

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

AMAR SINGH,—*Appellant*

versus

PUNJAB STATE,—*Respondent*

Regular Second Appeal No. 985 of 1957

1964

November, 16th.

Punjab Motor Vehicles Taxation Act (IV of 1924)—Ss. 3, 4 and 8—Owner of Vehicle transferring it to another—Transferee not getting the vehicle registered in his name—Transferor—Whether liable to pay tax for the period during which the vehicle remains in his name—Penalty—Whether can be imposed on the transferor.

Held, that under section 3(2) of the Punjab Motor Vehicles Taxation Act, 1924, the tax is paid upon a licence to be taken out and paid for under the provisions of this Act by the person who keeps the motor vehicle for use. Therefore, till the licence is transferred in accordance with law, the tax liability remains on the licensee. It is clear from the record that the licence for the period in question was never transferred from the plaintiff to his transferees. Therefore, the liability of the plaintiff does not come to an end and any use of the motor vehicle by the transferees of the plaintiff would be used for and on behalf of the plaintiff, because it is the plaintiff who remains licensee of the vehicle. This is further supported by rule 13 of the rules framed under the Motor Vehicles Taxation Act. The mere fact that there is no duty cast on the transferor to report about the change of the ownership of the vehicle will not affect the liability to tax, which liability arises not under section 31 of the Motor Vehicles Act, 1939, but under sections 3 and 4 of the Punjab Motor Vehicles Taxation Act, 1924.

Held, that no penalty can be imposed under section 8 of the Punjab Motor Vehicles Taxation Act, 1924, on the transferor, because the penalty is only imposed if a person fails to deliver a declaration in accordance with the provisions of this Act, or delivers a declaration wherein the particulars prescribed to be therein set forth are

not fully and truly stated. There was no breach of any of these provisions by the transferor who had filed a proper declaration and submitted the correct particulars. With regard to the transfer of the vehicle, there is no duty cast on him to notify the Registering Authority under this Act and no penalty can, therefore, be imposed on him for his failure to notify the transfer of his vehicle to the Registering Authority.

Regular Second Appeal from the decree of the Court of Shri Ishar Singh Hora, Senior Sub-Judge, with enhanced appellate powers, Ambala, dated the 5th June, 1957, affirming that of Shri Man Mohan Singh Sethi, Sub-Judge, 4th Class, Ambala, dated the 29th June, 1956, dismissing the plaintiff's suit and leaving the parties to bear their own costs.

DALJIT SINGH, ADVOCATE, for the Appellant.

S. S. DHINGRA, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

MAHAJAN, J.—This second appeal is directed against the concurrent decisions of the Courts below, dismissing the plaintiff's suit.

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The plaintiff brought the present suit for recovery of Rs. 100 already recovered by the State of Punjab from him and for a permanent injunction against the State restraining it from recovering a sum of Rs. 2,250 in respect of tax on truck No. P.N.E. 886. The tax in question was imposed under the Punjab Motor Vehicles Taxation Act, 1924 (Punjab Act 4 of 1924). Section 3 of the Act deals with imposition of the tax. The tax under this section is leviable on every motor vehicle in equal instalments for quarterly periods and is payable upon a licence to be taken out and paid for under the provisions of this Act by the person who keeps the motor vehicle for use. Under section 4 of this Act a person who keeps a motor vehicle for use is obliged to fill up and sign a declaration in the prescribed form, stating the prescribed particulars, and shall deliver the declaration as filled up and signed by him to the licensing officer before the 30th day of April, 1925, or if such person commences to keep the vehicle after the 10th day of April, 1925, then before the expiration of 21 days from

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the day of his commencing to keep the vehicle for use. Under section 7 "every licensing officer shall grant and deliver to every person who pays to him the first instalment of tax due, a license in which shall be specified the particulars of the tax paid, * * * * *

Section 8 provides the penalties for omission to comply with the provisions of section 4. The arrears of tax under section 11 are recoverable as arrears of land revenue. Under this Act the relevant rule which need be noticed is rule 13, which is in these terms—

"When a person purchases or keeps for use a motor vehicle in respect of which a licence has already been issued, he shall produce the licence referred to in rule 18 before the Licensing Officer. The Licensing Officer shall then cancel the licence and deliver to the applicant a fresh licence in his own name, in which he shall enter as paid those instalments of the tax which were entered as paid on the former licence."

Under section 31 of the Motor-Vehicles Act, as enacted in the year 1939 and as it stood up to the year 1956 when it was amended by Act 100 of 1956, there was no obligation on the part of the transferor of a motor vehicle to notify the transfer to the registering authority. Under this section as amended in 1956 the corresponding duty has been cast on the transferor as well.

In the present case, initially the truck was purchased by Amar Singh plaintiff and he paid tax in respect of this vehicle up to the third quarter of 1948-49, i.e., up to the 31st of December, 1948. According to Amar Singh, he sold the truck to Mian Singh, Chanan Singh and Amar Singh of Naroo in PEPSU and also gave them the permit and in view of this sale he never paid the tax thereafter. He received a notice for the fourth quarter of 1948-49 to the second quarter of 1952-53, whereby tax for all this period was demanded from him. The plaintiff on the 29th of September, 1952, sent an application by post to the licensing authority intimating to it that he had sold the truck in September, 1948 and that no tax or penalty should have been imposed on him. The licensing authority took the stand that as no intimation of the transfer had been given to it the liability to pay tax rested with the plaintiff. On

the pleadings of the parties the following issues were framed:—

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- (1) Whether the transfer was effected with the knowledge of the Punjab State? If not, with what effect?
- (2) Is the suit within time?
- (3) Is the plaintiff entitled to the refund of Rs. 100 and the declaration prayed for?
- (4) Is the plaint not properly valued for the purposes of court-fee and jurisdiction?

The trial Court found that the transfer in question had not been effected with the knowledge of the Punjab State, that the suit was within time, that the plaintiff was not entitled to the refund of Rs. 100 and the declaration prayed for and that the plaint was properly valued for purposes of court-fee and jurisdiction. Against this decision the plaintiff went up in appeal, but the appeal was dismissed and the decision of the trial Court upheld. The plaintiff has come up to this Court in second appeal.

The contention of Mr. Daljit Singh, learned counsel for the appellant, is that the plaintiff after the transfer is not keeping a motor vehicle for use and, therefore, he is not liable to pay the tax after the sale. Under section 3(2) of the Punjab Motor Vehicles Taxation Act, 1924, the tax is paid upon a licence to be taken out and paid for under the provisions of this Act by the person who keeps the motor vehicle for use. Therefore till the licence is transferred in accordance with law, the tax liability remains on the licensee. It is clear from the record that the licence for the period in question was never transferred from the plaintiff to his transferees. Therefore, the liability of the plaintiff does not come to an end and any use of the motor vehicle by the transferees of the plaintiff would be use for and on behalf of the plaintiff, because it is the plaintiff who remains licensee of the vehicle. This is further supported by rule 13 of the rules framed under the Motor Vehicles Taxation Act. This rule has already been quoted for facility of reference. The mere fact that there is no duty

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cast on the transferor to report about the change of the ownership of the vehicle will not affect the liability to tax, which liability arises not under section 31 of the Motor Vehicles Act, but under sections 3 and 4 of the Punjab Motor Vehicles Taxation Act. Mr. Daljit Singh has placed reliance on a Single Bench decision of the Madras High Court in *V. Shanmugam, In re.* (1), where Ramaswami, J., observed that there is no obligation on the part of the transferor of a motor vehicle to notify the transfer. It is the duty of the transferee and, therefore, a prosecution of the transferor for failure to exhibit the tax licence after the date of the transfer, as his name continued in the registers as owner, is unsustainable. This is a case under the Motor Vehicles Act (4 of 1939) and has no relevance so far as the Punjab Motor Vehicles Taxation Act is concerned. The liability for tax is that of the licensee and if for any fault on the part of the transferor he is burdened with the tax, he has the corresponding right to recover that tax from his transferee who has failed in his duty to get the licence transferred in his name; but so far as the State is concerned; it is fully justified in recovering the tax from the transferor.

Mr. Daljit Singh then contended that on the basis of the Madras decision at least no penalty can be imposed on his client. The penalty is imposed under section 8, which is in these terms—

“8(1) If a person (a) fails to deliver a declaration in accordance with the provisions of this Act, or (b) delivers a declaration wherein the particulars prescribed to be therein set forth are not fully and truly stated, the licensing officer may, after making such enquiry as he deems fit and after hearing the person if he desires to be heard, impose on such person any tax or additional tax for such quarterly period or periods as the licensing officer may find that such person is liable to pay under the provisions of the Act and may also impose a penalty which may extend to twice the amount of the tax to which he is found liable.

(1) 1957 M.W.N. 429.

(2) The tax or additional tax imposed shall be payable before the expiry of fourteen days from the date of the licensing officer's order."

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It is apparent from the reading of this provision that no penalty can be imposed under this section on the transferor, because the penalty is only imposed if a person fails to deliver a declaration in accordance with the provisions of this Act, or deliver a declaration wherein the particulars prescribed to be therein set forth are not fully and truly stated. There was no breach of any of these provisions. So far as the appellant is concerned, he filed a proper declaration and submitted the correct particulars. With regard to the transfer of the vehicle there is no duty cast on him to notify the registering authority under this Act (the Punjab Motor Vehicles Taxation Act). Therefore, it appears to me that the imposition of the penalty was wholly uncalled for.

In the result I would partly allow this appeal and grant the declaration prayed for so far as it relates to penalty, but would dismiss the appeal so far as it relates to the realisation of the actual tax. There will be no order as to costs in view of the divide success.

B.R.T.