

Punjab-Haryana High Court

Shankar Lal vs The State Of Haryana And Anr. on 3 November, 1981

Equivalent citations: 1982 50 STC 46 P H

Author: M Punchhi

Bench: M Punchhi

JUDGMENT M.M. Punchhi, J.

1. This judgment will dispose of Civil Writ Petitions Nos. 55 and 56 of 1972, as these have been preferred by the same petitioner Shankar Lal and the matters involved therein are integral.

2. The petitioner had a son named Ranjit Singh. This Ranjit Singh, in partnership with a few others, obtained a licence for running a brick-kiln. For the purposes of running the business of the partnership, a sales tax registration certificate was obtained for the assessment years 1967-68 and 1968-69. The assessment proceedings were commenced at the time when Ranjit Singh was alive. During the proceedings thereof, he died. The petitioner as the father of Ranjit Singh, as also the other partners, were associated in the proceedings. Ultimately vide two orders of even date dated 30th August, 1971, Shri Bhupinder Singh, the Assessing Authority, Kaithal, came to the conclusion that the partners and Ranjit Singh deceased were jointly and severally responsible for all the liabilities under the Tax Act. The demand created for the assessment year 1967-68 was Rs. 38.33 and for the assessment year 1968-69 was Rs. 5,164.20 only. However, in the assessment order pertaining to the assessment year 1968-69, an observation came about, which is to the following effect:

...Shri Ranjit Singh was a member of H.U.F. and he has expired, his liabilities are automatically transferred to Shri Shankar Lal.

On the strength of the aforesaid observation coming forth in the assessment order pertaining to the assessment year 1968-69, Shri B. R. Goel, the Assessing Authority, Kaithal, issued demand notice to the petitioner requiring him to comply with the chalans for Rs. 38.33 and Rs. 5,164.20 respectively by a particular date. Since the demand was not met, the arrears due were certified to be collected as arrears of land revenue. The Assistant Collector, 1st Grade, then on 23rd December, 1971, issued a writ of demand to the petitioner advising him that in the failure of payment, the recovery would be effected by issuance of warrant of arrest and attachment of property. It is then that the petitioner approached this Court challenging the assessment order as also the demands created respectively for both the assessment years.

3. In reply, Shri B.R. Goel, the Assessing Authority, Kaithal, has controverted most of the allegations and has explained away how the liability came to be fastened on the petitioner. Significantly, in the return there is no mention that the deceased partner Ranjit Singh was ever a member of the H.U.F. with Shankar Lal, the petitioner. Rather in the return it has been positively asserted that on the death of Ranjit Singh, his liabilities stood automatically transferred to Shankar Lal because he was the father of Ranjit Singh and the latter had died issueless. Stress has also been laid therein that the liability was fastened in accordance with the provisions of the Hindu Succession Act as all the assets and liabilities of the deceased partner had been transferred to his heirs. To crown it all, this stance

has been repeated a number of times in the return without a trace of the petitioner constituting a joint Hindu family with his deceased son Ranjit Singh.

4. Though this Court does not decide questions of fact in proceedings under Article 226 of the Constitution of India normally and takes statements of facts contained in the impugned orders to be sacrosanct, nevertheless the pleadings of the parties have to be read in conjunction therewith in order to deduce what is the real controversy. It seems from a reading of the assessment order for the year 1968-69 and the return of the Assessing Authority that the observation in one of the assessment orders (and not in the other one) that the deceased partner Ranjit Singh was a member of the H.U.F. with the petitioner, is a stray observation bereft of any material supportive thereof. It is for this reason that now on affidavit the Assessing Authority has chosen to resile from the same and in its place assert that the petitioner is an heir of the deceased partner Ranjit Singh. Mrs. Yadav, Assistant Advocate-General, Haryana, appearing for the respondents, also does not dispute such an inference and deduction of facts.

5. Now on this turn of facts straightaway the petitioner becomes entitled to relief on one score and denial thereof on the other. Since his so called H.U.F. is no longer left involved with the partnership, obviously he cannot be permitted to challenge the assessment orders. Even if he be a person who could have appealed against such an order, he could have approached the appellate authority under Section 20 of the Punjab General Sales Tax Act, 1948, and exhausted that remedy. He having not done so, I am not prepared to upset the assessment order for this additional reason as well. The relief which is due to the petitioner is then on the question of demand. The Assessing Authority issued him a notice of demand on the basis of the assessment orders, addressed in the name of M/s. Ranjit Singh Shankar Lal, an entity which did not exist factually or legally. The notice ought to have been issued to the petitioner alone as an heir of the deceased partner and the recovery could only be effected from the petitioner if he had received any assets as part of the estate of the deceased partner as an heir. This clearly postulated an enquiry and the affording of an opportunity of being heard to the petitioner in that direction. This conceivably was not done.

6. As a result of the foregoing discussion, these petitions are partially allowed but only to the extent that the Assessing Authority, Kaithal, will determine whether the petitioner has received any assets as an heir from the deceased partner and if so, then out of the same he may recover the outstanding arrears from him, debarred from arresting the petitioner in the pursuit of such recovery in accordance with the rule laid down by this Court in *S. Ujjal Singh v. Excise and Taxation Officer, Amritsar* [1967] 20 STC 35. It goes without saying that the other partners are and would remain liable to meet the demand and the venue of recovery from them remains open to the Assessing Authority. These petitions are accepted on these terms. No costs.