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evidence of certain witnesses who although they did not identify the accused in the inquiry before him had identified him at an identification parade, and Mr. Kavlekar says that this evidence is irrelevant and the learned Magistrate has relied on this evidence in order to commit the accused to the Sessions. We express no opinion as to whether this evidence is relevant or not. The proper time for considering this would be when the evidence is led before the Sessions Court. At this stage all that we are concerned with is to consider whether on the evidence led by the Magistrate it could be said that there was no case to go to the jury. In our opinion, it is impossible to put forward that contention. Therefore, even on the merits the commitment order must be upheld.

The result is that the petition fails and must be dismissed.

Rule discharged.

G. N. V.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Dixit.

1956
June 26

THE COLLECTOR OF SALES TAX, BOMBAY, (APPLICANT) *v.* SHRI MORARJI PADAMSI OF MESSRS. E. EYERS & CO. BOMBAY, (RESPONDENTS).*

The Bombay Sales Tax Act, 1946 (Bom. V of 1946) ss. 5, 18—Whether transferrer of business liable to pay tax after transfer of business—Whether liability of transferrer and transferee co-extensive?

Section 5, of the Bombay Sales Tax Act, 1946, which is the charging section, makes the dealer liable to pay tax. On the transfer of the whole business, the liability of the transferrer does not automatically cease. Section 18 does not absolve the transferrer of the liability to pay tax, incurred by him by reason of s. 5. The transferrer continues to be liable to pay the tax in respect of the period during which he carried on the business and incurred the liability to pay sales tax.

Facts material to this report are fully set out in the Judgment.

At the instance of the Collector of Sales Tax, Bombay, the Sales Tax Tribunal, Bombay, referred the following questions to the High Court at Bombay:—

(*i*) Whether by virtue of the provisions of s. 18 of the Bombay Sales Tax Act, 1946, the applicant is precluded from levying on and/or recovering from the respondent arrears of sales tax dues for the period to the date of transfer of his business.

(*ii*) If question No. (*i*) is answered in the affirmative whether in any event having regard to the fact that the transferee (who did not hold the certificate of registration) did not apply for registration under s. 8 or 8A, the applicant was precluded from levying on and/or recovering from the respondent sales tax for the period prior to the date of transfer of his business.

*Civil Reference No. 7 of 1956 (with Civil Reference No. 8 of 1956).

(*iii*) If question (*i*) be answered in the affirmative whether the applicant is entitled to levy on and/or recover from the respondent any penalty for default in the payment of sales tax dues.

H. M. Seervai with *Messrs. Little & Co.* for the applicant.

P. M. Kapadia with *Messrs. Matubhai Jamietram & Madan* for the Opponents.

Chagla C. J.—A rather novel and ingenious contention was put forward by the assessee in this reference. The facts briefly are that the assessee registered his business under the Sales Tax Act on October 1, 1946, and conducted his business till March 2, 1949. On that date he transferred the whole of his business as a going concern to a third party. The Sales Tax Officer assessed the assessee in respect of two periods October 1, 1946, to March 31, 1947, and April 1, 1947 to March 1, 1949. It will be noticed that both the periods are antecedent to the date of transfer. The assessee admitted the correctness of the amount of assessment, but he denied his liability on the ground that as the business had been transferred by him the liability to pay tax with regard to the business done before the transfer was only upon the transferee and the transferor was absolved from his liability. The Tribunal accepted this contention and the Taxing Authority has come before us on this reference.

Turning to the Act, s. 5 imposes the liability upon the dealer whose gross turnover exceeds a certain amount during the relevant period and it makes the dealer liable to pay tax on his turnover. It is not disputed that under this section the assessee became liable to pay tax. Section 6 deals with the levy and rates of tax, and s. 8 deals with registration of dealers, and the assessee was registered under this section. Sub-s. (*6*) of that section provides that when any business in respect of which a certificate has been granted under this section has been discontinued or transferred, and the dealer has applied in the prescribed manner for cancellation of his registration, the prescribed authority shall cancel the registration with effect from the prescribed date. This is what the assessee did after he had transferred the business and he ceased to be a registered dealer. Section 10 provides for returns to be made in the prescribed manner and these returns were made by the assessee during the relevant period. Section 11 deals with assessment, and s. 12 deals with payment and recovery of tax, and a special machinery is set up by which a registered dealer has to pay the full amount of tax due from him under the Act according to the return that he makes. Therefore, when the assessment takes place under s. 11 the assessing authority has to consider the return, the amount paid and to determine whether any further amount is payable by the dealer. Sub-section (*4*) of s. 12 deals with the notice which is to be served upon the dealer and the notice is to be of 30 days' duration and any amount of tax which remains unpaid after the date specified in the notice is made recoverable as an arrear of land

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revenue. Then comes s. 18 which calls for interpretation at our hands, and sub-s. (1) provides:

"When the ownership of the business of a dealer liable to pay the tax under this Act is entirely transferred, any tax payable in respect of such business and remaining unpaid at the time of the transfer shall be payable by the transferee as if he were the dealer liable to pay such tax; and the transferee shall also be liable to pay tax under this Act on the sales or supplies of goods effected by him with effect from the date of such transfer and shall within thirty days of the transfer apply for registration under s. 8 or s. 8A, as the case may be, unless he already holds a certificate of registration."

Under this section a three-fold statutory liability is imposed upon the transferee. The first, with which we are directly concerned, is that he becomes liable to the same extent and in the same manner as the transferor to pay the tax which the transferor was liable to pay. The second liability is that he is liable to pay tax with regard to the sales effected or supplies made of goods after the date of the transfer, and the third liability is that he has got to apply for transfer within the fixed period. The rather surprising argument that is put forward is that the liability imposed upon the transferee under the first head makes him solely liable to pay the tax which the transferor was liable to pay under that head. It is said that the Legislature in enacting s. 18 has not made it clear that the liability imposed upon the transferee is concurrent and co-extensive with the liability upon the transferor and in only imposing the liability upon the transferee the Legislature has not continued to impose the liability upon the transferor with regard to the payment of tax. In putting forward this argument what is overlooked is that the liability upon the transferor is already imposed by s. 5 of the Act. That is the charging section which makes the dealer, who in this case is the assessee, liable to pay tax, and it is not disputed that that liability was upon him during the relevant period and in respect of the relevant period. The assessee in order to succeed must draw our attention to some provision in the Act which absolves him from that liability. Undoubtedly the Legislature for greater caution could have said in s. 18 that not only the transferee is liable but the transferor continues to be liable. But the mere fact that the Legislature did not make the position clear cannot lead to the inference that a liability solemnly imposed in a taxing statute upon the tax payer has been displaced or taken away by reason of the fact that a statutory liability to pay the same tax has been imposed upon a third party. It has been seriously suggested before us that even though an assessment had taken place before the date of transfer and even though a notice to pay had been served under s. 12 (4), as soon as the transferor transferred the whole of his business his liability would automatically cease and the liability would be imposed upon the transferee and he would be solely liable to discharge the tax due by the assessee. We are conscious of

the fact that this is a taxing statute and that we must place upon every provision of this statute a construction which should help the assessee if it is possible to do so. But as Mr. Seervai has rightly pointed out, the construction suggested by the transferor imposes an unconscionable burden upon the transferee because the result of this construction is that the transferee alone in law is liable to pay the tax which was due by the assessee and that if the transferee pays the tax he would not be entitled to recover that tax from the transferor because it is only if he discharges a liability which in law is payable by the transferor that the transferee would be entitled to recover the tax. So we are asked to put a construction upon s. 18 which discharges the liability of the transferor, imposes a liability upon the transferee, makes that liability the sole liability of the transferee, and deprives the transferee of recovering the amount of tax paid by him from the transferor. No canon of construction can possibly induce us to take that view of s. 18. We should have thought that the proper construction of any statute which imposes a liability upon a person and then proceeds to impose that liability vicariously upon a third party is that the original liability of the person does not come to an end. The taxing authority in order to make sure of the tax makes somebody else also liable to pay the tax, but it would be fantastic to suggest that the Legislature relieved the person primarily liable to pay the tax from his liability and only made the transferee liable merely by reason of the fact that he accepted a transfer of the business. It is true, as we have pointed out, that s. 18 does not in terms say that the tax shall be payable also by the transferor, but nor does the section say that the tax shall be payable only by the transferee. If the Legislature had used either one or the other expression, we would not have been called upon to consider this matter. But as the Legislature has failed to use those clear words, the question is what is the proper construction to be placed upon the liability imposed upon the transferee by s. 18, and in our opinion, with respect to the Tribunal, it is not possible to take the view that s. 18 absolves the transferor of the liability to pay the tax which liability has been incurred by him by reason of s. 5. The Tribunal has referred to certain provisions of the Income Tax Act and considered the language used by that statute to come to the conclusion that failure to use similar language in s. 18 must result in a contrary conclusion being taken as to the liability of the transferor. The Sales Tax Act and the Income Tax Act, as we have said before are not *in pari materia*. The particular section to which reference has been made by the Sales Tax Tribunal, viz. s. 26, deals with the rather complicated machinery of assessment of partnerships and partners before and after discontinuance of the partnership and to draw any inference from the language used in that section in order to construe s. 18 would in our

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opinion not be a safe guide at all nor would it be a proper canon of construction.

In our opinion, therefore, the transferor continues to be liable to pay the tax in respect of the periods during which he carried on the business and incurred the liability to pay sales tax. Although two questions have been submitted to us, Mr. Seervai has only argued one, viz. question (*1*), and we answer that question in the negative. The assessee to pay the costs.

Same answer for the same reasons in Reference No. 8 of 1956.

As both the references were heard together there will be one order for costs.

Answer accordingly.

H. R. G.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Dixit.

In Re : J. C GANDHI.*

1956
June 29

Bombay Pleaders' Act (Act XVII of 1920) Sch. III—Pleaders—Professional Misconduct—Pleaders' fees in Suit for accounts—Agreement between pleader and client that the minimum Pleader's fees in the client's suit for accounts would be Rs. 250, whether client fails or succeeds and 25 per cent of the amount found due at the foot of the accounts—Decree for Rs. 20,045-12-0—Pleaders' suit to recover Rs. 5,011-9-0 on the basis of the agreement—Whether pleader guilty of professional misconduct—Whether fees claimed exhorbitant or unconsionable—Principles for fixing quantum of fees.

A pleader who enters into an agreement with his client that he should receive as his fees 25 per cent of the amount which may be found due and decreed in a suit for accounts is not guilty of professional misconduct inasmuch as in a suit for accounts a pleader may make his fees dependent upon the result of the suit.

In re Gauba,[1] *In re Bhandara,*[2] distinguished.

Bai Meherbai v. *Maganchand,* [3] relied on.

The lawyer owes a duty not only to himself but to the society; in charging fees he must remember that he must not exact fees which necessity compels a client to pay though it may be beyond his capacity.

Anandalwan v. *Judges of the High Court at Madras,*[4] *George Taylor* v. *Elizabeth Bemiss,*[5] referred to.

CIVIL Reference under the Bombay Pleaders' Act made by V. R. Shah Esquire, District Judge, Broach.

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*Civil Reference No. 5 of 1956.

1. (1954) 56 Bom. L. R. 838, 1220, s. c.
2. (1901)3 Bom. L. R. 102.
3. (1904) 29 Bom. 229.
4. (1930) 32 Bom. L. R. 876.
5. (1884) 110 U. S. 42, 28 Law Ed. 64.