

(1960) 02 MP CK 0015

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 361 of 1959

Sardar Sant Singh

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 26-02-1960

Acts Referred:

Central Provinces and Berar Sales Tax Act, 1947 — Section 24, 24(1)(a), 24(2), 8(1)

Citation : (1961) 12 STC 76

Hon'ble Judges : T.C. Shrivastava, J

Bench : Single Bench

Judgement

T.C. Shrivastava, J.—The petitioner, Sardar Santsingh, was convicted in a summary trial by the Judge-Magistrate, Hoshangabad, of an offence u/s 24(1)(a) read with Section 8(1) of the Central Provinces and Berar Sales Tax Act, 1947 (hereinafter referred to as the Act) and was sentenced to pay a fine of Rs. 500 (in default, 45 days' simple imprisonment) and also to a further fine of Rs. 1,125 at the rate of Re. 1 per day from 1st June 1947, to 26th July, 1950 (in default, simple imprisonment for six months). He went up in appeal to the Additional Sessions Judge, Hoshangabad, who dismissed it. He has, therefore, filed this petition for revision against the conviction and the sentence.

2. The petitioner dealt in timber, charcoal and firewood during the period 1st June, 1949, to 26th July, 1950, but did not register himself as a dealer. The prosecution case was that during that period his turnover exceeded Rs. 5,000 per year and he was, therefore, liable to register himself as a dealer under the Act. In omitting to do so, he committed an offence u/s 24(1) (a) read with Section 8(1) of the Act. The petitioner applied for registering him as a dealer on 26th July, 1950, (exhibit P-12) and he was then registered as such.

3. The trial court found that the petitioner carried on business exceeding the taxable quantum and that his omission to register himself as a dealer amounted to an offence under the Act. Accordingly, he was ordered to pay a fine of Rs. 500. As the offence was held to be a continuing one, he was further fined at the rate

of Re. 1 per day for the period during which he carried on business without registration.

4. On behalf of the petitioner, Shri A. R. Choubey has raised several contentions. It is urged that the sanction, which was granted by the Sales Tax Commissioner, is invalid and the prosecution is, therefore, illegal. It was also urged that the petitioner was not a "dealer" within the meaning of Section 8(1) of the Act. At any rate, it was urged that the fine of Re. 1 per day was illegal. It was also stated that the prosecution was barred by time.

5. Section 24(2) of the Act, as it stood in 1950, provides that "No Court shall take cognizance of anything expressed to be an offence by or under this Act, except with the previous sanction of the Commissioner..." It is, therefore, clear that sanction of the Commissioner was necessary for prosecution. Exhibit P-I is the sanction, which is in the following terms:

The prosecution of Shri Santsingh Harmendarsingh of Banapura, District Hoshangabad, holding registration certificate No. SM/66 is sanctioned as required by Sub-section (2) of Section 24 of the Central Provinces and Berar Sales Tax Act, 1947, for carrying on business as a dealer in contravention of Sub-section (1) of Section 8 of the Act, and thereby committing an offence punishable under Clause (a) of Sub-section (1) of Section 24 of the said Act.

It is pertinent to observe that the sanction does not specify the period during which the business was carried on. The sanction itself is dated 9th February, 1956, and it may refer to any period prior to that date. In fact, facts constituting the offence have not at all been stated in the sanction.

6. In AIR 1948 82 (Privy Council) the question of the requisites of a sanction under Clause 23 of the Cotton Cloth and Yarn (Control) Order, 1943, has been considered. It was observed that:-

In order to comply with the provisions of Clause 23, it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is plainly desirable that the facts should be referred to on the face of the sanction, but this is not essential, since Clause 23 does not require the sanction to be in any particular form, nor even to be in writing. But if the facts constituting the offence charged are not shown on the face of the sanction, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority.

It is clear from these observations that the facts constituting the offence must be stated in the sanction itself or if the sanction is not clear, they must be proved by other evidence. It is also necessary that it should be apparent from the sanction itself or by other evidence that the sanctioning authority applied its mind to the facts of the case. From the sanction (exhibit P-I) in the present case neither of these two things is clear. It is not known as to what the facts were before the Sales Tax Commissioner which, in his opinion, constituted the offence and for

which he sanctioned the prosecution. Nor is it clear that he applied his mind to the question at all. The trial court has observed that as some portions in the printed form have been omitted and some words have been typed below it, it must be assumed that the sanctioning authority applied its mind to the facts of the case. Looking at the sanction itself, it is difficult to agree that the insertion of a few words, which do not themselves show what the facts before the sanctioning authority were, would lead to the conclusion that the Commissioner applied his mind to the facts of the case. No attempt has been made during the trial to show that the Sales Tax Commissioner had the necessary facts before him. Under the circumstances, the contention that the sanction is invalid must be accepted.

7. Shri A. R. Choubey for the petitioner stated at the time of arguments that I should not decide the other points raised by him in this case, if I agreed that the sanction was invalid, as that might prejudice the petitioner, if he is tried for the offence in future after proper sanction. It is not, therefore, necessary for me to go into the other contentions raised before me.

8. The jurisdiction of the criminal Court to try an offence u/s 24 of the Act arises only after a proper sanction under Sub-section (2) of that section has been granted by the Commissioner. As in the present case, the sanction granted is invalid, the whole trial was without jurisdiction.

9. Accordingly, I order that the conviction of the petitioner u/s 24(1) (a) read with Section 8(1) of the Act is quashed and the sentences passed are set aside. Fines, if paid, shall be refunded.