State of Karnataka

Vs

K. Gopalakrishna Shenoy and Another

Criminal Appeal No. 2 of 1977

(A. P. Sen, S. Natarajan JJ)

15.07.1987

JUDGMENT

NATARAJAN, J. -

1. The objective of the State of Karnataka in filing this appeal by special leave is to seek a pronouncement of this Court on the scope and effect of Section 3(1) of the Mysore Motor Vehicles Taxation Act, 1957 (now the Karnataka Motor Vehicles Taxation Act, 1957) and not to pursue the prosecutorial action against respondents 1 and 2 for their contravention of certain provisions of the said Act. This position was conceded by the learned counsel for the State even at the commencement of his arguments. Even so, the facts of the criminal case filed against the respondents and the reasons for their acquittal require mention for a proper comprehension of the legal issues involved in the case.

2. The first respondent sold his goods vehicle, to wit a 12 ton lorry bearing registration No. MYH 3797, to the second respondent on January 2, 1971 but neither of the respondents reported the transfer of the vehicle to the Regional Transport Officer in compliance with the terms of sub-section (1)(a) and sub-section (1)(b) of Section 31 of the Motor Vehicles Act. Be that as it may, it came to the notice of the Regional Transport Officer subsequently that the tax payable for the vehicle under Section 3(1) of the Mysore Motor Vehicles Taxation Act, 1957 (hereinafter the Taxation Act) for the period October 1, 1972 to March 31, 1974 amounting to Rs. 6300 had not been paid. This led to a demand notice being issued to the first respondent to pay the arrears of tax together with penalty. The first respondent refuted his liability to pay the arrears of tax on the ground that he had transferred the vehicle to the second respondent as early as on January 2, 1971. A demand notice was then issued to the second respondent and he too refuted his liability to pay the arrears of tax on the plea that the vehicle was not in a fit condition and it had been lying in a workshop during the relevant period without repairs being effected for want of spare parts. Since both the respondents failed to pay the arrears of tax the Transport Authorities filed a complaint against them under Section 3(1) read with Section 12(1)(a) of the Taxation Act in the Court of the Chief Judicial Magistrate, Mangalore. In the trial of the case the second respondent sought to prove his defence by examining the owner of a workshop known as Lokmata Garage and filing several defence exhibits. The Chief Judicial Magistrate accepted the defence of the respondents and held that since the first respondents had sold the vehicle he was not liable to pay the arrears of tax and likewise the second respondent too was not liable to pay the tax because the vehicle did not have a fitness certificate and had been left in a workshop for repairs being carried out. The Chief Judicial Magistrate further held that the currency of the Registration Certificate during the relevant period will not alter the situation in any manner because the Registration Certificate cannot have currency so as to attract tax liability when the vehicle was not covered by a valid certificate of fitness. For taking such a view and

acquitting the respondents, the learned Magistrate relied on a decision of the Karnataka High Court in State of Karnataka v. Boodi Reddappa ((1975) 1 Kant LJ 206). The State preferred an appeal against the acquittal to the High Court but the High Court dismissed the appeal in limine and hence the present appeal by special leave by the State.

3. Before we proceed to consider the relevant provisions of the Taxation Act and the Motor Vehicles Act, we may refer to the decision in Reddappa case ((1975) 1 Kant LJ 206). which has been followed by the Chief Judicial Magistrate. The case pertained to the owner of a goods vehicle who was prosecuted under Section 12(1)(a) of the Taxation Act for non-payment of tax for a certain period during which the vehicle was not covered by a certificate of fitness and there was also no evidence that the vehicle had been put to use on the roads even without a certificate of fitness. The Trial Magistrate acquitted the owner of the goods vehicle and the State preferred an appeal to the High Court and contended that as per the deeming provision contained in the Explanation to Section 3(1) of the Taxation Act, the owner was bound to pay tax as long as the Certificate of Registration was current. The Division Bench rejected the contention and held that the word 'kept' occurring in Section 3(1) must be construed as 'kept for use' and that in the absence of evidence to show that the vehicle had been made use of or that it had been 'kept for use', the currency of the Certificate of Registration would not by itself attract tax liability. For taking such a view the High Court placed reliance on an earlier decision rendered in V. Naraina Reddy v. Commr. for Transport ((1971) 2 Mys LJ 319). The Bench also held, following the view taken in yet another earlier case D. G. Bhagavan v. RTO (AIR 1967 Mys 139 : (1966) 2 Mys LJ 649 : (1966) 8 Law Rep 647) that in the absence of a fitness certificate, Section 38 of the Motor Vehicles Act would be attracted and therefore a Certificate of Registration will not have currency without a co-extensive certificate of fitness for the vehicle.

4. Even without going into the correctness of the view taken by the High Court, we would like to point out that the two earlier decisions do not really provide support for the view taken by the High Court. Bhagavan case (AIR 1967 Mys 139 : (1966) 2 Mys LJ 649 : (1966) 8 Law Rep 647) was decided on the basis of the peculiar facts therein. What had happened in that case was that the Superintendent of Police made a surprise check of a stage carriage and found it to be defective and unsuitable for use on the roads. He, therefore, held a joint inspection of the vehicle with the Regional Transport Officer and thereafter the Regional Transport Officer cancelled the certificate of fitness of the vehicle on February 9, 1963. The permit-holder returned to the Regional Transport Officer the Certificate of Registration as well as the token of the vehicle but failed to surrender the permit till November 23, 1963. His failure to surrender the permit was construed as a lapse contravening the notification issued by the government and hence he was called upon to pay the tax and the penalty for three quarters commencing from April 1, 1963 and ending with December 31, 1963. The permit-holder sought the issue of a writ to quash the order of demand served on him. Before the High Court the State took the stand that notwithstanding the cancellation of the certificate of fitness, the Certificate of Registration continued to have currency and therefore the permit-holder was liable to pay the tax in terms of the Explanation to Section 3(1) of the Taxation Act. The High Court repelled the contention and held that once the certificate of fitness had actually been cancelled, the Certificate of Registration cannot be said to have currency on a deemed basis as envisaged by the Explanation to Section 3(1) and hence the demand for tax for the three quarters was not legal and the order should therefore, be quashed. From the facts stated above it may be seen that it was a case where the certificate of fitness had actually been cancelled by the Transport Authorities but in spite of such cancellation they sought to recover the tax from the permit-holder on the sole ground that the Certificate of Registration had deemed currency by reason of the Explanation to Section 3(1). The Division Bench did not lay down any general proposition of law

that the currency of a Certificate of Registration is always linked up with the currency of a Certificate of Fitness and in the absence of the same, a Certificate of Registration by itself can never have currency and the deeming provision in the Explanation to Section 3(1) should be construed in that restricted manner. The Bench made it clear that its decision was confined to the peculiar facts of that case as may be seen from the following sentences at page 40 :

> In view of the cancellation of the fitness certificate, it follows that the Certificate of Registration issued to the petitioner was no more current. That being the position, the Explanation to Section 3(1) of the Mysore Motor Vehicles Taxation Act, 1957, is inapplicable to the facts of the present case.

Insofar as the decision in Naraina Reddy case ((1971) 2 Mys LJ 319) is concerned, the permit-holder therein had paid the tax for his stage carriage for the quarter ended June 30, 1959 but failed to pay the tax for the next two quarters ending with September 30, 1959 and December 31, 1959. On February 5, 1960 he paid the tax for the months of February and March, 1960 alone. The non-payment of tax for the period July 1, 1959 to February 2, 1960 was subsequently noticed and a demand was made on him to pay the arrears of tax for the abovesaid period together with penalty. The permit-holder contended that the demand was illegal because the vehicle was not in use during the relevant period and he had actually kept it in a workshop at Madanapalle in Andhra Pradesh from June 30, 1959 and furthermore the certificate of fitness for the vehicle had expired on June 30, 1959 itself and it had been renewed only on February 5, 1960 and besides he had also surrendered the Certificate of Registration to the Transport Authorities and intimated them that he would not be operating the vehicle. The permit-holder's representations were not accepted and he was directed to make the payment. The permit-holder then challenged the validity of the demand before the High Court by means of a petition under Article 226 of the Constitution. A twofold argument was advanced to assail the order of demand. The first one was that the words "kept in the State of Mysore" occurring in Section 3(1) should be read as "kept for use in the State of Mysore" and as such unless the State proved that the vehicle had in fact been kept for use, whenever wanted, the physical act of keeping alone would not attract the tax liability under Section 3(1). The second argument was that the period of currency of a certificate of Registration was co-extensive with the currency of a certificate of fitness and as such once the certificate of fitness expired and was not renewed, the Certificate of Registration would automatically cease to have currency. The High Court sustained the first argument and remanded the matter for a finding on the nature of the keeping of the vehicle but rejected the second contention and held that the currency of a Certificate of Registration was not dependent on the concurrent currency of a certificate of fitness. The High Court held as follows :

> By the Explanation to sub-section (1) of Section 3, the legislature, for the purpose of the Act has provided that motor vehicles so long as their Certificates of Registration are current shall be deemed suitable for use on roads. The legal fiction created by Section 38 of the Motor Vehicles Act is only for the purpose of Section 22 of that Act and cannot be extended to the Taxation Act.

In spite of this clear pronouncement in Naraina Reddy case ((1971) 2 Mys LJ 319) about Section 38 not having any impact on Section 3(1) of the Taxation Act, the High Court has held in Reddappa case ((1975) 1 Kant LJ 206) that Sections 38 and 22 of the Motor Vehicles Act have an impact on Section 3(1) of the Taxation Act and, therefore, a Certificate of Registration cannot have currency if the vehicle is not covered by a certificate of fitness for the corresponding period. Thus we find the decisions in Bhagavan case (AIR 1967 Mys 139 : (1966) 2 Mys LJ 649 : (1966) 8 Law Rep 647)

and Naraina Reddy case ((1971) 2 Mys LJ 319) do not really constitute authority for the view taken in Reddappa case ((1975) 1 Kant LJ 206).

5. We will now examine the scope of Section 3(1) of the Taxation Act and the effect of the Explanation to it. At the relevant time the Mysore Motor Vehicles Taxation Act, 1957 (now the Karnataka Motor Vehicles Taxation Act, 1957) was in force and Section 3(1) and the Explanation read as follows :

> (1) A tax at the rates specified in Part A of the Schedule shall be levied on all motor vehicles suitable for use on roads, kept in the State of Mysore :
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> Provided that in the case of motor vehicle kept by a dealer in or manufacture of, such vehicles for the purposes of trade, the tax shall only be levied and paid by such dealer or manufacturer on vehicles permitted to be used on roads in the manner prescribed by rules made under the Motor Vehicles Act, 1939.

Explanation. - A motor vehicle of which the certificate of registration is current shall, for the purpose of this Act, be deemed to be a vehicle suitable for use on roads.

6. It will also be apposite to extract the relevant portion of Section 4 since Sections 3 and 4 go together :

> 4. Payment of Tax. - (1) The tax levied under Section 3 shall be paid in advance by the registered owner or person having possession or control of the motor vehicle, for a quarter, half year or year, at his choice within ten days from the commencement of such quarter, half year, or year as the case may be.

On a reading of Sections 3 and 4 it may be seen that they make the registered owner or person having possession or control of a motor vehicle kept in the State absolutely liable to pay tax in advance at the rates specified in Part A of the Schedule thereto for a quarter, half-year or year at his choice. The Motor Vehicle Taxation Acts in all the States of the Indian Union follow a uniform pattern. Entry 57 of List II of Schedule VII of the Constitution is the Legislative Entry conferring power on the States to levy the tax. It has been observed by this Court in Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan ((1963) 1 SCR 491 : AIR 1962 SC 1406) that the tax on motor vehicles is a compensatory tax levied for the use of the roads and it is not a tax on ownership or possession of motor vehicles. The object of the Act is achieved by charging to tax all motor vehicles suitable for use on roads kept in the State, the registered owner or person having possession or control being held liable to pay the tax in advance and then providing for grant of refund for non-user subject to prescribed conditions.

7. What falls for consideration now is whether the owner or person having the possession or control of a motor vehicle is not bound to pay the tax under Section 3(1) of the Act because the vehicle was in a state of repair and was not put to use on the road and furthermore the certificate of fitness of the vehicle had not been kept current even though the Certificate of Registration was kept current. One factor which has to be borne in mind in interpreting Section 3(1) and its Explanation is the meaning to be given to the words "suitable for use on roads" occurring in them as otherwise a misconception would arise. These very words occur in Entry 57 in the State List which reads as under :

> Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tram-cars subject to the provisions of Entry 35 of List III.

The words "suitable for use on roads" in the said entry have been construed by Hidayatullah, J. as he then was in Automobile Transport case ((1963) 1 SCR 491 : AIR 1962 SC 1406) as under (vide page 571) :

> The words "suitable for use on roads" describes the kinds of vehicles and not their condition. They exclude from the entry, farm machinery, aeroplanes, railways etc. which though mechanically propelled are not suitable for use on roads. The inclusion of trams using tracks which may be on roads or off them, makes the distinction still more apparent.

It, therefore, follows that the same meaning should be given to those words occurring in Section 3(1) and the Explanation also. The resultant position that emerges is that Section 3(1) confers a right upon the State to levy a tax on all motor vehicles which are suitably designed for use on roads at prescribed rates without reference to the road-worthy condition of the vehicle or otherwise. Section 4 enjoins every registered owner or person having possession or control of the motor vehicle to pay the tax in advance. The Explanation to Section 3(1) contains a deeming provision and its effect is that as long as the Certificate of Registration of a motor vehicle is current, it must be deemed to be a vehicle suitable for use on the roads. The inevitable consequence of the Explanation would be that the owner or a person having control or possession of a motor vehicle is statutorily obliged to pay the tax in advance for the motor vehicle as long as the Certificate of Registration is current irrespective of the condition of the vehicle for use on the roads and irrespective of whether the vehicle had a certificate of fitness with concurrent validity or not. The Act, however, takes care to see that the owner of a motor vehicle or a person having possession or control of it is not penalised by payment of tax in advance for a vehicle which had not been actually used during the whole of a period or part of a period for which tax had been paid by him. The legislative provision in this benefit is to be found in Section 7 of the Taxation Act. The relevant portion is contained in sub-section (1) and it reads as follows :

> Refund of Tax - (1) Where a tax on any motor vehicle has been paid for any period and it is provided to the satisfaction of the prescribed authority that the vehicle has not been used during the whole of that period, or a continuous part thereof, not being less than one calendar month, a refund shall be made of such portion of the tax and subject to such conditions as may be prescribed.

The rules framed under the Act prescribe the conditions referred to in Section 7. Rules 20 to 23 are the relevant rules. Rule 20 sets out the manner and time in which the application for refund should be made and the authorities who can sanction refund. Rule 21 provides for the issue of certificate of refund, and Rule 22 refers to the payment of refund to a person on production of a certificate of refund in Form 17. Rule 23 deals with the scales of refund. If the vehicle had not been used during the whole of the period for which tax has been paid then the applicant is entitled to get a refund of the entire tax amount. If the vehicle had been made use of for a portion of the period then different scales of refund have been provided according to the period of user and period of non-user of the vehicle.

8. Section 7 read with the relevant rules, therefore, makes it clear that an owner or other person paying the tax for a motor vehicle in advance would not suffer in any manner on account of the payment of the tax if the vehicle is not put to use on the roads and he can apply to the authorities concerned and seek appropriate refund as per the scales given in Rule 23. The scheme of the Taxation Act is such that the tax due on a motor vehicle has got to be paid in terms of Section 3 at

the prescribed rate and in advance and the liability to pay tax continues as long as the Certificate of Registration is current but if it so happens that in spite of the Certificate of Registration being current, the vehicle had not actually been put to use for the whole of the period or a continuous part thereof, not being less than one calendar month, the person paying the tax should apply to the prescribed authority and obtain a refund of the tax for the appropriate period of his claim. Section 3 and 4 are absolute in their terms and the liability to pay the tax in advance is not dependent upon the vehicle was not in a roadworthy condition and could not be put to use on the roads without the necessary repairs being carried out, the owner or person having possession or control of a vehicle is enjoined to pay the tax on the vehicle and then seek a refund. Perhaps in exceptional cases where the vehicle has met with a major accident or where it is in need of such extensive repairs that it would be impossible to put the vehicle to use or where the Transport Authorities themselves prohibit the use of vehicle due to its defective condition and cancel the certificate of fitness or suspend it, the person concerned may surrender the Certificate of Registration and other documents like permit etc., and seek the permission of the Transport Authorities to waive the payment of tax on the ground that no proof of non-user was necessary and as such payment of tax on the one hand and an automatic application for refund on the other would be a needless ritualistic formality and if the permission sought for is granted, he need not pay the tax. In all other cases the only course left open is for the person concerned to pay the tax in advance and thereafter apply to the authorities and obtain refund of tax after proving that the vehicle was not fit for use on the roads and has in fact not been made use of. The principle underlying the Taxation Act is that every motor vehicle issued a Certificate of Registration is to be deemed a potential user of the roads all through the time the Certificate of Registration is current and therefore liable to pay tax under Section 3(1) read with Section 4. If however, the vehicle had not made use of the roads because it could not be put on the roads due to repairs, even though the Certificate of Registration was current, the owner or person concerned has to seek for and obtain refund of the tax paid in advance after satisfying the authorities about the truth of his claim. It is not for the Transport Authorities to justify the demand for tax by proving that the vehicle is in a fit condition and can be put to use on the roads or that it had piled on the roads without payment of tax. It would be absolutely impossible for the State to keep monitoring all the vehicles and prove that each and every registered vehicle is in a fit condition and would be making use of the roads and it therefore liable to pay the tax. For that reason, the State has made the payment of tax compulsory on every registered vehicle and that too in advance and has at the same time provided for the grant of refund of tax whenever the person paying the tax has not made use of the roads by plying the vehicle and substantiates his claim by proper proof. Any view to the contrary would defeat the purpose and intent of the Taxation Act and would also afford scope and opportunity for some of the persons liable to pay the tax to ply the vehicle unlawfully without payment of tax and later on justify their non-payment by setting up a plea that the vehicle was in repair for a continuous period of over a month or the whole of a quarter, half-year or year as they choose to claim.

9. In view of a legislative change in the Act we do not find any necessity to go into the question whether the words "kept in the State of Mysore" should be construed as "kept for use in the State of Mysore". It may be remembered that this construction found favour with the Karnataka High Court in its decision in Naraina Reddy case ((1971) 2 Mys LJ 319) and Reddappa case ((1975) 1 Kant LJ 206). The words "kept in the State of Mysore" and the proviso to the section have omitted by Karnataka Act 38 of 1976 and therefore, the discussion on that point will only be of academic value now. It is for that reason we do not feel it necessary to go into that aspect of the matter.

10. The next factor for consideration is whether the impact of Section 38 of the Motor Vehicles Act on Section 22 of the said Act will have its ramifications on Section 3(1) and the Explanation of the

Taxation Act. Section 22 deals with the necessity for registration of motor vehicles and mandates that no person shall drive a motor vehicle and no owner shall cause or permit his motor 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 Chapter 3 of the Act and the Certificate of Registration granted has not been suspended or cancelled. Section 38 on the other hand deals with the Certificate of Fitness for transport vehicles. This section lays down that a transport vehicle shall not be deemed to be a validly registered for the purposes of Section 22, unless it carries a Certificate of Fitness in the prescribed form issued by the Prescribed Authority. The very terms of Section 38 limit the deeming effect caused by the absence of a Certificate of Fitness to the rights conferred under Section 22 pursuant to the registration of a vehicle. There is therefore, no scope for extending the deeming provision in Section 38 to Section 3(1) and the Explanation thereto of the Taxation Act. In fact the Explanation to Section 3(1) clearly sets out that the deeming effect conferred by it will have overriding force on Section 3(1). This is made clear by the words "for the purposes of this Act" contained in the Explanation. The operative force of the deeming provision contained in Section 38 being restricted to Section 22 of the Motor Vehicles Act has been correctly noticed by the Karnataka High Court in Naraina Reddy case ((1971) 2 Mys LJ 319) and the High Court has held at page 322 as follows :

> The legal fiction created by Section 38 of the Motor Vehicles Act is only for the purpose of Section 22 of that Act and cannot be extended to the Taxation Act.

11. Though the High Court has taken the correct view, it has not gone into the reason underlying the restriction of the operation of Section 38 to Section 22 of the Motor Vehicle Tax Act alone. The reason is that Section 38 has been provided so as to effectively prevent an owner or person having possession or control of a motor vehicle from carrying passengers or goods in it in spite of the vehicle not being in a fit condition and not carrying a certificate of fitness and thereby endangering the safety of the public. The deeming effect on the certificate of registration of a vehicle when it is not carrying a certificate of fitness is to ensure that the safety of the public is not jeopardised by anyone driving or using a vehicle without a certificate of fitness for carrying passengers or goods and trying to take umbrage for the violation by contending that he was entitled to make such use because of the certificate of registration issued to the vehicle being current. It has also to be noticed that Section 38 contains a safety measure while Section 3 of the Taxation Act pertains to a compensatory measure. The former cannot therefore limit the operation of the latter i.e. Section 3(1) of the Taxation Act and the Explanation thereto.

12. In the light of our discussion it follows that Section 3(1) of the Taxation Act and its Explanation have to be construed on their own force and not with reference to Section 38 of the Motor Vehicles Act. The combined effect of Sections 3, 4 and 7 of the Act lies that the State is empowered to levy tax on all motor vehicles which are suitably designed and manufactured for use on the roads. The Explanation provides that every motor vehicle of which a Certificate of Registration is current shall be deemed to be a vehicle suitable for use on roads and liable to pay tax as a potential user of the roads at the rates prescribed by the government. Section 4 enjoins the tax levied under Section 3 to be paid in advance. Section 7 provides that in the event of a vehicle for which tax has been paid in advance under Section 4 had not been made use of for the whole of the period for which tax has been paid or of a continuous part thereof, not being less than one calendar month the person paying the tax may apply to the Prescribed Authority and obtain appropriate refund as prescribed by the rules after producing proof in support of the claim for refund. In the light of this position the decision rendered in Reddappa case ((1975) 1 Kant LJ 206) is not correct law.

13. Admittedly the respondents had failed to pay the tax in advance in compliance with Sections 3 and 4. They had also failed to inform the Transport Authorities that the goods vehicle was not fit for use on the roads and had been left in a workshop during the period October 1, 1972 to March 31, 1974 and they had also failed to surrender the Certificate of Registration and the certificate of fitness which was in force till November 28, 1972. In such circumstances the trial court was in error in acquitting them and the High Court too was not justified in dismissing in limine the appeal against acquittal. Since the transfer of the vehicle had not been reported to the authorities the first respondent was as much liable as the second respondent to pay the arrears of tax that was demanded.

14. However, as stated at the outset itself the State is not anxious to pursue the prosecution against the respondents. Moreover, it is reported that the second respondent has died during the pendency of the appeal. In the result the appeal succeeds insofar as the contentions of the State regarding the scope and effect of Section 3(1) and the Explanation of the Taxation Act, 1957, are concerned, but the acquittal of respondents 1 and 2 will remain undisturbed.

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