Markand Saroop Aggarwal and Others

Vs

M. M. Bajaj and Another

Criminal Appeal No. 368 of 1976

(Jaswamt Singh P.S. Kailasam JJ)

15.09.1978

JUDGMENT

KAILASAM, J. -

1.This appeal is preferred by the five partners of Lido Restaurant, Connaught Circus, New Delhi by special leave against the judgment and order of the High Court of Delhi in Criminal Appeal 141 of 1971.

2. A complaint was filed by the Entertainment Tax Inspector on behalf of the State in the Court of the Judicial Magistrate, First Class, against the appellants on the ground that they had contravened the provisions of Section 4(1) read with Section 3(1) and Section 3(3) of the U.P. Entertainments and Betting Tax Act, 1977, as extended to Delhi and punishable under Section 5(3) of the Act. The trial Court acquitted the accused on the ground that no offence against them had been established. On appeal by the Entertainment Tax Inspector, the High Court found that the appellants are guilty of the offences with which they were charged allowed the appeal, set aside the order of acquittal and imposed a fine of Rs. 40 each on the five partners of the Lido Restaurant and directed that the fines will be paid in addition to the tax leviable under Section 3 of the Act.

3. PW 3, Bodh Raj, was the Entertainment Tax Inspector at the material time. On 15th November, 1968 under the instruction of his superior officer, he went along with Bajaj, PW 5, Inspector, and visited Lido Restaurant, Connaught Circus, at 10 p.m. and remained in the restaurant till 11.15 p.m. Cabaret programme was given in the restaurant and a band was in attendance. PW 3 contacted the Manger and record a statement which is Ex. B-1, in which the Manager, V. N. Sood, stated that they were holding cabaret programme from 5th November, 1968 daily and that the services is effected on an a la carte basis. The minimum charges for eatables at the time of cabaret are Rs. 5 at evening tea, and Rs. 10 at dinner time from 10 p.m. onwards. According to his statement, there was no admission charge or fee of any kind. PW 3 also examined cash memos and found at that time 72 persons were present in the restaurant for taking dinner. The evidence of the inspector is that no charge for entry to the restaurant was collected except a minimum charge of Rs. 5 for the evening and Rs. 10 for the night which was adjustable towards the food. The Accountant of the restaurant, who was examined as PW 4, explained that they were collecting the charges for the food consumed by the customer in the restaurant and no money was being charged for cabaret or any other type of entertainment. The evidence of PW 5, the Inspector, Entertainment Tax, is that a sum of Rs. 10 were the minimum charges for the food including band performance. A sum of Rs. 10 were charged on per head basis, in the nightly dinner-cabaret programme.

4. On the evidence adduced, the trial Court found that the cabaret performance in a restaurant is

essentially an item of entertainment. It also found that Rs. 5 and Rs. 10 were minimum charges for the afternoon (sic evening) tea and dinner. It is also clear that these amounts were adjusted towards the eatables that were consumed. It is not the case for prosecution that the price of eatables were raised for the purpose of covering the entertainment, but it is seen from the admission of the manager as well as the evidence on record that whether a person consumed anything or not, he had to pay Rs. 5 for the evening and Rs. 10 for the night. If the consumers eatables for more than Rs. 5 in the evening and for more than Rs. 10 in the night, the amount of Rs. 5 and Rs. 10 paid by him would be adjusted. On these facts, the question arose whether any charges were collected for the cabaret entertainment. The trial Court came to the conclusion that nothing was charged for cabaret performance and the minimum charges had only been fixed so that no undesirable element can get into the restaurant. The High Court came to a different conclusion and found that the idea behind the requirement of payment of minimum charge was to cover the cabaret programme and therefore would attract entertainment duty payable under the law.

5. In order to decide the question, the relevant provisions of the law under which the accused are charged will be referred to. The United Provinces Act 8 of 1937 was passed on 22nd October, 1937 for the purpose of imposing a tax on entertainment and other amusements and on certain forms of betting. Section 3(1) provides that there shall be levied and paid to the Central Government on all payments for admission to any entertainment, a tax at the rate specified in the section. Section 3(3) provides for amounts payable on lump subscription on contribution or on season ticket and other matters which would be referred to a little later.

6. Section 4(1) runs as follows :

Save as otherwise provided by this Act, no persons other than a person who has some duty to perform in connection with the entertainment or a duty imposed upon him by law, shall be, admitted to any entertainment, except with a ticket stamped with an impressed, embossed, engraved or adhesive stamp (not before used) issued by the Central Government for the purposes of revenue and denoting that the proper entertainments tax payable under Section 3 has been paid.

> The words "payment for admission" in Section 3(1) are defined under Section 2(6) as follows :-
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> "Payment for admission" includes -
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> (i) any payment made by a person who, having been admitted to one part of a place of entertainment is subsequently admitted to another part thereof, for admission to which a payment involving tax or more tax is required;
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> (ii) any payment for seats or other accommodation in a place of entertainment;
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> (iii) any payment for a programme or synopsis of an entertainment; and
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> (iv) any payment for any purpose whatsoever connected with an entertainment which a person is required to make as a condition of attending or continuing to attend the entertainment in addition to the payment, if any, for admission to the entertainment.
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> Admission to an entertainment is defined under Section 2(1) as including admission to any place to which the entertainment is held. Under Section 3(1), all payments for admission to any entertainment are taxable. Admission to an entertainment would

include admission to any place in which entertainment is held and payment for admission would include any payment for any purpose whatsoever connected an entertainment which a person is required to make as a condition if attending or continue to attend the entertainment. It is not in dispute that cabaret show is an item of entertainment. The only question therefore that arises for consideration in this case is, whether any payment for admission to the entertainment is made. The contention on behalf of the prosecution is that by levying a minimum charges of Rs. 5 for evening and Rs. 10 for the night there is a payment for the entertainment also. It is the case of the defence that there is no levy for the entertainment and the minimum fee is levied only for the purpose of keeping out undesirable elements from getting into the restaurant. By levying a minimum fee, the customer is liable to pay the amount whether he consumes any eatable or not. Two advertisements which were inserted by the restaurant invited customers for the show. In the issues dated November 15, 1968 and November 9, 1968, marked as Ex. 'A' and 'C' of the Hindustan Times, it is stated :

LIDO Air-Conditioned RESTAURANT Opposite Super Bazar CABARET Every day at 7.00 & 10.00 p.m. (Please take seats by 6.30 & 9.30 p.m.) * Welcome by Ladies * Music * Large Selection in Eatables * Open till late night Seat Reservation on Tel. 44110##

The customers are invited for the cabaret to take their seats by 6.30 and 9.30 p.m. and to listen to music during which time large selection of eatables would be available. It is not alleged that any extra rate is charged for the eatables because of the show but it is not disputed that a minimum fee is levied, for taking a seat for witnessing the show and for taking tea or dinner. If the normal rates are charged for the items consumed and incidentally a show is put up, it cannot be said that any payment is made for admission for the entertainment but requiring a minimum of Rs. 5 and Rs. 10 whether the customer consumed any eatable or not would lead to an irresistible conclusion that a payment of fee for admission to the entertainment is also included.

7. On the facts of the case it would be an admission to an entertainment. Though it may be for taking tea or dinner for a minimum charge, as the admission is to a place where the entertainment is held, it would come within the definition under Section 2(1). Further, the payment of Rs. 5 or Rs. 10, though it is stated to be for the dinner, as it is connected with an entertainment and as the person is making the payment as a condition for attending or continuing to attend the entertainment, it would attract the definition of payment for admission under Section 2(6)(iv) of the Act. On the facts therefore we agree with the conclusion arrived at by the High Court and confirm the convictions passed on the appellants and reject the appeal. The High Court, in disposing of the appeal by the Government though the Government was not present, dealt with the law elaborately referring to various English decisions. The learned Counsel for the appellants, Mr. Frank Anthony referred to some of the decisions and we would, before concluding our judgment, refer to a few of them in brief.

8. It may be noted that English law on the subject has its origin from the Sunday Observance Acts, 1625 to 1780. The Act, as a general rule, prohibited all public entertainments of all types on Sundays. Act 1780 provided that "any house, room or other place which shall be opened or used for public entertainment or amusement and to which persons shall be admitted by the payment of money or by tickets sold for money shall be deemed a disorderly house", vide Halsbury's Law of England. In Williams v. Wright ((1897) 13 TLR 551), a ticket for a Sunday concert at the Queen's

Hall was stamped "Admission Free. Reserved Seat Ish." On the facts it was held that a charge was made for a reserved seat and was not incompatible with the admission being free and hence no offence was committed. In a subsequent case, Kitchner v. Evening Standard Co. Ltd. ((1936) 1 KB 576), in connection with an all-in wrestling contest an advertisement stated - "Prices 4sh. 6d., 2sh. Od., reserved, unreserved 1sh. Od.", it was held that an offence was committed as the advertisement made it plain that no one can get in without payment. Section 1(1) of the Finance (New Duties) Act, 1916, reads as follows :-

There shall, as from the fifteenth day of May, nineteen hundred and sixteen, be charged levied an paid on all payments for admission to any entertainment as defined by this Act an Excise duty (in this Act referred to as entertainment duty') .....

This sub-section is similar to Section 3(1) of the United Provinces (Entertainments and Betting Tax) Act 1937, with which we are concerned. The Acts with which we are concerned, have taken into account the subsequent developments and widened the definition of 'admission to an entertainment' and 'payment for admission' so as to embrace payment for any purpose whatsoever connected with an entertainment and admission to a place in which the entertainment is held. In Halsbury's Law of England, 3rd Ed. Vol. 37, page 11, para it is stated that it would be levy for entertainment where refreshments are sold for a higher price than the normal price even though no money is paid for admission and would be liable for tax. A decision which was debated at length at the bar is that of a Court of Appeal in J. Lyons & Co. Ltd. v. Fox. ((1919) 1 KB 11 : 119 LT 763). In that case, the concerts of music were given during and after the service of tea and dinner. The dinner was permitted to stay for one hour after the service of dinner had ceased. No charge was made in any form except for the meals which were served both at a fixed price and a-la-carte, and for which a bill was rendered to the customer before he left the restaurant. By a majority it was held that payments made by the customers to the restaurant were not payment for admission to entertainment within the meaning of Section 1(1) of the Finance (New Duties) Act, 1916, and that the entertainment duty was therefore not chargeable in respect thereof. A minority judgment took the view that the tea or dinner was purely incidental to the concert, especially in view of the finding of the Magistrate that the persons were paying not merely for the dinner but also for the entertainment which followed the dinner. Reference was made to Attorney General v. London Casino Ltd. ((1937) 3 All ER 858), under the (New Duties) Act, 1916. In this case, food and drinks were supplied, as in an ordinary restaurant, and patrons were able to dance on the stage. In addition, an elaborate revenue was performed at the stage. Patrons were allotted tables as in an ordinary restaurant and there was a fixed menu each night, but dishes could be ordered a-la-carte. A minimum charge of 15sh. 6d. was made, payment being made before leaving. The Court distinguishing the case in J. Lyons & Co. Ltd. v. Fox (supra) held that no doubt could be entertained that people paid 15sh. 6d. because they can have a good dinner in pleasant surroundings and that they paid it and to a substantial extent paid it because they will, in addition to the dinner, be able to see and extremely good and interesting and lively entertainment. The Court holding," whatever the result may be, I cannot bring myself to doubt that the normal person paying 15sh. 6d. pays not only for the dinner but also for the right to dance to a band, and to a substantial extent also pays it because he desires to see what is a good and elaborate and expensively produced show." The facts of the case in the London Casino's case are similar to the facts of our case. In the case before us, a minimum is fixed and we have no doubt, a part of which is a payment for admission to the entertainment. Other decisions referred to were Attorney General v. Mcleod, ((1918) 1 KB 13 : 117 LT 631), Attorney General v. Swan, ((1922) 1 KB 682 : 127 LT 61), Attorney General v. Arts Theatre of London Ltd. ((1933) 1 KB 439 : 148 LT 266) and Attorney General v. Southport Corporation. ((1933) All ER (Rep) 971). We feel it is unnecessary to burden our judgment with the various decisions referred to

in detail by the High Court for they are not applicable as the Act with which we are dealing is wider in its scope and application. In the circumstances we confirm the conviction and sentence imposed by the High Court and its direction regarding levy of the tax dismiss the appeal.

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