(1973) 08 KL CK 0021

In the High Court Of Kerala

Case No : Criminal A. No''s. 241, 244 and 256 of 1972 and R.C. No''s. 3, 4 and 5 of 1972

State of Kerala APPELLANT

Vs

M.M. Mathew and Another RESPONDENT

Date of Decision : 03-08-1973

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 46(2)(c)

Citation : (1973) 32 STC 441

Hon'ble Judges : P. Narayana Pillai, J

Bench : Single Bench

Advocate : State Prosecutor, for the Appellant; S. Easwara Iyer and E. Subrantoni, for the Respondent

Final Decision : Dismissed

Judgement

P. Narayana Pillai, J.—These appeals and revisions arise from three cases, C. C. Nos. 90, 91 and 92 of 1970 on the file of the District Magistrate, Kottayam. The accused, two in number, in all these cases are the partners of a firm called Kallupalam Lad''s Jewellery Mart, doing jewellery business at Kottayam. While the prosecution in C.C. No. 90 of 1970 was u/s 46(1)(a) of the Kerala General Sales Tax Act, for short, the Act, for submission of untrue returns, the prosecution in the other two cases, which related to two different years, was u/s 46(1)(c) of the Act for failure to keep true and complete accounts and Section 46(2)(c) of the Act for fraudulent evasion of payment of tax. In respect of the charge u/s 46(2)(c) of the Act, the District Magistrate acquitted the accused. But they were convicted in C.C. No. 90 of 1970 u/s 46(1)(a) of the Act and each of them was sentenced to pay a fine of Rs. 600 and in default to undergo imprisonment for eight days and in C.C. Nos. 91 and 92 of 1970 u/s 46(1)(c) of the Act and each of them was sentenced in each of those cases to pay a fine of Rs. 500 and in default to undergo imprisonment for one week. In the appeals filed by the accused before the Sessions Court, Kottayam, their convictions and sentences in all the three cases were set aside and they were acquitted. .The appeals are by the State from the acquittal and the revision cases are those taken up suo motu on perusal of the judgments in the three cases.

2. On 20th February, 1970, certain officers of the sales tax department inspected the place of business of the accused, which is in the ground and first floors of a storied building at Kottayam. The ground floor is used by the artisans employed in the firm for manufacture of jewellery. The entire first floor is a big hall. That has been converted into several rooms, the partitioning being made with shelves. In the eastern room of the hall jewellery business is being conducted and in the western room an auto stores called Kallupalam Auto Stores belonging to one Marikutty. Marikutty has no interest whatsoever in the Kallupalam Lad''s Jewellery Mart and the accused have no interest in Kallupalam Auto Stores. At the portion separating the jewellery business from the auto stores at the southern end there is a room separated by shelves. There is a table in that room. It was to that room that the officers in the sales tax department first went. After going there when they demanded the first accused production of the account books of the Kallupalam Lad''s Jewellery Mart, he produced certain account books. During the examination of the same they came across some other books and papers which were already in that room and which the lower courts have chosen to call as "secret books and papers". On examining them, the officers found that the entries in them were different from those in the account books which had been submitted to them by the accused. Those secret account books and papers were then taken into custody. It was thereafter that prosecution was launched.

3. The prosecution case is that the entries in the secret books differ widely from those in the account books produced before the officers and that, consequently, the entries in the account books produced before the officers were false and the returns that the accused filed previously before the officers in respect of their sales and turnovers were also false. According to the accused, it was not from their custody that the secret books were taken and the true accounts of their business were those which they produced before the officers. Conviction u/s 46(1)(a) and (c) can be made if the accused submitted false returns and failed to keep true and complete accounts. In the present case, two sets of account books have come. One is that produced by the accused before the officers and the other the secret account books. As the two accounts are conflicting, there are three possibilities and they are : the entries in the secret books may be false and those in the other books may be true or the entries in the secret books may be true and those in the other books may be false or the entries in both the secret books and the other books may be false. From the mere fact that two sets of accounts which are conflicting are being maintained, it cannot be taken that the account books evidencing less turnover or profits are false. It is not unusual to find businessmen keeping two sets of actounts, one the correct one and the other showing exaggerated turnover and profits, the purpose of the latter being only to attract investments in and dealings with, the business. If any person has

been cheated by the false accounts the businessman may be guilty of cheating. Keeping of such conflicting accounts by itself, although it may be morally wrong, is no offence. No doubt if the taxing officer comes across two sets of conflicting accounts in respect of the same business, the burden is on the assessee to show that the account showing the larger turnover and profits is not the correct one and in the absence of proper explanation on the part of the assessee, it may be open to the officer to ignore both sets of accounts if he has reason to doubt that both of them are false. But, they are all for purposes of assessment only, They cannot be extended to criminal trials where different considerations prevail. The right of an accused to remain silent if he so wishes during trial is well-recognised. His silence cannot be allowed to any degree to become a substitute for proof by prosecution of its case. The presumption of innocence in his favour entitles him to the benefit of every reasonable doubt. The whole prosecution case here has been built on the assumption that the secret accounts are the true accounts. According to the prosecution, as the secret accounts are the true accounts, the accounts produced by the accused before the officers and on the basis of which the returns have been filed are false. No doubt, if the secret accounts are true, the other accounts must necessarily be false. But have the secret accounts been proved here to be true. Proof of the recovery of the secret books is one thing and the truth of the accounts contained in them entirely different. No doubt in Girdhari Girdhari Lal Gupta and Another Vs. D.N. Mehta, Assistant Collector of Customs and Another, , certain account books and slips seized by Customs Officers during search were held by the Supreme Court to be evidence which could be taken into consideration in a, prosecution under the Foreign Exchange Regulation Act, but there is nothing in that decision to show that mere proof of seizure of books or slips carries with it proof of the truth of the accounts in those books or slips seized. Truth of the accounts in books has to be proved by other evidence. In this case, there is absolutely no proof that the entries in the secret account books are true and correct. It may as well be that the secret accounts are false and the other accounts true. The maintenance of two conflicting sets of accounts by the same person may create suspicion about their falsity, but suspicion however grave it may be, is no substitute for proof.

4. Even with regard to the accused''s possession of the secret account books at the time of their recovery, there is serious doubt. They were recovered from the room which was accessible through the Kallupalam Auto Stores also. The prosecution has no case that any of the accused or any of their employees was found inside that room when the officers entered the place of business of the Kallupalam Lad''s Jewellery Mart for inspection. No jewellery of any kind was also in that room at that time. P.Ws. 1 to 5 are the witnesses examined to prove the recovery. Of them, all except P.W. 4, are officers of the sales tax department. P.W. 4 is an independent witness. He is an attestor in the mahazar prepared at the time of recovery. His evidence shows that he had not seen the actual seizure of the secret books and papers and that he did not really know from where they were seized. Therefore, there is also serious doubt about the accused''s exclusive

possession of the secret books and papers at the time they were recovered.

5. As it has not baen proved beyond reasonable doubt that the accused had submitted false returns and that they had failed to keep true and complete accounts, the appeals are dismissed and the rules issued in the revision cases are discharged.

