

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. TAN BOON KONG, DEFENDANT AND APPELLEE.

G. R. No. 32652. March 15, 1930

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from an order of the Judge of the Twenty-third Judicial District sustaining a demurrer to an information charging the defendant Tan Boon Kong with the violation of section 1458 of Act No. 2711, as amended. The information reads as follows:

"That on and during the four quarters" of the year 1924, in the municipality of Iloilo, Province of Iloilo, Philippine Islands, the said accused, as manager of the Visayan General Supply Co., Inc., a corporation organized under the laws of the Philippine Islands and engaged in the purchase and sale of sugar, 'bayon,' coprax, and other native products and as such subject to the payment of internal-revenue taxes upon its sales, did then and there voluntarily, illegally, and criminally declare in 1924 for the purpose of taxation only the sum of P2,352,761.94, When in truth and in fact, and the accused well knew that the total gross sales of said corporation during that year amounted to P2,543,303.44, thereby failing to declare for the purpose of taxation the amount of P190,541.50, and voluntarily and illegally not paying the Government as internal-revenue percentage taxes the sum, of P2,960.12, corresponding to 1 1/2 per cent of said undeclared sales."

The question to be decided is whether the information sets forth facts rendering the defendant, as manager of the corporation liable criminally under section 2723 of Act No. 2711 for violation of section 1458 of the same Act for the benefit of said corporation. Sections 1458 and 2723 read as follows:

"SEC. 1458. Payment of percentage taxes—Quarterly report of earnings.—The percentage taxes on business shall be payable at the end of each calendar quarter in the amount lawfully due on the business transacted during each quarter; and it shall be the duty of every person conducting a business subject to such tax, within the same period as is allowed for the payment of the quarterly installments of the fixed taxes without penalty, to make a true and complete return of the amount of the receipts or earnings of his business during the preceding quarter and pay the tax due thereon. * * *" (Act No. 2711.)

"SEC. 2723. Failure to make true return of receipts and sales.—Any person who, being required by law to make a return of the amount of his receipts, sales, or business, shall fail or neglect to make such return within the time required, shall be punished by a fine not exceeding two thousand pesos or by imprisonment for a term not exceeding one year, or both.

"And any such person who shall make a false or fraudulent return shall be punished by a fine not exceeding ten thousand pesos or by imprisonment for a term not exceeding two years, or both." (Act No. 2711.)

Apparently, the court below based the appealed ruling on the ground that the offense charged must be regarded as committed by the corporation and not by its officials or agents. This view is in direct conflict with the great weight of authority. A corporation can act only through its officers and agents, and where the business itself involves a violation of the law, the correct rule is that all who participate in it are liable (Grail and Ostrander's

Case, 103 Va., 855, and authorities there cited).

In case of *State vs. Burnam* (71 Wash., 199), the court went so far as to hold that the manager of a dairy corporation was criminally liable for the violation of a statute by the corporation though he was not present when the offense was committed.

In the present case the information or complaint alleges that the defendant was the manager of a corporation which was engaged in business as a merchant, and as such manager, he made a false return, for purposes of taxation, of the total amount of sales made by said corporation during the year 1924. As the filing of such false return constitutes a violation of law, the defendant, as the author of the illegal act, must necessarily answer for its consequences, provided that the allegations are proven.

The ruling of the court below sustaining the demurrer to the complaint is therefore reversed, and the case will be returned to said court for further proceedings not inconsistent with our view as hereinbefore stated. Without costs. So ordered.

Johnson, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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