
(1966) 05 MP CK 0015**Madhya Pradesh High Court****Case No:** Criminal Appeal No. 739 of 1963

The State of Madhya Pradesh

APPELLANT

Vs

Sant Singh

RESPONDENT

Date of Decision: May 5, 1966**Acts Referred:**

- Central Provinces and Berar Sales Tax Act, 1947 - Section 24(1)(a), 26(2), 8(1)

Citation: (1968) ILR (MP) 313 : (1966) JIJ 563 : (1966) 11 MPLJ 680 : (1967) 19 STC 141**Hon'ble Judges:** Shiv Dayal Shrivastava, J; R.J. Bhawe, J**Bench:** Division Bench**Advocate:** H.L. Khaskalam, for the Appellant; A.R. Choubey, for the Respondent**Final Decision:** Dismissed

Judgement

Shiv Dayal, J.

This is an appeal from the order of acquittal of the respondent on the ground that the prosecution was barred by time.

The case for the prosecution was that the accused was a forest contractor. He dealt in timber, charcoal and firewood during the period from 1st June, 1947 to 26th July, 1950, without getting himself registered as a dealer. During the said period his turnover exceeded Rs. 5,000 per year. He was liable to be punished u/s 24(1)(a) read with Section 8(1) of the C.P. and Berar Sales Tax Act (21 of 1947) (hereinafter called the Act). The challan was put up on 4th February, 1961. The learned Magistrate held that it was barred by time u/s 26(2) of the Act.

Section 26 of the Act runs thus :

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 the 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.

Learned Government Advocate first contended that Section 26(2) of the Act refers to a servant of the Government but not to any other person. The first sub-section confers protection to the "Government" and "any servant of the Government" for anything which is done in good faith, but not to any other person. And Sub-section (2) merely prescribes time limit for action which may be taken against the Government or any person for anything done or intended to be done "under this Act or the rules made thereunder" (but not in good faith). In view of *Sitaram and Anr. v. State of M.P.* [1962] 13 S.T.C. 285, this contention cannot be raised in this Court.

Thus, the only question on which the decision of this appeal turns is whether carrying on business by a dealer without getting himself registered is "something done or intended to be done under the Act." It is argued by the learned Government Advocate that an act, which is in contravention of the Act, can never be considered to be done under the Act. That expression has reference to things done or purported to be done in accordance with the provisions of the Act. To put it differently, it must be a positive act and that positive act must have reference to some provision of the Act. On that foundation, it is argued that to carry on business is not doing something "under the Act" because there is no provision in the Act for carrying on business and business is not carried on in accordance with the provisions of the Act. We do not accept this argument as it unduly strains the language of Section 26(2). That sub-section has to be read with reference to the scheme of the Act. Section 8(1) enacts as follows:

8. (1) No dealer shall, while being liable to pay tax under this Act, carry on business as a dealer unless he has been registered as such and possesses a registration certificate...

And, Section 24(1)(a) provides :

24. (1) Whoever-

(a) carries on business as a dealer in contravention of Sub-section (1) of Section 8...shall, without prejudice to the recovery of any tax that may be due from him, be punishable...

Thus, Section 8 casts a duty on a dealer to get himself registered as such before he carries on business as dealer. Violation of this duty is punishable u/s 24(1)(a). The prosecution will, therefore, be u/s 24(1). Then" steps in Section 26(2) under which time limit is prescribed for such prosecution.

If the expression "any person" employed in Section 26(2) of the Act is not restricted to servants of the Government-and that point is concluded by the decision of the

Supreme Court in Sitaram [1962] 13 S.T.C. 285- the time limit of three months must apply to every prosecution u/s 24(1) of the Act. In some of the clauses of that section certain positive acts are made punishable, while in others certain omissions are made punishable.

It is true that to carry on business is a positive act and carrying on business, simpliciter, is not an act done under the Act. But, where a dealer carries on business without getting himself registered under the Act, he certainly commits an omission under the Act. What is punishable is not carrying on the business but is the omission on the part of the dealer to get himself registered. Now, u/s 2(2) of the General Clauses Act, words which refer to an act done also refer to illegal omissions. Therefore, a dealer's omission to get himself registered is something "done" under the Act.

In Sitaram v. State of M.P. [1962] 13 S.T.C. 285, the firm, of which five brothers including the appellants therein were partners, submitted their sales tax return for the quarter beginning on 1st June, 1947, to the quarter ending 31st December, 1951. A complaint was filed against the partners of that firm on 1st July, 1957, on the ground that the returns filed by them were false and the accounts produced were incorrect and, therefore, an offence u/s 24(1)(b) and (g) of the Act was committed. The accused raised an objection that the prosecution was barred by time u/s 26(2) of the Act. Their Lordships referred to the relevant provisions of the Act. u/s 10, 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 were registered dealers and they made their returns under that section. Section 15 deals with production and inspection of accounts and Section 24 enumerates the offences under the Act. The alleged offence committed by the appellants fell u/s 24(1)(b) and (g). Their Lordships held as follows :

When the appellants submitted their returns they did so u/s 10 of the Act and when they produced their accounts, they did so u/s 15 of the Act. Therefore, both the making of the returns and the production of the accounts were done under the Act and cannot be said to be outside the provisions of the Act.

The principle of that ruling must be applied here.

In this view of the matter, Section 26(2) of the Act applies to the omission on the part of a dealer to get himself registered. In the present case, the prosecution having been instituted after three months it has rightly been held to be barred by time.

The appeal is dismissed.