
(1973) 10 AHC CK 0017
In the Allahabad High Court
Case No : Criminal Revision No. 1085 of 1971.

Vijay Prakash Gaur

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 19-10-1973

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 2

Citation : (1974) 33 STC 495

Hon'ble Judges : H.N. Kapoor, J

Bench : Single Bench

Advocate : S.K. Suri, for the Appellant; Assistant Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Kapoor, J.—The applicant has been convicted u/s 14 of the Sales Tax Act (hereinafter referred to as the Act) and was sentenced to pay a fine of Rs. 1,000 and in default to undergo R.I. for three months. The order was confirmed in appeal.

2. The applicant is a partner and manager of the firm, M/s. Satya Prakash Rajesh Kumar, which was assessed to sales tax over Rs. 36,000 for the year 1967-68. He had not deposited the tax in spite of notice. He was, therefore, prosecuted u/s 14 of the Act.

3. The only point that has been argued before me in this case is that the prosecution of the applicant is illegal as the dealer was the firm itself and, as such, that firm should have been prosecuted. Learned counsel for the applicant has stated that there would have been no objection if all the partners of the firm, including the applicant, had been prosecuted. In support of this contention he has placed reliance on a case of the Madras High Court, The Public Prosecutor Vs. K. Jacob Nadar, . This authority, no doubt, supports the argument of the learned counsel for the applicant but it appears that in that case no notice at all had been

served on K. Jacob, partner of the firm, who was prosecuted. It was further observed:

Though Jacob may be made liable, if the proper procedure had been followed, as a partner of the firm -- on that question I do not express my final opinion -- he is not liable as the firm is the person who made the default and who should have been prosecuted.

4. This authority was considered by a single Judge of this court in the case of Hira Lal v. State 1965 A.L.J. 813, It was distinguished. The learned single Judge further observed that in case it was laid down in the case of The Public Prosecutor Vs. K. Jacob Nadar, , that either all the partners of the firm should be prosecuted or none at all, then he would express his respectful dissent.

5. The learned counsel for the applicant has argued that the judgment in the case of Hira Lal v. State 1965 A.L.J. 813, was based on certain observations made in a Division Bench case, State v. Basdeo AIR 1961 All. 44, which was a case under the Defence of India Rules and in which the observations were that a partnership-firm is not a juristic person. He has referred to a subsequent Supreme Court decision in the case of State of Punjab Vs. Jullunder Vegetables Syndicate, , in which it was observed:

Though under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, Income Tax as well as sales tax, it is a legal entity. If that be so, on dissolution, the firm ceases to be a legal entity.

6. Their Lordships were not considering the case of prosecution of a partner or partners but they were considering the case of a dissolved firm for the purposes of assessment. A firm, even if it is a legal entity, cannot be prosecuted in the sense that it cannot be sentenced to imprisonment in case imprisonment was provided. Ultimately, the partners of the firm are to be prosecuted. Learned counsel for the applicant has himself argued that there would have been no objection if all the partners had been prosecuted.

7. As noticed above, even in the case of The Public Prosecutor Vs. K. Jacob Nadar, , the question about the prosecution of K. Jacob as a partner was left open with the observation that he might have been made liable if the proper procedure had been followed as a partner of the firm.

8. In the present case, Vijay Prakash Gaur was prosecuted as proprietor, partner, manager of the firm and karta of the joint family. There were only three partners and the other two partners were ladies belonging to the family of the applicant. Liability of the partners is joint and several. The applicant had himself filed revision before the Judge (Revisions) as managing partner of the firm and had obtained stay order on the condition that half of the sales tax shall be paid by him. Notice of demand was duly issued to him. u/s 2(c) of the Act a dealer has been defined, which includes association of persons, a firm or joint Hindu family,

etc. Section 14 provides that any person who fails to pay without reasonable cause within the time allowed the tax assessed on him under this Act is liable for prosecution and penalty. In the present case, there can be no doubt that the applicant as managing partner of the firm was liable to pay the tax. He was, therefore, rightly prosecuted. In the case of State Vs. Basdeo, , only one partner of the firm was convicted under the Defence of India Rules, while the other partners were acquitted. A Division Bench of this Court held that there was nothing illegal in Basdeo being convicted even though his father and brother were fortunate in being acquitted, as their acquittal cannot at all affect his liability for the offence. It was further observed:

There is no law that when an offence is committed by a firm, either all or none of the partners must be prosecuted.

9. In the light of the above discussion, the prosecution of the applicant cannot be considered to be illegal. He was rightly convicted. The sentence too is not severe. There is no force in this revision. It is accordingly dismissed.