

(1960) 04 MP CK 0041
In the Madhya Pradesh High Court
Case No : Cr.A. No. 567 of 1959

The State of Madhya Pradesh

APPELLANT

Vs

Somnath

RESPONDENT

Date of Decision : 20-04-1960

Acts Referred:

Central Sales Tax Act, 1956 — Section 24, 26, 8
General Clauses Act, 1897 — Section 2

Citation : (1960) ILR (MP) 505 : (1960) JLJ 1157 : (1960) 5 MPLJ 1158 :
(1961) 12 STC 72

Hon'ble Judges : T.C. Shrivastava, J;A.H. Khan, J

Bench : Division Bench

Advocate : R.J. Bhawe, Additional Government Advocate, for the Appellant; A.D. Deoras, for the Respondent

Final Decision : Allowed

Judgement

T.C. Shrivastava, J.

This is an appeal by the State Government against the acquittal of the respondent Somnath of an offence u/s 8(1) read with Section 24(1) of the C. P. and Berar Sales Tax Act, 1947-hereinafter referred to as the Sales Tax Act.

The respondent registered himself as a dealer u/s 8(3) of the Sales Tax Act on 20th September, 1950. He was carrying on business in grain and other articles before that date also. The prosecution case was that the respondent became liable to register himself as a dealer on 11th April, 1949, but he failed to do so. He carried on business in contravention of the provisions of section 8(1) of the Sales Tax Act during the period from 11th April, 1949, to 19th September, 1950, and thus rendered himself liable to prosecution. After obtaining the necessary sanction from the Sales Tax Commissioner on 27th March, 1959, the department filed a complaint in the court of First Class Magistrate.

The defence was that the prosecution should have been commenced within three

months from the date of commission of the offence u/s 26(2) of the Sales Tax Act and as the complaint was beyond that period, the prosecution was barred.

This contention has been accepted by the learned Magistrate and the accused-respondent has accordingly been acquitted without trial.

The only question which arises for determination in this appeal is whether the period of limitation prescribed in Section 26(2) applies to prosecutions u/s 24 of the Sales Tax Act. That section is as follows :-

26. (1) No suit, prosecution or other legal proceedings shall lie against any servant of the Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

(2) No suit shall be instituted against the Government and no prosecution or suit shall be instituted against any person in respect of anything done or intended to be done under this Act unless the suit or prosecution has been instituted within three months from the date of the act complained of.

The decision depends upon the true meaning of the words underlined.

At the outset, I may observe that the first sub-section grants an absolute protection to the servants of the Crown against any proceedings-civil or criminal-in cases where the act complained of was done in good faith. For acts which are not done in good faith and would give cause for a civil or criminal action, the protection is that no action can be taken after three months from the date of the act complained of.

It is contended on behalf of the State by Shri R. J. Bhawe that Section 26(2) is restricted in its application to Government servants only and the act of the respondent in carrying on business without registration is not covered by the expression "anything done under the Act". On the other hand, Shri A. D. Deoras for the respondent contends that the words "any person" are wide enough to cover a dealer and the omission to register is also an "act done under the Act".

At first sight, it appears that the words "any person" are wide enough to cover a dealer also. However, as Naik, J., observed in *The State of M.P. v. Bipin Chandra and two others* Criminal Revision No. 86 of 1958, decided on 14th October, 1959, Criminal Revision No. 86 of 1958, decided on 14th October, 1959 such a wide interpretation renders Section 24 meaningless. Prosecution for most of the items included in that section is almost impossible within the short period allowed. For instance, a prosecution under item (g) which makes it an offence for the dealer to produce incorrect accounts, or documents or to furnish incorrect information can be started only after the account, document or information has been found to be false after due enquiry. A prosecution under Clause (b) would require an opportunity to show cause that the carrying on of the business was "without sufficient cause". The same position exists about other clauses. Then the sanction of the Commissioner is needed in each case which can only be obtained after placing the necessary material obtained on clue enquiry. All this cannot be

done within three months except in very exceptional cases.

A literal interpretation of the words "any person" leads to an absurdity and makes Section 24 ineffective. A narrower interpretation would avoid the absurdity. It is a well settled canon of interpretation that an enactment should be read with other enactments in a statute and interpreted in such a manner as to give effect to every one of them. Where an interpretation renders the other enactments absurd, an alternative interpretation which harmonizes the different parts should be accepted. Accordingly, it appears to me that "any person" must be so interpreted as to exclude persons committing an act which is an offence u/s 24 of the Sales Tax Act.

Coming to the interpretation of the expression "anything done under the Act" Shri Deoras for the respondent has drawn our attention to *State v. Sales Tax Officer, Yeotmal* (1957) N.L.J. 13 in which Kotval, J., has held that the words "anything done" are wide enough to include "anything omitted to be done". Maxwell on page 73 of his book "The Interpretation of Statutes" (Tenth Edition) observes:-

The statutes which require notice of action for anything "done" under them, are construed as including an omission of an act which ought to be done as well as the commission of a wrongful one.

Under Section 2(2) of the General Clauses Act words which refer to "acts done" also refer to "illegal omissions". I agree with Shri Deoras that the words "anything done" in Section 26(2) are wide enough to cover "omissions".

However, the whole expression "anything done under the Act" requires closer examination. The word "under" here is synonymous with "in accordance with the provisions of". The expression has thus reference to things done in accordance with the provisions of the Act in the case of positive acts. Extending it to omissions, the expression would only refer to acts which are required to be done by the Act but have not been done. These two categories do not, however, exhaust the whole connotation of the expression "anything done". There is a third class of acts, viz., acts which are directly in contravention of the provisions of the Act. Such acts are neither acts which the law requires to be performed nor the omission of such acts. Anything done which is in contravention of the provisions of the Act can never be considered to be done under the Act.

In *State v. Girdharilal* Criminal Revision No. 510 of 1951, decided on 27th February, 1952 Hemeon, J., said :-

The failure of the non-applicant to submit quarterly returns was not a thing which was done or attempted to be done under the enactment and it follows that the limitation prescribed in Sub-section (2) did not apply to his prosecution.

Naik, J., held the same view when he said in *Bipin Chandra's* case, Criminal Revision No. 86 of 1958, decided on 14th October, 1959:-

The offences which can only be committed by a dealer and for which provision is made in Section 24 are not "anything done or intended to be done under the Act". The latter phrase has relevance only to those acts which can legitimately originate in any activity under the Act and not to acts which are made offences and for which a penalty is prescribed.

And yet in another case, *The State of M.P. v. Sitaram s/o Ramsakhey* Criminal Revision No. 273 of 1959, decided on 11th February, 1960 Sharma, J., placed the same interpretation on the expression saying, :-

It is not possible to hold that an act which is made punishable by Section 34 of the C.P. and Berar Sales Tax Act can yet be deemed for the purposes of Sub-section (2) of Section 26 of the Act to be an act done or intended to be done under the provisions of the said Act. The fact that the act has been declared to be punishable under the law is itself sufficient, in my opinion, for holding that it cannot be an act done or intended to be done under that law. The test whether an act is done or intended to be done under a certain law might well be whether the person who committed it can, if challenged, reasonably justify his act under any provision contained in that law.

I find myself in respectful agreement with the view which has consistently been taken in this Court.

Turning to the offence in the present case, Section 8(1) reads as follows:-

No dealer shall, while being liable to pay tax under this Act, carry on business as a dealer unless he has been registered as such and possesses a registration certificate.

The act which constitutes an offence is not the omission to take a certificate but the positive act of carrying on business without it. The dealer may not well take a certificate when the stage for taking one is reached and discontinue business. There will be no offence committed till then ; but if he carries on business thereafter without a certificate, he commits an offence. Can it be said that in such a case he carries on business under the Act ? I have no doubt that carrying on business thus can never be considered to be "anything done under the Act". Section 26(2) of the Sales Tax Act has, therefore, no application and the limitation provided therein does not bar the prosecution.

In the view that I have taken, the dismissal of the complaint on the ground that it was beyond time was erroneous. The appeal is allowed and the acquittal is set aside. The case is sent back to the trying Magistrate for disposal in accordance with law.

A.H. Khan, J.

I agree.