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(1971) 07 KL CK 0008

In the High Court Of Kerala

Case No : Second Appeal No. 585 of 1971

Souri Varghese	APPELLANT
Vs	
P.C. Assankutty	RESPONDENT

Date of Decision : 19-07-1971

Acts Referred:

Kerala Agriculturists Debt Relief Act, 1970 — Section 2(4)

Citation : AIR 1972 Ker 57 : (1971) KLJ 695

Hon'ble Judges : P. Subramaonian Poti, J

Bench : Single Bench

Advocate : S. Boothalingam Aiyar, for the Appellant; V. Sivaraman Nair, for the Respondent

Final Decision : Dismissed

Judgement

P. Subramaonian Poti, J.—When an Oil miller purchases copra for the purpose of crushing it into oil and selling it, could it be said that he is purchasing such copra for the purpose of his trade? This is the question which calls for an answer in this case. If the answer is ''yes'', then the purchase price is excluded from the definition of ''debt'' in the Kerala Agriculturists'' Debt Relief Act 11 of 1970. The appellant before me is the debtor who claims the benefit of the Act.

2. It is true that ''trade'' is a term which, in this context, is narrower in its scope than the term ''business''. Trade involves the concept of buying and selling. But it is not necessary that goods or merchandise purchased are sold in the same form or are sold without being converted into some other product. A person may be trading in copra and oil by purchasing copra and selling oil after converting the copra into oil by crushing in his mill. It cannot be said that he is not a trader or that he is not purchasing copra for his trade. Therefore the decision of the court below must stand.

3. My attention has been drawn to three decisions, none of which, according to me, applies to the facts before me as I will presently show. The decision of the

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Allahabad High Court in Behari Lal v. Smt. Chandrawati AIR 1966 All 541. was one where, in connection with the use of certain premises, it was considered whether ''trading'' included ''manufacture'' and in that context the court observed that the activity of trading does not include running of a mill, That of course is so. But that will have no bearing on the question for decision, before me. Raghavan. J. (as he then was) considered, in Alexander v. Kuruvilla (Thachara) & Co. 1963 KLT 8, the scope of the term ''debt'' as defined in Section 2(c) of Act 31 of 1958. The question there was whether a pronote executed by the defendant converting a debt due could be considered as for price of goods purchased for the purpose of trade. The goods in that case was some machinery for a mill and the engine attached to the pump set. Certainly that was not merchandise intended to be sold or converted into some other form for the purpose of trade. That is not the case where, as in the case before me, copra is purchased and converted into oil and such oil sold. The same view as that taken by Raghavan, J. has been taken by a Division Bench of this Court in Lukka John v. Popular Automobiles. 1965 K LT 553. There again the question was whether the debt which represented the price of automobile parts purchased for the purpose of use in a bus service business run by the defendant could be considered as price of goods purchased for purpose of trade. In running a bus service a person may be conducting a trade. But goods purchased for purpose of repair of or replacement in the transport vehicles are certainly not goods purchased for purpose of trade. The goods are not sold in the same or some other form. Though they are no doubt purchased for the running of the business the purchases are certainly not for the purpose of trade.

4. Trade, as I said earlier, involves, the concept of buying and selling. The mere fact that the form of the goods have changed in the hands of the person who is dealing in such goods does not render the purchase any other than that for his trade. Section 2(4)(f) of Act 11 of 1970 which corresponds to Section 2(c) (vi) of Act 31 of 1958 does not apply to such a debt as Section 2(4)(f) excludes "any debt which represents the price of goods purchased for purpose of trade" from the scope of the definition.

5. The Second Appeal therefore fails and is dismissed with costs.

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