

State vs Kailash Chandra And Ors. on 5 March, 1952

Equivalent citations: AIR1952ALL799, AIR 1952 ALLAHABAD 799, 53 BOM LR 545

ORDER

P.L. Bhargava, J.

1. This is a reference, under Section 438, Criminal P. C., by the Additional Sessions Judge of Etawah. The facts and circumstances leading to the reference are these :

2. Sri Kailash Chandra, Sri Swami Dayal and Sri Surendra Narain, the proprietors of the Prabhat Talkies, Etawah, were prosecuted under Section 5 read with Section 4, U. P. Entertainment and Betting Tax Act (NO. vIII [8] of 1937) for having admitted thirteen persons, who were liable to pay entertainment tax, to their cinema-house--a place of entertainment--without payment of the tax leviable under Section 3 of the Act.

3. According to the prosecution story, on 7-2-1950, the Entertainment Tax Inspector entered the cinema-house for the purpose of checking and he found in the Inter Glass thirteen persons sitting without ticket. These persons were liable to pay the entertainment tax under Section 3 (2) of the Act but they had been admitted without payment; of the same. The proprietors of the cinema house were, therefore, held liable to pay the penalty prescribed under Section 5 (3) of the Act.

4. The defence of the accused persons was that they were not liable to pay any penalty as the thirteen persons were board-boys and band-men and that they were on duty in connection with the entertainment because in the interval the band-men played on the band inside the cinema-house and the board-boys showed pictures to the inmates of the hall.

5. The accused persons were tried by a Magistrate of the First Class of Etawah, who found that the thirteen persons had no duty to perform in connection with the entertainment and as such they were liable to pay the entertainment tax. Accordingly he held that the accused were liable to pay penalty under Section 5 (3), Entertainment and Betting Tax Act, and sentenced each of them to pay a fine of Rs. 50 or, in default of payment of fine, to undergo simple imprisonment for one week.

6. The accused persons filed a revision in the Court of the Sessions Judge and contended that the band-men and board-boys were not liable to pay any entertainment tax as they were persons on duty in connection with the entertainment. The learned Sessions Judge accepted the finding of the trial Court that the band-men and the board-boys had no duty to perform during the course of entertainment. The learned Judge, however, interpreted the expression "some duty to perform in connection with the entertainment," occurring in Section 4, Entertainment and Betting Tax Act to

mean any duty performed during the course of entertainment inside as well as outside the place where entertainment is held. In this connection the learned Judge has pointed out:

"Had the legislature in ended to exempt only those persons who had to perform duties inside the entertainment or during the course of entertainment, it would have used a restrictive phrase like 'during the course of entertainment' or 'inside the entertainment' instead of such a wide phrase as 'in connection with the entertainment'."

7. Mr. Baleshwari Prasad, learned counsel for the accused persons, has supported the reference and the interpretation placed upon the phrase referred to above by the learned Sessions Judge. Learned counsel holding the brief of the Government Advocate has, however, opposed the reference.

8. Sub-section (1) of Section 4, Entertainment and Betting Tax Act, 1937, is in these terms :

"Save as otherwise provided by this Act, no person, other than a person who has some duty to perform in connection with the entertainment or a duty imposed upon him by law, shall be admitted to any entertainment except with a ticket stamped with an impressed, embossed, engraved or adhesive stamp (not before used) issued by Government for the purposes of revenue and denoting that the proper entertainment tax payable under Section 3 has been paid."

The sub-section provides the "manner of admission" to any entertainment and the mode of payment for such admission. The term "entertainment" has been defined in the Act so as to include any exhibition, performance, amusement, game or sport to which persons are admitted on payment.

The Act also defines the expression "admission to an entertainment" so as to include admission to any place in which the entertainment is held.

9. According to the provisions contained in the sub-section quoted above, therefore, no person, other than a person who has some duty to perform in connection with the entertainment or a duty imposed upon him by law can be admitted to any place in which the entertainment is being held except with a ticket stamped in the manner provided. It has been found by the courts below that the band-men and board-boys had no duty to perform inside the place where the entertainment was being held in connection with the entertainment. It follows, therefore, that these persons were there to witness the entertainment. As they held no tickets, they had obviously been admitted free of charge as they were employed by the proprietors of the entertainment for the purposes of publicity. Under Sub-section (2) of Section 3 of the Act the persons admitted free of charge or on a concession rate are also liable to pay the same amount of entertainment tax as would be payable by them had they been admitted on full payment to the class to which they were entitled. Consequently, the thirteen persons who were found inside the place where the entertainment was being held without tickets were liable to pay the entertainment tax.

10. In any place like a cinema house where entertainment is being held there are usually present (1) persons who have gone to see the entertainment, and (2) persons who have some duty to perform in connection with the entertainment. Section 4(1), Entertainment and Betting Tax Act exempts the latter class of persons from payment of entertainment tax. Those persons who have some duty to perform outside the place where entertainment is being held are not required inside the place where the entertainment is being held to perform any duty in connection with the entertainment and, therefore, if they go inside the place where the entertainment is being held they would go there to witness the entertainment and as such they would fall in the first category; and if they are admitted free of charge they would be liable to pay the entertainment tax. If they enter the place to see the entertainment they must either have tickets or they must be admitted free of charge or on a concession rate. In either case they would be liable to pay entertainment tax. Every person who is employed by the proprietor of the entertainment to perform some duty outside the place where the entertainment is being held cannot be considered a person who has been admitted to the place of entertainment to perform some duty in connection with the entertainment. In a case like the one before us band-men and board-boys are engaged for the purposes of publicity and for distribution of hand bills outside the place of entertainment. If they are admitted to the place of entertainment they cannot be considered as persons who have some duty to perform in connection with the entertainment.

11. In regard to the observations of the learned Sessions Judge that had the legislature intended to exempt only those persons who had to perform duties inside the entertainment or during the course of entertainment it would have used a restrictive phrase and not a wide phrase like the one which has been used, I may point out that the legislature has made provision in Section 4, Entertainment and Betting Tax Act for admission to an entertainment and for payment for such admission. The section lays down, as already pointed out that every person admitted to an entertainment must have a ticket and pay the entertainment tax in the manner prescribed therein. Exception is made only in the case of persons who have some duty to perform in connection with the entertainment, and having regard to the fact that the phrase applies to the persons who are admitted to the place where the entertainment is being held, it necessarily contemplates persons who have some duty to perform inside the place of entertainment. The exemption cannot possibly refer to persons who have some duty to perform outside the place of entertainment about whose entry inside the place of entertainment no question in such cases arises. In my opinion, therefore, for the purposes of Section 4 of the Act persons who have some duty to perform in connection with the entertainment inside the place of entertainment must be treated differently from the persons who have some duty to perform in connection with the entertainment outside that place.

12. The learned Sessions Judge has also pointed out that if there are a number of partners in a cinema and only one of them acts as a manager other partners who may not be performing any duty during the course of the entertainment are all persons who perform duties in connection with the entertainment and so all of them will be exempted from the payment of entertainment tax. He has also pointed out that there may be yet another case of engaging board-boys without payment of any wages but on the agreement of giving them free shows in lieu of their services. I have not come across any provision in the Act which exempts proprietors of an entertainment other than those who have some duty to perform in connection with the entertainment from payment of entertainment

tax ; and if the board-boys, who are engaged on the condition that in lieu of their services they would be allowed to see the entertainment free of charge, are admitted to the place of entertainment they would be liable to pay entertainment tax under Section 3 (2) of the Act.

13. I, therefore, find myself unable to accept the interpretation placed by the learned Sessions Judge on the expression "some duty to perform in connection with the entertainment" or to accept this reference. The accused persons have been rightly convicted and sentenced. The reference is rejected.