

SITARAM

v.

STATE OF MADHYA PRADESH

(J. L. KAPUR, K. C. DAS GUPTA and RAGHUBAR DAYAL, JJ.)

Criminal Trial—Offence of filing false return of Sales tax—Limitation—If trial barred after three months—C. P. and Berar Sales Tax Act, 1947 (C. P. XXI of 1947), s. 26.

The appellants submitted their returns of sales tax. More than three months afterwards a complaint was filed against them under s. 24(1)(b) and (g) of the C. P. and Berar Sales Tax Act alleging that the returns filed were false and that the accounts produced were incorrect. They contended that the prosecution was barred by s. 26(2) of the Act which provided that no prosecution shall be instituted against any person in respect of anything done or intended to be done under the Act unless it was instituted within three months from the date of the act complained of.

Held, that the prosecution was barred by s. 26(2) of the Act. The words "any person" in s. 26(2) were words of wide import and included the appellants. There was no reason to restrict them to Government servants. Both the making of the return and the production of the accounts were acts done under the Act; the return being filed under s. 10 and the accounts being produced under s. 15 of the Act. Section 26(2) was thus clearly applicable to the case.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 146 and 147 of 60.

Appeals by special leave from the judgment and order dated February 11, 1960, of the Madhya Pradesh High Court in Criminal Revisions Nos. 270 to 274 of 1959.

G. C. Mathur, for the appellants.

I. N. Shroff, for the respondents.

1962. February 5. The Judgment of the Court was delivered by

KAPUR, J. —There are two appeals directed against the order of the High Court of Madhya

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Pradesh rejecting a Reference made by the Sessions Judge against the prosecution of the appellants for contravening the provisions of the C. P. and Berar Sales Tax Act (C. P. XXI of 1947), hereinafter called the 'Act'.

A firm of which five brothers including the two appellants were partners submitted their sales tax returns for the quarters beginning June 1, 1947, to the quarters ending December 31, 1951. A complaint was filed against the partners on July 19, 1957, on the ground that the returns filed by them were false and the accounts produced were incorrect and therefore an offence under s. 24(1)(b) and (g) of the Act was committed.

On December 12, 1958, an objection was taken by the accused persons that under s. 26(2) of the Act, the prosecution could not be instituted as it was barred by time, having been instituted more than three months after the commission of the offence. The learned Magistrate did not go into the objection on the ground that it was not the proper forum for raising the objection. Four revisions were taken to the Sessions Judge who on May 4, 1959, made a reference to the High Court for quashing the proceedings. But the High Court rejected the reference on the ground that a person making a false return neither acts nor purports to act under the Act and therefore s. 26(2) is not applicable to him. It is against that order that these appeals were brought by Special Leave.

In order to decide this question, it is necessary to refer to the relevant provisions of the Act. Under s. 10 of the Act every dealer is required to furnish a return when called upon to do so and every registered dealer is required to furnish returns by such dates as may be prescribed. The appellants are registered dealers and they have made returns under that section. Section 15 deals with

production and inspection of accounts and s. 24 enumerates the offences under the Act. The alleged offence of the appellants falls under s. 34(1) (b) and (g). *i. e.* failing without sufficient cause to submit any return or furnishing false returns and knowingly producing incorrect accounts, registers or documents or knowingly furnishing incorrect information. Section 26 relates to the protection of persons acting in good faith and limitation for suits and prosecutions. The section when quoted is as follows :

S. 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 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."

For the appellants, it was contended that the words "no prosecution or suit shall be instituted against any person in respect of anything done" in sub-s. (2) of s. 26 cover their cases also and they fall within the words "any person". The respondent's submission on this point was that the two sub-sections of s. 26 should be read together and the intention of the Legislature was to give protection to Government servants in regard to prosecutions or other legal proceedings. That, in our opinion, is not what the words used in sub-s. (2) mean. They are words of wider import and would cover cases of all persons including persons other than Government servants. There are no words restricting the meaning of "any person" and no

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reason has been shown why those words should not include the appellants.

The ground on which the High Court rejected the Reference was that in its opinion the appellants neither acted nor purported to act under any of the provisions of the Act when they filed false returns or produced false accounts and in fact they were rendering themselves liable to punishment under the provisions of s. 24 of the Act. It observed as follows :—

“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”.

This opinion is, in our view, not sustainable. When the appellants submitted their returns they did so under s. 10 of the Act and when they produced their accounts they did so under s. 15 of the Act. Therefore both the making of the returns and production of the accounts were done under the Act and cannot be said to be outside the provisions of the Act.

In our opinion the High Court was in error in rejecting the Reference. The appeals are therefore allowed, the order of the High Court is set aside and the proceedings in the trial court are quashed.

Appeals allowed.