

by fraud at the stage when the parties consented to solemnise the marriage cannot vitiate the marriage and it is only the consent, vitiated due to fraud, obtained at the time of solemnisation of the marriage, that is recognised for its annulment under section 12 of the Hindu Marriage Act. No doubt, marriage is not a mere civil contract, but on the plain reading of section 12(1)(c) it appears to me that if fraud is practised in obtaining consent even at the earlier stage, the marriage would take place in pursuance of that consent and, therefore, such a fraud at this stage may vitiate the marriage. It is not, however, necessary to carry the matter any further, because I am not in agreement with the arguments on behalf of the appellant that the marriage can be annulled in the circumstances of this case.

A challenge was also thrown on behalf of the respondent on the findings of unchastity arrived at by the trial Court. It is also not necessary to record a finding thereon in view of my decision on the other question.

It is then suggested on behalf of the appellant that it stands established on the record that the respondent is living in adultery and, therefore, I should pass a decree for divorce. Admittedly, this point was never taken in the petition and, apart from the question whether the respondent can in the circumstances be said to be 'living in adultery', this point cannot be considered at this stage, because it would have been open to the other side to plead condonation if the point had been raised in the petition. Faced with this difficulty, Mr. Frank Anthony, learned counsel for the appellant, did not pursue the matter any further.

In the circumstances mentioned above, this appeal must fail and is dismissed, but the parties will bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Shamsheer Bahadur, J.

M/S SUD & CO.,—Petitioner

versus

STATE OF PUNJAB AND ANOTHER,—Respondents

Civil Writ No. 2314 of 1964

Punjab Passengers and Goods Taxation Act (XVI of 1952)—S. 3—Private Carrier—When liable to pay tax—Private carrier transporting petrol to his petrol pump at the cost of the company—

Surjit Kumar
v.
Raj Kumari
—————
Kapur, J.

1965

December, 2nd

Whether liable to pay tax—Assessing Authority—Whether competent to determine if private carrier is conducting business in the legitimate exercise of the permit granted to it.

Held, that if it is found by the Assessing Authority that a private carrier is also carrying on the business of charging hire for goods transported, it is legitimate to investigate the matter and subject the vehicle to the tax which is liable to be paid under section 3 of the Punjab Passengers and Goods Taxation Act, 1952. Where the private carrier owns a petrol pump and the petrol is to be supplied to him, f.o.r. the petrol pump by the Company and the private carrier transports the petrol to his petrol pump at the cost of that company, the private carrier is liable to pay the tax under section 3 of the Act.

Held, that there is nothing in the Motor Vehicles Act or the Passengers and Goods Taxation Act which will lead to the conclusion that the Regional Transport Authority alone can determine whether the business conducted by a transporter is in the legitimate exercise of the permit granted by it. True, the Regional Transport Authority alone may launch prosecutions for the breach of the use of permits granted by it. This does not exclude the jurisdiction of the Assessing Authority to determine whether a transporter is to be assessed on the income derived by him as hire from the vehicle registered as a private carrier. The Assessing Authority cannot be prevented from taking action under the Act merely on the ground that an infraction or breach of the conditions on which a permit has been granted is also liable to be penalised under the Motor Vehicles Act.

Petition under Articles 226/227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the order of respondent No. 2, dated the 22nd September, 1964, relating to assessments for the years 1955-56 to 1964-65, and further praying that ad-interim stay of the recovery of the goods tax be granted to the petitioner during the pendency of the Writ petition.

LAXMI GROVER, ADVOCATE, for the Petitioner.

K. S. KAWATRA, ASSISTANT ADVOCATE-GENERAL, for the Respondents.

ORDER

Shamsher Bahadur, J. SHAMSHER BAHADUR, J.—This petition for issuance of a writ of *certiorari* under Articles 226 and 227 of the Constitution is at the instance of Messrs. Sud and Co., to challenge ten assessment orders ranging from the assessment year 1955-56 and ending with 1964-65, raising a

common question about the liability of the petitioner-company to pay goods tax in respect of vehicles owned by it and registered as "private carriers."

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The petitioners claim to be agents and dealers of Burmah Shell Oil Company and also transporting contractors of the company for the area of Pathankot to Kulu valley, with headquarters at Kulu. During the course of checking it was found by the Assessing Authority of Gurdaspur and Kangra Districts, that the petitioner was liable to pay tax under the Punjab Passengers and Goods Taxation Act, 1952, in respect of petrol and its products being transported on hire in vehicles registered as "private carriers". On behalf of the petitioners, it is urged that the Assessing Authority is precluded from making such assessment as the vehicles had been registered as "private carriers". It may be taken as common ground that the vehicles which are used as private carriers are not subjected to any tax which is to be paid on freights under section 3 of the Punjab Passengers and Goods Taxation Act, which says that:—

"There shall be levied, charged and paid to the State Government a tax on all fares and freights in respect of all passengers carried and goods transported by motor vehicles at the rate of".

On behalf of the petitioners, reliance is placed on sub-section (2) of section 2 of the Motor Vehicles Act, 1939, which defines a "private carrier" to mean "an owner of a transport vehicle other than a public carrier, who uses that vehicle solely for the carriage of goods, which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport, or who uses the vehicle for any of the purposes specified in sub-section (2) of section 42". It is contended that the petitioner having obtained a permit as a 'private carrier' it must be assumed that the business done by it of transporting goods is purely and solely for the benefit of the transporter itself. Reference is also made to section 42 of the Motor Vehicles Act which says that in determining whether a transport vehicle is or is not used for the carriage of goods for hire or reward, the delivery or collection by or on behalf of the owner of goods sold, used or let on hire or hire

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purchase in the course of any trade or business carried on by him other than the trade or business of providing transport, shall not be deemed to constitute a carrying of the goods for hire or reward. All that can be said is that the considerations which weigh with the Regional Transport Authority in granting permits are those, which are indicated in the provisions of the Motor Vehicles Act. If, however, it is found by the Assessing Authority that a private carrier is also carrying on the business of charging hire for goods transported, it is legitimate, in my opinion, to investigate the matter and subject the vehicle to the tax which is liable to be paid under section 3 of the Punjab Passengers and Goods Taxation Act. There is no error in the exercise of jurisdiction by the Assessing Authority. It is pointed out in support of the allegation which has been made that the petitioner had used the device of obtaining a private carrier's permit to use the vehicle for the purpose of charging hire. In other words, according to the Assessing Authority, the vehicles of the petitioner-company had been used as public carriers inasmuch as freights were actually charged by them. In support of this conclusion reliance is placed on the agreement of the petitioner with the Burmah Shell Oil Company itself, whereby the petrol and its products were supplied to the petitioner f.o.r. Petrol pump. It is clear from this agreement that the suppliers were paying the transporter which has a filling station for the freight of the oil upto its destination. It is also mentioned in the assessment orders that the petitioner had been charging hire for transport of goods of other dealers. These are questions of fact on which this Court cannot adjudicate. There is nothing in the Motor Vehicles Act or the Passengers and Goods Taxation Act to justify the suggestion which has been made by the learned counsel that the Regional Transport Authority alone can determine whether the business conducted by a transporter is in the legitimate exercise of the permit granted by it. True, the Regional Transport Authority alone may launch prosecutions for the breach of the use of permits granted by it. This does not exclude the jurisdiction of the Assessing Authority to determine whether a transporter is to be assessed on the income derived by him as hire from the vehicle registered as a private carrier. If the contention of the learned counsel for the petitioner were to be accepted, it would provide a ready method for a transporter to use the vehicle registered as a private carrier

to carry on the work of hire without liability for payment of the tax due under the Passengers and Goods Taxation Act. The Assessing Authority cannot be prevented from taking action under the Act merely on the ground that an infraction or breach of the conditions on which a permit has been granted is also liable to be penalised under the Motor Vehicles Act.

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The next objection raised by the learned counsel relates to the question of limitation. It is contended on the basis of rule 29 of the Punjab Passengers and Goods Taxation Rules, 1952, that reassessment could not be made for a period beyond three years of the last assessment. No allegation has been made in the petition that the petitioner did not receive any notice from the Assessing Authority and in absence of any such suggestion it cannot be determined whether the assessment is justifiable under rule 29. This is a matter to be determined by the Assessing Authority and it is well to point out that the petitioner has not even gone in appeal from the assessment orders. These are matters which could and should have been agitated before the Appellate Authority. It would suffice to say that the principle is settled now in the Full Bench decision of this Court in *F. Jagat Ram-Om Parkash. v. The Excise and Taxation Officer, Assessing Authority, Amritsar* (1), wherein it was held that whenever a question arises as to what point of time the Assessing Authority did actually proceed to the best of his judgment has to be determined on the facts and circumstances of each case in its own setting as it is not possible to lay down any definite and clear cut test applicable to all cases. This ruling, though it arose in construing section 11 of the East Punjab General Sales Tax Act would equally apply to the assessments under rule 29 of the Punjab Passengers and Goods Taxation Rules. The last objection with regard to the validity of the notice under rule 29 has not been pressed by the learned counsel and it is no longer necessary to discuss it.

This petition, therefore, fails and is dismissed. As there is no direct authority on the point which has been raised by the learned counsel for the petitioner, I would make no order as to costs.

B.R.T.