

(1972) 03 BOM CK 0021

In the Bombay High Court

Case No : Criminal No's. 232 and 233 of 1969

The State of Maharashtra

APPELLANT

Vs

Smt. Jamunadevi Shrikrishna Mohta

RESPONDENT

Date of Decision : 14-03-1972

Acts Referred:

Bombay Motor Vehicles Tax Act, 1958 — Section 16(1), 3(2)
Motor Vehicles Act, 1939 — Section 22, 38

Citation : (1972) 74 BOMLR 800 : (1972) MhLj 469

Hon'ble Judges : Chandurkar, J

Bench : Single Bench

Judgement

Chandurkar, J.—The only question which is involved in these two appeals is whether, having regard to the provisions of Sections 22 and 38 of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act), the learned Additional Sessions Judge was right in holding that the certificate of registration of the transport vehicle in question was current so as to give rise to the presumption contemplated by Section 3(2) of the Bombay Motor Vehicles Tax Act, 1958 (hereinafter referred to as the Tax Act). Admittedly, the respondent is the owner of a truck bearing registration No. BYY 1822. It is not disputed that this truck would be a transport vehicle as defined in Section 2(33) of the Act. She was prosecuted for non-payment of tax under the Tax Act. The offence alleged to have been committed by her u/s 16 of the Tax Act was in respect of two periods, namely, (1) April 1, 1966 to June 30, 1966, and (2) January 1, 1967 to March 31, 1967. We are not concerned with the other periods in these two appeals. In respect of the first period, the Magistrate registered Criminal Case No. 1271 of 1968 and in respect of the second period he registered Criminal Case No. 4320 of 1968. According to the prosecution, the quarterly rate of the tax is Rs. 302.50 P, the annual rate being Rs. 1,100.00, and the respondent was also liable to pay penalty as provided by Section 16(1) of the Tax Act. u/s 16(1) it is provided that whoever, as a registered owner or otherwise, has the, possession or control of any motor vehicle used or kept for use in the State without having paid the

amount of the tax, or additional tax, due in accordance with the provisions of that Act in respect of such vehicle, shall, on conviction, be punished with fine which shall not be less than a sum equal to the quarterly tax payable in respect of such vehicle, and which may extend to a sum equal to the annual tax payable in respect of such vehicle. Enhanced penalty is provided in the case of a person who has been previously convicted of an offence under that section. Under Sub-section (2) the amount of any tax due is made recoverable as if it were a fine.

2. The defence of the respondent was that the certificate of fitness issued u/s 38 of the Act had expired on April 8, 1966 and that the vehicle had met with a serious accident and had ceased to be in road-worthy condition with effect from April 4, 1966 and that thereafter the vehicle was never used as such.

3. Before the trying Magistrate some documents were filed to show that the vehicle could not have been used and was not in a serviceable condition. The trying Magistrate however found in both the cases that though the certificate of fitness had expired, the registration certificate was not automatically suspended, and the presumption u/s 3 of the Tax Act would arise. He also held that the respondent had failed to prove that the vehicle was not serviceable during the period for which the tax was being demanded. Thus he convicted the accused of the offence u/s 16(1)(a) of the Tax Act in both the cases and he was made liable to pay the outstanding tax and an equal amount of fine.

4. Against both these judgments of the trying Magistrate the respondent-accused filed appeals. The learned Additional Sessions Judge, on a consideration of the provisions of Section 38 of the Act, came to the conclusion that the certificate of registration of the transport vehicle in question could not be said to have been current after the expiry of the certificate of fitness and consequently no presumption u/s 3(2) of the Tax Act could be drawn against the respondent. These were the only questions agitated before him, and in view of the findings arrived at Criminal Appeal No. 300 of 1968 which was in respect of the period January 1, 1967 to March 31, 1967 was fully allowed and the other appeal, i.e. Criminal Appeal No. 301 of 1968, was partly allowed because he took the view that the respondent was liable to pay tax having regard to the provisions of Section 4(1)(iii) of the Tax Act and penalty for the period April 1, 1966 to April 8, 1966. These two appeals are now filed by the State challenging the view taken by the learned Additional Sessions Judge. The respondent has not challenged the Order in the appeal against her.

5. The only contention which is raised on behalf of the State by Shri Palshikar, learned Assistant Government Pleader, is that the fiction in Section 38(1) of the Act cannot be imported into the provisions of Section 3(2) of the Tax Act, and since in fact the transport vehicle of the respondent continued to be a registered vehicle as contemplated by Section 22 of the Act, the certificate of registration must be taken to be current and consequently in the absence of any evidence to rebut the presumption which is raised u/s 3(2) of the Tax Act, it ought to have been held by the learned Additional Sessions Judge that the trying Magistrate

was right in convicting the respondent u/s 16(1)(a) of the Tax Act. In Order to appreciate this contention it is necessary to refer to the material provisions of the two Acts. Section 3(1) of the Tax Act deals with the levy of tax and provides that subject to the other provisions of that Act, on and from April 1, 1958, there shall be levied and collected on all motor vehicles used or kept for use in the State, a tax at the rates fixed by the State Government, by notification in the Official Gazette, but not exceeding the maximum rates specified in the first Schedule. Section 3(2) provides as follows:

Except during any period for which the Taxation Authority has, in the prescribed manner, certified that a motor vehicle was not used or kept for use in the State, the registered owner, or any person having possession or control of a motor vehicle of which the certificate of registration is current, shall, for the purposes of this Act, be deemed to use or keep such vehicle for use in the State.

The provision regarding a certificate that a motor vehicle was not used or kept for use in the State is made in Rule 5 of the Bombay Motor Vehicles Tax Rules, 1959. For the purposes of these appeals it is not necessary to refer to that rule. Section 2 is the definition section and Clause (10) thereof provides:

Other words and expressions used, but not defined, in this Act shall have the meanings respectively assigned to them in the Motor Vehicles Act, 1939.

The words "certificate of registration" in Section 3(2) of the Tax Act are not defined in that Act but are defined in Section 2(2) of the Act as follows:

"certificate of registration" means the certificate issued by a competent authority to the effect a motor vehicle has been duly registered in accordance with the provisions of Chapter III;

Chapter III of the Act deals with registration of motor vehicles. Section 22(1) of the Act is as follows:

22. (1) No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner.

Section 24(2) of the Act requires the registering authority to issue to the owner of a motor vehicle registered by it a certificate of registration in Form G as set forth in the First Schedule and it is required to enter in a record to be kept by it particulars of such certificate. The provisions of Section 22 of the Act show that there is a prohibition against driving of motor vehicles for the purposes of carrying passengers or goods unless it is registered in accordance with the provisions of Chapter III and unless the certificate of registration of the vehicle has not been suspended or cancelled, that is to say, the certificate of registration is current and the vehicle must have a registration mark displayed in the

prescribed manner.

6. Now, the most material provision so far as this case is concerned is Section 38 of the Act. It provides:

38. (1) Subject to the provisions of Section 39, a transport vehicle shall not be deemed to be validly registered for the purposes of Section 22, unless it carries a certificate of fitness in Form H as set forth in the First Schedule, issued by the prescribed authority, to the effect that the vehicle complies for the time being with all the requirements of Chapter V and the rules made thereunder. Where the prescribed authority refuses to issue such certificate, it shall supply the owner of the vehicle with its reasons in writing for such refusal.

(2) Subject to the provisions of Sub-section (3), a certificate of fitness shall remain affective for such period, not being in any case more than two years or less than six months, as may be specified in the certificate by the prescribed authority under Sub-section (1):

Provided that this sub-section shall, in respect of a certificate of fitness relating to a new transport vehicle registered for the first time and not plying in hilly areas, have effect as if for the words "six months", the words "one year" were substituted.

Explanation.-....

(3) The issuing authority or other prescribed authority may for reasons to be recorded in writing cancel a certificate of fitness at any time, if satisfied that the vehicle to which it relates no longer complies with all the requirements of this Act and the rules made thereunder; and on such cancellation the certificate of registration, of the vehicle and any permit granted in respect of the vehicle under Chapter IV shall be deemed to be suspended until a new certificate of fitness has been obtained

(4)

The certificate of fitness which is given in Form H and which is applicable in the case of transport vehicles only is issued by an inspecting authority and is intended to certify that the vehicle complies with the provisions of Chapter V of the Act and the Rules made thereunder and the date on which the certificate will expire is also required to be stated. Now, what is contended on behalf of the State by the learned Assistant Government Pleader is that the deeming fiction in Section 38(1) of the Act does not affect the certificate of registration which is in fact issued u/s 22, and therefore, though in the instant case the certificate of fitness had expired on April 8, 1966, for the purposes of Section 3(2) of the Tax Act, the certificate of registration must be treated as a current one and the presumption that the transport vehicle was for the purposes of the Tax Act to be deemed to have used or kept for use in the State could be drawn. The presumption u/s 3(2) that the vehicle must be deemed to have been used or kept for use by the respondent could only be drawn if the certificate of

registration of the vehicle can be said to be current. Whether the certificate of registration was current or not must be decided not only with reference to the provisions of Section 22 of the Act because where the vehicle is a transport vehicle a special provision affecting the registration of a transport vehicle has been made in Section 38 of the Act. Section 39 to which the provisions of Section 38 are made subject is not relevant for the present purpose, because it deals with registration of vehicles which is the property of the Central Government. What is required to be found out is what is the effect of the words

a transport vehicle shall not be deemed to be validly registered for the purposes of Section 22, unless it carries a certificate of fitness in Form H as set forth in the First Schedule,...to the effect that the vehicle complies for the time being with all the requirement of Chapter V and the rules made thereunder.

I have already pointed out above that there is a bar against driving any motor vehicle, unless all the three conditions in Section 22 of the Act are satisfied i.e. the vehicle is registered, the certificate of registration is current, and the vehicle carries the registration mark displayed in the prescribed manner. Thus, want of registration is a bar against driving of motor vehicles. In the case of a transport vehicle, it has been additionally provided that there must be a certificate of fitness in Form H, and if a transport vehicle does not carry such a certificate, then the law provides that the transport vehicle shall not be deemed to be validly registered for the purposes of Section 22. The effect of Section 38 therefore is that even though in fact a transport vehicle is registered u/s 22 and such registration would otherwise be valid, it is treated as an invalid registration if the transport vehicle does not carry a certificate of fitness. The transport vehicle without a certificate of fitness is thus treated as one which has no valid registration. If the transport vehicle by the fiction created u/s 38 does not have a valid registration, there is a bar to its being driven and legally the vehicle cannot be said to be capable of being used at all. If the registration itself is invalid because of the special provisions in Section 38 of the Act, the registration cannot be said to be current in the case of the transport vehicle without a certificate of fitness as contemplated by Section 3(2) of the Tax Act. In such a case therefore, the presumption that the transport vehicle shall be deemed to have been used or kept for use cannot arise. In the instant case, the effect of Section 38 of the Act was that after April 8, 1966 the transport vehicle i.e. the truck in question must be deemed not to have been validly registered and therefore its certificate of registration cannot be said to be current thereafter, with the result that the prosecution was not entitled to rely on the presumption u/s 3(2) of the Tax Act after April 8, 1966. The learned Additional Sessions Judge was therefore right in taking the view that after April 8, 1966 the provisions of Section 16(1)(a) of the Tax Act were not attracted. Both the appeals must therefore fail and are dismissed.

7. Counsel for the respondent states that after the two appeals were admitted he has deposited the entire amount. Since the judgments of the Additional Sessions

Judge in both the cases are now upheld, the only amounts that could have been recovered from the respondent were those as determined by the Additional Sessions Judge. The balance of the amount, if any, deposited by the respondent must, therefore, be refunded to her. The bail bond of the respondent is cancelled.