

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Criminal Appeal No. 25 of 1961

Between:

MOHAMMED SADIQ KHAN, s/o M. T. KHAN Appellant

v.

REGINAM Respondent

Income Tax Ordinance (Cap. 172)—s. 25 (1) and 26 (1)—whether proceedings against defaulter should be criminal or civil.

Criminal proceedings were instituted against the appellant in the Magistrate's Court, Suva, for a contravention of section 25 (1) of the Income Tax Ordinance (Cap. 172). He was convicted and sentenced under s. 26 (1) to a fine of £5 per day for a period of 151 days. The relevant subsection of Cap. 172 reads as follows:

"25 (1). If the Commissioner in order to enable him to make an assessment or for any other purpose desires any information or additional information or a return from any person who has not made a return or a complete return, he may, by registered letter, demand from such person such information, additional information or return, and such person shall deliver to the Commissioner such information, additional information or return within the period of time determined by the Commissioner in such registered letter. For the purpose of any proceedings taken under this Ordinance the facts necessary to establish compliance on the part of the Commissioner with the provisions of this section as well as default thereunder shall be sufficiently proved in any court of law by the affidavit of the Commissioner or any other responsible officer of the Department of Inland Revenue. Such affidavit shall have attached thereto as an exhibit a copy or duplicate of the said letter.

26 (1). For every default in complying with the provisions of the next preceding section the persons in default shall each be liable to a fine not exceeding twenty pounds for each day during which the default continues."

Upon appeal it was contended, *inter alia*, that the proceedings in the court below should not have taken the form of a criminal prosecution, but that the Commissioner of Inland Revenue should have instituted a civil claim for the penalty provided under section 26 (1) of the Ordinance.

Held.—The use of the word "fine" in s. 26 (1) connoted a criminal offence. A criminal prosecution was the correct proceeding.

Appeal dismissed.

K. C. Ramrakha for the Appellant.

K. C. Gajadhar for the Respondent.

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KNOX-MAWER, Ag. J. (25th August, 1961).

The appellant was convicted before the Magistrate's Court of the First Class, Suva, of an offence contrary to section 25 (1), punishable under section 26 (1) of the Income Tax Ordinance (Cap. 172). He was sentenced to pay a fine of £5 per day for a period of 151 days (£755). He has appealed both against conviction and sentence.

The two relevant subsections of the Income Tax Ordinance (Cap. 172) (25 (1) and 26 (1)) may conveniently be set out here:—

“ 25 (1). If the Commissioner in order to enable him to make an assessment or for any other purpose desires any information or additional information or a return from any person who has not made a return or a complete return, he may, by registered letter, demand from such person such information, additional information or return, and such person shall deliver to the Commissioner such information, additional information or return within the period of time determined by the Commissioner in such registered letter. For the purpose of any proceedings taken under this Ordinance the facts necessary to establish compliance on the part of the Commissioner with the provisions of this section as well as default thereunder shall be sufficiently proved in any court of law by the affidavit of the Commissioner or any other responsible officer of the Department of Inland Revenue. Such affidavit shall have attached thereto as an exhibit a copy or duplicate of the said letter.

26 (1). For every default in complying with the provisions of the next preceding section the persons in default shall each be liable to a fine not exceeding twenty pounds for each day during which the default continues.”

For the purposes of section 25 (1) (*supra*), an affidavit sworn by the Acting Senior Assessor of the Department of Inland Revenue was filed in the court below together with a copy of the registered letter of demand. The affidavit (Exhibit B) reads—

Affidavit

“ I, Joseph Stephenson Giltrap, Acting Senior Assessor in the Inland Revenue Department of the Colony of Fiji make oath and say as follows:—

1. The abovenamed Mohammed Sadiq Khan (s/o Mohammed Towahir Khan) of Lautoka in the Colony of Fiji a Trustee of the Estate of Mohammed Towahir Khan (s/o Rahimtullah Khan) has failed to furnish returns of income, books of record and such other information as required by the Commissioner of Inland Revenue to enable him to make an assessment in respect of the said estate.

2. The defendant failed to furnish Estate returns of income for the period, 22nd July, 1949 to 31st December, 1949 and for the years ended 31st December, 1950 to 31st December, 1959 inclusive.

3. By a registered letter dated 13th October, 1960 (a copy of which is attached hereto and marked ' A ') a demand was issued on the defendant requiring him to furnish all records relating to the income and disbursements of the Estate of Mohammed Towahir Khan from date of death, 21st July, 1949 to 31st December, 1959. By the same letter a demand was issued on the defendant requiring him to furnish returns of income derived by the Estate of Mohammed Towahir Khan during the period 22nd July 1949 to 31st December 1949 and during each of the years ended 31st December 1950 to 31st December 1959 inclusive.

4. The date determined by this registered letter on or before which the required information was to be furnished was 22nd October 1960.

5. The said Defendant neglected to supply on or before the 22nd day of October, 1960 the information demanded by the said registered letter and still continues to neglect to supply the information demanded from him.

Sworn at Suva this
29th day of October 1960

(sgd.) J. GILTRAP

Before me

(Sgd.) H. WHEATLEY

Commissioner for Oaths."

The letter (Exhibit B1) reads—

"Registered

K.53

13th October, 1960.

Mr. Mohammed Sadiq Khan,
Executor in Estate M. T. Khan, deceased,
P.O. Box 11,
Lautoka.

Dear Sir,

It is noted that no returns of income derived by Estate Mohammed Towahir Khan have been furnished. I therefore demand that you forward to this office returns of income derived by the Estate during the period, 22nd July, 1949 to 31st December, 1949 and each of the years ended 31st December, 1950 to 31st December, 1959 inclusive. You are also requested to furnish me with all records relating to the income and disbursements of the Estate from date of death, 21st July 1949 to 31st December 1959.

2. In particular the following are required:—

- (a) All the books of account.
- (b) All books of prime entry including rent books and receipt books.
- (c) Cheque butts, bank passbooks and statements.
- (d) All Savings Accounts and Deposit Accounts.
- (e) A statement of assets and liabilities of the estate as at 31st December, 1959.
- (f) A schedule of all premiums received from tenants showing name of tenant, amount of premium and date of receipt.

3. This information is demanded in terms of section 25 of the Income Tax Ordinance (Cap. 172) and should reach me not later than 22nd October, 1960. Failure to furnish the information demanded herein on or before 22nd October, 1960 will render you liable to prosecution under the provisions of section 26 of the Income Tax Ordinance (Cap. 172). This section provides for a fine not exceeding £20 for each day during which the default continues.

Yours faithfully,

(Sgd.) B. A. FERGUSON
Acting Commissioner of Inland Revenue.

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This is the exhibit 'A' referred to in the annexed affidavit of Joseph Stephenson Giltrap sworn before me the 29th day of October, 1960.

(Sgd.) H. WHEATLEY
A Commissioner for Oaths etc."

This, as section 25 (1) categorically states, was sufficient proof of compliance with the provisions of the subsection on the part of the Commissioner and of the appellant's default thereunder. The appellant elected to remain silent and called no evidence. A conviction was therefore recorded.

The only point in the appeal against conviction, which requires discussion is whether the proceedings in the court below properly took the form of a criminal prosecution. Unless learned counsel for the appellant succeeds upon this ground, the conviction must, in my view, otherwise be sustained.

It is true that subsection (1) unlike subsection (2) of section 26, does not contain the words "shall be guilty of an offence". However I consider that the use of the word "fine" in the context of subsection (1) necessarily connotes a criminal offence. The first (and I think primary) definition of "fine" in *Wharton's Law Lexicon* 14th Edition is a "sum of money . . . imposed upon an offender". This is the meaning which I consider it has in this subsection. A study of the other provisions of the Income Tax Ordinance has fortified me in this opinion. Had the word "penalty" been used instead of "fine" there might have been more substance in learned counsel's contention. This ground of appeal accordingly fails and the appeal against conviction is dismissed.

The assessment of the punishment to be imposed involved the usual exercise of the court's discretion (up to the maximum prescribed by the subsection 26 (1)), having regard to any relevant circumstance. I think that in the circumstances of this case it will be sufficient if the fine of £5 per day is imposed for 144 days only. The total fine which the appellant must pay is thus reduced to £720.