and Sales Tax Act.

11. In T.S. Ramasawamy Ayyangar Vs. The Sivakasi Municipality, while considering the question whether it is open to the accused in a prosecution under Rule 30. Clause 2 of Sch. 4 of the District Municipalities Act to plead that the tax is not leviable, Venkataramana Rao, J., speaking for the Bench, at page 278 ruled:

We are therefore clearly of the opinion that it is incumbent upon the prosecution to establish affirmatively that the profession tax was legally leviable from the accused and it is also open to the accused to plead and prove that he is not liable to pay the tax and therefore he is not liable to be prosecuted under Rule 30, Clause 2 of Sch. 4 of the District Municipalities Act

Ultimately, the conviction and the sentence were quashed and the accused was acquitted.

12. In Poppatlal Shah Vs. The State of Madras, the Supreme Court, holding that the transaction in question was a sale outside the province of Madras which did not require any payment of sales tax thereon, acquitted the accused allowing the appeal, finding that the conviction of an assessee for an offence u/s 15 of the

Madras General Sales Tax Act in respect of such illegal assessment was unsustainable. In that case, the assessment was completed before December 1947, i.e. prior to the amendment of the Act where the words "tax due" in Section 15 were in existence instead of the words "any tax assessed" as a result of the amendment.

13. The Full Bench decision of this Court in *Public Prosecutor, (Andhra) Vs. Bhavigadda Thimmiah and Others*, sought to be relied upon by the Public Prosecutor was a case, where their Lordships had to consider the expression "any tax assessed on him under this Act" in Section 15 (b) of the Madras General Sales Tax Act subsequent to amendment. The following passage in that Full Bench decision at page 132 lends support to the plea of Sri Subrahmanyam in the present case:

Cases which enunciate the principle that before an accused could be convicted for non-payment of taxes, one of the essential ingredients of the offence, namely, the liability to pay should be made out, turn on the language of the enactments, namely "taxes due". That expression lends itself to the interpretation taxes lawfully due and payable. The import of the words "tax assessed under the Act" is different. They only connote that an assessment in fact has been made. There is no warrant for importing the words "lawfully or legally assessed" into the section. We are of opinion that the clause "any tax assessed on him.. under this Act" in Section 15 (b) cannot have that implication.

14. In a recent Bench decision of this Court in *Public Prosecutor v. Mukh Singh* (1967) 2 AnWR 157, it was held that the non-service of a notice under Sub-section (4) of Section 14 of the Andhra Pradesh General Sales Tax Act to show cause why the original order of assessment should not be re-opened, on any of the accused before the order of reassessment, invalidated the very reassessment which was found to be null and void, when the accused were prosecuted u/s 30(1)(a) of Andhra Pradesh General Sales Tax Act. No doubt, the assessment was allowed to become final under the Act, but their Lordships have held that in the eye of law, the assessment made without serving the statutory notice was no assessment at all, the validity of which can be questioned in a prosecution sought to be launched u/s 30(1)(a) of the said Act.

15. In *K.S. Venkataraman and Co. Vs. State of Madras*, their Lordships of the Supreme Court have held that a civil Court has jurisdiction to question the assessment which was made outside the provisions of the Madras General Sales Tax Act.

16. In *Raghubar Dayal Vs. Emperor*, while considering the validity of the conviction u/s 62 of the Stamp Act read with Section 109, I. P. C, it was held, on a consideration of the documents and the recitals therein, that they were merely memoranda of the sale of goods entitled for exemption from stamp duty under Article 5, Exemption (a) conveyance within the meaning of An. 23, and the conviction was set aside as unsustainable. The same view has been reiterated by

the Allahabad High Court in Imam Baksh Vs. Emperor In the aforesaid two cases, the documents were considered and finally adjudicated upon by the criminal Court as to the nature of the same and the requisite stamp duty due and payable by the parties for the execution of the same. I am unable to agree with the contention of the Public Prosecutor that these decisions of the Allahabad High Court can have no application to the facts of the present case, as no adjudication by the competent authority under the statute was made in those cases.

17. The object and purpose of the enquiry relating to the nature of the document sought to be registered by the competent authority under the provisions of the Act is to fix the requisite quantum of stamp duty due and payable thereon, whereas the object and intendment of launching criminal prosecution, after obtaining the requisite sanction, against any persons is to punish such persons for the offences committed by them in contravention of the provisions of Section 62 of the Act. Hence, in the circumstances, the findings given in respect of the nature of the document as well as the requisite stamp duty duly payable thereon, by the concerned authority under the Act, can, by no stretch of reasoning, be said to be conclusive and binding on the criminal Court in a proceeding u/s 62 of the Act, although they are allowed to become final in so far as the applicability of the provisions of the Act and decision of the competent authority are concerned. Where the notice required under the statute was not at all issued or no enquiry was made, or the enquiry made was illegal and opposed to the principles of natural justice, or where the stamp duty decided upon by the competent authority was not in the eye of law duly chargeable, I have no hesitation to hold that the decision or adjudication by the concerned authority under the Act was not a valid decision in the eye of law and can be ignored by the criminal Court for the purpose of the criminal prosecution. The accused person is always entitled to prove that the ingredients of Section 62(1) have not been made out beyond reasonable doubt, thereby entitling him for an acquittal. Hence, the accused in the present case are entitled to raise the plea that the document in question was not a sale but only a settlement and the stamp duty duly chargeable thereon has in fact been paid properly and the alleged deficit stamp duty of Rs. 360/- was duly not chargeable within the provisions of Section 62(1) of the Act and the criminal Court in this enquiry has ample jurisdiction and power to go into those questions and decide the same, on a consideration of the recitals of the document as well as the other material on record.

18. There remains the question as to whether Ex. P-I is a deed of settlement on which the duty payable is only Rs. 105/- as urged by Sri Subrahmanyarn, or a deed of sale or partly sale and partly, settlement as contended by the Public Prosecutor. To arrive at a correct conclusion on this point the Court can look into the very recitals of the document as primary evidence and the other material available on record. I am unable to agree with the contention of Sri Subrahmayam that the evidence other than the recitals of the document is inadmissible, as the same is hit by Section 92 of the Evidence Act. Though the document is styled as a deed of "dakhal" for Rs. 7000/-, the recitals relating to

consideration disclose that it was executed partly due to love and affection towards the vendees and partly in consideration of the expenses incurred by and due and payable to the vendees in respect of the archakatwam service performed by them for a period of 9 years and for "paditharamulu".

On a close reading of the recitals of the entire document, I must hold that Ex. P-1 is not a simple deed of settlement executed without any consideration except love and affection. Admittedly, A-1, by virtue of the compromise decree, has to pay an amount of Rs. 6912/- towards "paditharamulu" and services expenses to A-2 and A-3 as revealed from Ex. P-1. Ex. P-7, the petition filed by A-2 and A-3, discloses that Ex. P-1 was executed by A-1 in their favour for the consideration of the amount due and payable to them by her pursuant to the compromise decree. The contention of Sri Subrahmayam that Ex. P-7 is inadmissible in evidence, as according to him it was filed by A-2 and A-3 who are accomplices; is devoid of any merit. I must say that A-2 and A-3 are not accomplices but they are co-accused along with A-1 and they are represented by Sri Subrahmanyam in this very same case that apart. Ex. P-7 was filed before the District Registrar in the course of the enquiry contemplated under the Act and hence, it is not inadmissible by virtue of the provisions of Section 92 of the Evidence Act.

On a close reading of the recitals in Exs. P-1, P-10 and P-7, I have no hesitation to agree with the decision of the District Registrar that it was partly sale deed and partly settlement deed, setting aside the finding of the lower Court and disagreeing with the contention of the accused that it was an out and out settlement deed. But I am constrained to observe that the order of adjudication or or the material on record does not disclose the basis for allocating the amount of Rs. 5400/- towards sale and Rs. 1600/- towards settlement. However, it is unnecessary for me to go into that question as the same has not been agitated upon by any of the parties. In the circumstances and for the reasons indicated, I hold that the prosecution has established beyond reasonable doubt the requisite ingredients of Section 62(1)(b) of the Act and I do not find any merit in any of the objections raised by the accused, in this regard.

19. A-1, who is the vendor and who had executed the document Ex. P-1, is liable for the offence u/s 62(1)(b) of the Act. But in my considered opinion, A-2 and A-3 have neither executed the document nor signed the document in any capacity other than that of a witness, to bring home their guilt within the provisions of Section 62(1)(b) of the Act. Hence, they cannot be convicted for the offence charged against them.

20. In the result, the acquittal of A-2 and A-3 is confirmed and that of A-1 is set aside. I convict A-1 u/s 62(1)(b) of the Indian Stamp Act. In view of the fact that the offence has taken place about 9 years ago and A-1 is an old lady, I consider that the ends of justice will be met if a fine of Rs. 50/- is imposed. In the circumstance, I impose a fine of Rs. 50/- on A-1 payable within two weeks from the date of receipt of the judgment in the lower Court. The appeal by the State is therefore allowed in respect of A-1 and dismissed in respect of A-2 and A-3.