(1954) 04 MAD CK 0020

In the Madras High Court

Case No : Criminal Appeal No. 93 of 1953

State Prosecutor APPELLANT

Vs

Myalappa and Co. and Others RESPONDENT

Date of Decision : 01-04-1954

Acts Referred:

Constitution of India, 1950 — Article 20(2)
Criminal Procedure Code, 1898 (CrPC) — Section 403
Madras General Sales Tax (Turnover and Assessment) Rules, 1939 — Rule 19
Madras General Sales Tax Act, 1939 — Section 15

Citation : AIR 1955 Mad 161 : (1955) CriLJ 176 : (1954) 2 MLJ 554

Hon'ble Judges : Somasundaram, J

Bench : Single Bench

Advocate : Asst. Public Prosecutor, for the Appellant; G. Gopalaswami, Amicus curiae, for the Respondent

Final Decision : Dismissed

Judgement

Somasundaram, J.—This is an appeal by the state against the acquittal passed by the Sub-Divisional Magistrate, Tuticorin, in S. C. No. 542

of 1951 on his file. In this case the prosecution is against a firm called Mylappa and Co. for non-payment of Sales-tax. Mylappa and Co.,

consisted of two partners Jacob Nadar and Mylappa. Jacob Nadar was prosecuted in S. C. No. 256 of 1949 before the joint Magistrate,

Tuticorin, for non-payment of Sales-tax for the year 1946-47, an offence punishable u/s 15 (b) of the Madras General Sales-tax Act. He was then

acquitted and an appeal was preferred against that acquittal to this Court in C. A. No. 181 of 1950. The acquittal was upheld and the appeal was

dismissed on the ground that the defaulter was the firm and it is the firm that should nave been prosecuted and the individual or any partner cannot separately be prosecuted. Subba Rao J. who heard the appeal observed as follows:

A combined reading of the aforesaid sections establishes that a firm is a person and that for the purpose of assessment the firm is treated as one

entity and that in default of payment pursuant to the notice the firm is liable to be prosecuted. It is true that under Rule 19 of the Madras General

Sales-tax rules if a dealer or licensee enters into partnership with regard to his business he shall report the fact to the assessing authority within 30

days of his entering into such partnership and that the dealer or licensee and the partner shall jointly and severally be responsible for the payment of

the tax leviable under the Act. But that rule does not override the provisions of the Act which enable the authorities concerned to deal with the firm

as one entity for the purpose of assessment and prosecution. In the instant case the assessment was made on the firm. The notice was issued to the

firm. But a partner of the firm was prosecuted. As the defaulter in this case is the firm, the firm should nave been prosecuted for contravening the

provisions of Section 15. But instead, one of the partners on whom no notice was served at all has been prosecuted in his personal capacity. The

firm, which is a person u/s 2(b) and who committed the offence, is not the accused in the case.

The learned Judge therefore upheld the acquittal. Now the state has filed the prosecution against the firm, which, as already represented, consists

of two partners, namely, the said Jacob Nadar and another person. In the words of Subba Rao J. it is the firm that is now sought to be prosecuted.

2. An objection was taken in the lower Court that since Jacob Nadar, one of the partners, was already prosecuted for the non-payment of sales-

tax the same year 1946-47 and has been acquitted of that offence and as this prosecution also relates to the non-payment of sales-tax for the

Same year, he cannot be prosecuted again. At any rate, although the firm may be prosecuted, he, one of the partners, having been acquitted

cannot be joined in the prosecution against the other. The lower Court upheld the objection and not only acquitted Jacob Nadar, but also acquitted

the other person on the ground that the other person also cannot be individually prosecuted in the absence of Jacob Nadar. It is against the

acquittal that the state has preferred this appeal.

3. The question now is whether Section 403 Cr. P. C. will apply to the facts of this case. Rule 19 of the rules framed under the Madras General

Sales-tax Act says:

If a dealer or licensee enters into partnership in regard to his business, he shall report the fact to the assessing authority within thirty days of his

entering into such partnership. The dealer or licensee and the partner shall jointly and severally be responsible for the payment of the tax leviable

under the Act.

This shows that although the firms as such & as a separate entity may be prosecuted, still the partners are jointly and severally liable. That means to

say the partners may be individually fined and the fine may be collected in such, manner as is provided by law and the law provides that in default

of payment of fine, the offenders may be sentenced to imprisonment for a certain term.

Supposing in this very case instead of Jacob Nadar being acquitted, he was convicted and sentenced to a fine and in default to certain

Imprisonment and suppose Jacob Nadar had undergone this imprisonment as well. The authorities, not being able to realise the fine from Jacob

Nadar, may still launch a prosecution against the firm including Jacob Nadar again as an accused and in seeking to get a conviction of the firm, they

will in effect, get the two individual partners convicted separately, as both of them will be individually or in the words of the rules ""jointly and

severally"" liable.

In short, Jacob Nadar, if the contention of the State is to be accepted, can be convicted again and sentenced to imprisonment in default of payment

of fine. Although in respect of the very sales-tax & for the very same year & for the same offence he might have undergone the sentence of

imprisonment for non-payment of fine in the previous case, he could still be made to undergo imprisonment for non-payment of fine. That certainly

cannot be the principle of Section 403 Crl. P. C. or even the principle underlying prosecutions against firms.

The difficulty in this case has arisen not on account of anything done by the accused but on account of the rather careless way in which the

authorities have sought to prosecute the firm. They should have known that when the assessee was a firm, it is the firm that should be prosecuted and if in the first instance itself the firm had been prosecuted represented by its partners, this difficulty would never have arisen. If there is any

difficulty now it is due to the methods adopted by the authorities by not realising in the first instance itself that the individual ought not to be

prosecuted, but it is the firm that should have been prosecuted.

I have sufficiently indicated that Jacob Nadar cannot be put again for trial in respect of the non-payment of sales-tax for the same year for which he

was prosecuted before and if he cannot be put on trial, the other partner by himself alone cannot also be put up for trial and the objection therefore

on this ground was successfully maintained by the lower court and the appeal filed by the State fails. This appeal is therefore dismissed.

4. I must acknowledge my indebtedness to Mr. G. Gopalaswami, who appeared ''amicus curiae'' and argued the case with conspicuous ability.