

31. Lastly it is contended by the counsel for the respondent that even if the revision is sustainable under the provisions of the Cr.P.C., a revision lies to this Court only under Section 482 of Cr.P.C. and no revision lies under Section 397 of Cr.P.C.

32. In the decision in **Lalit Mohan v. Benoyendra Nath (AIR 1982 SC 785)** the Supreme Court observed as follows:

“We agree with the High Court that against an order passed in appeal under S.341 of the Criminal P.C., the order would not be revisable by the High Court under S.397(2) of the Criminal P.C., but there can be no doubt that the High Court is entitled to examine the matter under Sec. 482 of the Criminal P.C. which expressly overrules the bar contained in S.341 of the Code.”

33. Therefore, It is clear that as against the judgment of the appellate court against the order passed by the trial court in a proceeding under Section 340 of Cr.P.C. no revision will lie to this court under Section 115 of CPC and though a revision against the judgment in appeal is sustainable before this court under the provisions of Cr.P.C. it will lie only under Section 482 of Cr.P.C. and no revision will lie under Section 397 of Cr.P.C.

In view of my foregoing findings, the above revision petition being incompetent and not sustainable and also devoid of any merits, is liable to be dismissed and I do so.

1997 (1) K.L.J. 116

IN THE HIGH COURT OF KERALA

Present: P.A. Mohammed, J.

Ashraf v. Joint Regional Transport Officer & Ors.

Kerala Motor Vehicles Taxation Act, 1976 -- Motor Vehicles Act, 1988 -- Sec.2(14) -- Forklift used for lifting of the goods for stacking -- Tax can be levied only at the rate applicable to non-transport vehicles.

Held:-- In order to come within the definitions of ‘goods vehicle’ or ‘goods carriage’ discussed herein above the main conditions to be fulfilled are, (i) it must

motor vehicle, and (ii) it must be used for the carriage of goods. The vehicle in question is not used for the carriage of goods from one place to another. Its use is confined to the lifting of the goods for stacking. (Para.8)

M. Ramachandran Nair & Antony Dominic

For Petitioner

Adv. Pleader (K.Thankappan)

For Respondents

JUDGMENT

These two writ petitions involve a common question as to the rate of tax applicable to 'forklift' under the provisions of the Kerala Motor Vehicles Taxation Act, 1976, for short 'the Taxation Act'. The petitioners purchased 'forklift' for the purpose of their business of acting as Steamer Agents for various shipping companies at Cochin. According to them, 'forklift' is an equipment used basically for lifting goods for stacking at different heights. It has four wheels and is capable of moving with limited speed. It cannot be and is not used for transporting goods from place to place and its use is confined to storage places like godowns. Therefore the petitioners took the view that 'forklift' purchased by them do not require registration under the provisions of the Motor Vehicles Act, 1939 which is applicable only in the case of motor vehicles. However, in view of compulsion from first respondent, petitioners registered their vehicles as required under the Act. The first respondent, Joint Regional Transport Officer, while granting registration made endorsement in the respective registration books that the petitioners are liable to pay tax at the rate of Rs.1,000/- per quarter apparently treating 'forklift' as a 'goods carriage vehicle'.

2. Being aggrieved by the aforesaid endorsement, the petitioner in O.P. No.11377 of 1991 filed an appeal before the Deputy Transport Commissioner, Mattakulam under Section 23 of the Taxation Act. The said appeal was disposed of by him as per Ext.P1 order finding that the vehicle in question is a non-transport vehicle which is wrongly classified as 'goods vehicle' by the Joint Regional Transport Officer, Mattancherry. Therefore the Deputy Transport Commissioner directed the Joint R.T.O. to revise the endorsement and realise the tax accordingly. After the above order of the Deputy Transport Commissioner the petitioner remitted the tax at the rate of Rs.500/- per year. However when the petitioner's representative went to the office of the first respondent for payment of tax for the period commencing from 1.10.1991 the first respondent made an endorsement in the R.C. book directing the petitioner to pay motor vehicle tax at the rate of Rs.1,000/- per quarter applicable to goods vehicle from 1-7-1989 and at the rate of Rs.1,250/- per quarter from 1.4.1991