

(1958) 01 AP CK 0011
In the Andhra Pradesh High Court
Case No : Writ Petition No. 86 of 1956

Shankerlal Karva

APPELLANT

Vs

Tahsildar and Others

RESPONDENT

Date of Decision : 27-01-1958

Acts Referred:

Constitution of India, 1950 — Article 227, 229

Citation : (1958) 1 AnWR 440 : (1958) 9 STC 246

Hon'ble Judges : P. Satyanarayana Raju, J

Bench : Single Bench

Advocate : Krishnamachari, for S. Ranganadham, for the Appellant;

Final Decision : Allowed

Judgement

P. Satyanarayana Raju, J.—This is an application for the issue of writ of mandamus directing the Sales Tax Officer, Karimnagar, to withdraw the Certificate No. 145 dated 17th April, 1956, and to issue a writ of prohibition to the Tahsildar, Karimnagar, and the Collector of Karimnagar District, directing them to forbear from collecting sales tax to the tune of Rs. 2, 500.

2. The facts with have given rise to this petition are as follows :-

One Medisetti Veeresham applied to the Sales Tax Authority for registering him as a dealer and he was given a licence as provided under the provisions of the General Sales Tax Act and the Rules made thereunder. The said Medisetti Veeresham failed to file returns and produce accounts in spite of several notices issued to him to enable the officer to make an assessment. Therefore, under the provision enabling the officer to make a best judgment assessment, Veeresham's total turnover was determined at Rs. 1, 60, 000 and a tax of Rs. 2, 500 was levied as well as a penalty Rs. 500 for non-submission of returns. This was on the 24th of November, 1955. The assessment order and the demand notice were thereafter duly served on Veeresham, the assessee. The tax was not recovered and the matter was eventually referred to the District Collector on the

7th of February, 1956. When the tax was sought to be collected from Veeresham, the assessee, he represented to the authorities that one Shanker Lal Karva was his partner in the business and that as such he was equally liable to pay the tax. It is stated in the counter-affidavit filed by the Sales Tax Officer that the account books of the firm were produced by Medisetti Veeresham and that they showed that Shanker Lal Karva (the petitioner) was a partner in the said business. On his being thus satisfied that the petitioner was a partner along with the assessee, the Sales Tax Officer served a demand notice on the petitioner calling upon him to pay the tax of Rs. 2, 500. The petitioner thereupon objected that the amount could not be recovered from him as he was not a partner along with the assessee. From the facts narrated above, it is clear that the petitioner never admitted that he was a partner of Veeresham, the assessee, and it is undoubted that no notice was served on the petitioner before the assessment was made. It was only subsequent to the assessee stating before the Sales Tax Officer that the petitioner was his partner that the amount of tax was sought to be recovered from the petitioner. Under rule 34 of the Hyderabad General Sales Tax Rules, 1950, a dealer or a licensee who enters into partnership in regard to his business, has to report that fact to the licensing, registering and assessing authority within thirty days of his entering into such partnership. It is then that the dealer or the licensee or the partner may jointly and severally be responsible for the payment of the tax levied under the Act. It is nowhere stated by the respondent that either the petitioner or Veeresham has reported the fact, if it is true, that he was a partner with the assessee. If the Sales Tax Authorities considered on the basis of information obtained by them that the petitioner was really a partner with the assessee, the proper course for them would have been to give him a notice calling upon him to show why he should not be dealt with as such. This was not admittedly done.

3. Under the aforesaid circumstances, I find no warrant in law for the recovery of the amount of Rs. 2, 500 from the petitioner. There being a patent want of jurisdiction on the part of the respondents in recovering the tax from the petitioner, a writ of prohibition will issue restraining the respondents from recovering the amount of tax from him. The petitioner will have his costs from the respondent. Advocate's fee Rs. 100.