Supreme Court of India
State Of Kerala And Others vs C. M. Francis & Co on 12 December, 1960
Equivalent citations: 1961 AIR 617, 1961 SCR (3) 181
Author: Hidayatullah
Bench: Hidayatullah, M.

PETITIONER:
STATE OF KERALA AND OTHERS.

Vs.

RESPONDENT:
C. M. FRANCIS & CO.

DATE OF JUDGMENT:
12/12/1960

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
KAPUR, J.L.
SHAH, J.C.

CITATION:
1961 AIR 617 1961 SCR (3) 181
CITATOR INFO :
R 1961 SC 619 (28)
RF 1967 SC 295 (60)
RF 1979 SC1588 (14)

ACT:
Sales Tax-Recovery of-Remedies open to the authorities-Code of Criminal Procedure, 1898 (V of 1898, s. 386(1)(b)-Travancore Cochin General Sales Tax Act (XI Of 1125 Malayalam Era), ss. 13 and 19.

HEADNOTE:
The respondents were assessed to sales tax under the Travancore Cochin General Sales Tax Act and proceedings were started against them under s. 13 of the Act for the recovery of the arrears of Sales Tax as if they were arrears of land revenue. The proceedings were not fruitful. Thereafter a prosecution under s. 19 of the Act was instituted against the partners who pleaded guilty and the magistrate issued warrants under s. 386(1)(b) of the Code of Criminal Procedure to the Collector of the District for the recovery of the arrears of sales tax as if they were a fine imposed by that court. The authorities again started proceedings under S. 13 of the Act read with Travancore Cochin Revenue

Recovery Act, 1951, and certain properties were attached. The respondents urged that in as much as they were prosecuted under s. 19 of the Act and the magistrate had issued warrants, the procedure for recovery under s. 13 of the Act was not available.
The question was whether s. 19 was to be taken to prevail over s. 13 of the Act.
Held, that neither of the remedies for recovery of arrears of tax as laid down by ss. 13 and 19 of the Travancore Cochin General Sales Tax Act was destructive of each other and unless the statute laid down in express words or by necessary implication that one remedy was to the exclusion of the other, both the remedies were open to the authorities and they could resort to any one of them at their option.
Shankar Sabai v. Din Dial, I.L.R. [1889] 12 All. 409 (F.B.), 418,approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 279 of 1959. Appeal by special leave from the judgment and order dated November 18, 1957, of the Kerala High Court in O. P. No. 87 of 1956.

A. V. Sayed Muhammad, for the appellants.

The respondents did not appear.

1960. December 12. The Judgment of the Court was delivered by HIDAYATULLAH, J.-This is an appeal with the special leave of this Court against the judgment of the High Court of Kerala dated November 18, 1957, passed in a petition for writ of prohibition under Art. 226 of the Constitution. The State of Kerala and the Tahsildars of Kottayam and Kanjirappally Taluks are the appellants, and C.M. Francis & Co., a partnership firm, is the first respondent, and the partners of the firm are the remaining respondents. The respondents were doing business in hill produce like pepper, ginger, betelnuts etc., and were assessed to sales tax under the Travancore-Cochin General Sales Tax Act XI of 1125 (referred to as the Act), for the years 1950 to 1954. The respondents have to pay a sum of Rs. 1,01,716-4-3 as tax. In 1954, proceedings were started against them under s. 13 of the Act, which provides that if the tax is not paid as laid down in that section, the whole of the amount or such part thereof as remains due, may be recovered as if it were an arrears of land revenue. It appears that the pro- ceedings were not fruitful, and a prosecution under s. 19 of the Act was instituted against the partners in the Court of the First Class Magistrate, Ponkunnam. Respondents 2 to 5 pleaded guilty, and the Magistrate passed an order on October 18, 1955 as follows:

> "The sentence or other final order: A 1 to 4 sentenced to pay a fine of Rs. 50/- each and in default to undergo S. 1. for one month each. A 1 to 4 admit that they failed to pay on demand by the competent authority, a sum of Rs. 1,01,716-4-3 due from them as sales tax for the years 1950 to 1954. This amount will be realised from A 1 to 4, jointly or severally, individually or collectively under the provisions of the Cr.P.C. for

> realisation of criminal fines, as if it were a fine imposed by this court on each accused individually and all of them together. Take steps for the realisation."

Warrants under s. 386 (1) (b) of the Code of Criminal Procedure were issued to the Collector of Kottayam District for recovery of the arrears of sales tax.

The authorities, however, started proceedings again under s. 13 of the Act read with the provisions of the Travancore- Cochin Revenue Recovery Act, 1951 (VII of 1951), to recover the amount as arrears of land revenue, and attached some properties belonging to the respondents within the jurisdiction of the second and third appellants, the Tahsildars of Kottayam and Kanjirappally Taluks. The firm thereupon filed the petition under Art. 226 of the Constitution for a writ of prohibition or other order or direction to the effect that the proceedings for realisation of the arrears under the Revenue Recovery Act be quashed. In the petition, the respondents urged that inasmuch as they were prosecuted under s. 19 of the Act and the Magistrate had issued warrants, the procedure for recovery under s. 13 was not available. They contended that under s. 386 of the Code of Criminal Procedure the warrant is to be deemed to be a decree and has to be executed according to civil process applicable to the execution of decrees under the Code of Civil Procedure. They, therefore, submitted that the procedure under s. 19 of the Act was no longer open, and could not be proceeded with.

Section 19 of the Act, so far as it is material, reads as follows:

> "Any person who.....
>
> (b) fails to pay within the time allowed, any tax assessed on him under this Act, or
>
> (d)fraudulently evades the payment of any tax assessed on him..... shall on conviction by a Magistrate of the first class, be liable to a fine which may extend to one thousand rupees and in the case of a conviction under clause (b), (d) the Magistrate shall specify in the order the tax which the person convicted has failed or evaded to pay and the tax so specified shall be recoverable as if it were a fine under the Code of Criminal Procedure for the timebeing in force."

In dealing with the question, the learned Judges of the High Court felt that s. 13 of the Act was in the nature of a general law, over which the special procedure prescribed by s. 19 of the Act read with s. 386 of the Code of Criminal Procedure was to prevail. They, however, thought that, since all the processes available under s. 19 of the Act were also available under s. 386 of the Code of Criminal Procedure, it was not necessary to decide what would happen if the proceedings under s. 386 came to nothing. They observed that if the question arose, they would consider it. The writ of prohibition was granted by the High Court.

The respondents did not appear in this Court. We have heard learned counsel for the appellants, who has drawn our attention to all the relevant provisions of the law. The question which arises is whether s. 19 must be taken to prevail over s. 13 of the Act. Both the sections lay down the mode for

recovery of arrears of tax, and, as has already been noticed by the High Court, lead to the application of the process for recovery by attachment and sale of movable and immovable properties, belonging to the tax-evader. It cannot be said that one proceeding is more general than the other, because there is much that is common between them, in so far as the mode of recovery is concerned. Section 19, in addition to recovery of the amount, gives the power to the Magistrate to convict and sentence the offender to fine or in default of payment of fine, to imprisonment. In our opinion, neither of the remedies for recovery is destructive of the other, because if two remedies are open, both can be resorted to, at the option of the authorities recovering the amount. It was observed by Mahmood, J. in Shankar Sahai v. Din Dial (1) that where the law provides two or more remedies, there is no reason to think that one debars the other and therefore both must be understood to remain open to him, who claims a remedy. Unless the statute in express words or by necessary implication laid down that one remedy was to the exclusion of the other, the observations of Mahmood, J. quoted above must apply. In our opinion, in the absence of any such provision in the (1) I.L.R. (1889) 12 All-409 (F.B.), 418.

Act,, both the remedies were open to the authorities, and they could resort to any one of them at their option. The appeal is allowed, and the judgment of the High Court set aside. Though the respondents did not appear, in the circumstances of the case we think we should make an order that the costs shall be paid by them both here and in the High Court.

Appeal allowed.