

Kanwar Singh vs Delhi Administration on 5 August, 1964

Equivalent citations: 1965 AIR 871, 1965 SCR (1) 7, AIR 1965 SUPREME COURT 871, 1965 MADLJ(CRI) 435, 1965 (1) SCR 7, 1965 2 SCJ 115, 1965 (1) SCWR 896, 1965 CURLJ 366, 1965 SCD 630

Author: J.R. Mudholkar

Bench: J.R. Mudholkar, Raghubar Dayal, S.M. Sikri

PETITIONER:

KANWAR SINGH

Vs.

RESPONDENT:

DELHI ADMINISTRATION

DATE OF JUDGMENT:

05/08/1964

BENCH:

MUDHOLKAR, J.R.

BENCH:

MUDHOLKAR, J.R.

DAYAL, RAGHUBAR

SIKRI, S.M.

CITATION:

1965 AIR 871 1965 SCR (1) 7

CITATOR INFO :

R 1974 SC1158 (4)

RF 1991 SC1289 (16)

ACT:

Delhi Municipal Corporation Act, 1957 (Act 66 of 1957), s. 418(1)--Impounding of cattle-Delegation of authority, scope of-"Abandoned" meaning of-Private defence under s. 99, Indian Penal Code, 1860, extent of.

HEADNOTE:

The members of a raiding party led by the Licensing Inspector of the Delhi Corporation having taken into custody 25 or 30 stray cattle, were, while taking them to the cattle pound, belaboured with lathis by the three appellants and their friends, as a result of which they received injuries. It was contended on behalf of the appellants that (i) there

was no proper delegation 'of authority to impound cattle in favour of the persons forming the raiding party, by the Commissioner, whose personal presence to supervise the exercise of the delegated authority was, in any case, required by the very order delegating the authority; (ii) the cattle were not "abandoned" in the sense of being "ownerless", and therefore could not be legally impounded; and (iii) that the injuries were inflicted by the appellants in the lawful exercise of their right of private defence of property.

HELD : (i) The order of the Commissioner placed before the Court along with the statement of case proved that the Commissioner had authorised licensing Inspectors to impound stray cattle. Section 418(1) of the Delhi Municipal Corporation Act, 1957 (Central Act 66 of 1957), did not require that the delegation of power must be to particular, named, individuals. Nor was the personal presence of the Commissioner to supervise the exercise of the delegated power necessary although according to the terms of the order the delegation was "subject to my supervision", control and revision." [11E-F].

(ii) In the context in which the word "abandoned" occurred in section 418(1), the meaning which can reasonably be attached to it is "let loose" in the sense of being "left unattended" and certainly not "ownerless". It is the duty of the Court in construing a statute to give effect to the intention of the legislature so as to "advance the remedy and suppress the mischief". The legislature when it used the word "abandoned" in section 418(1) did not intend to say that the cattle must be "ownerless". [12E-G].

Maxwell on Interpretation of Statutes (11th Edn.) pp. 221-224 and 266, referred to.

(iii) Section 99 of the Indian Penal Code specifically says that there is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done by the direction of a public servant acting in good faith, tincture colour of his office. The protection extends even to acts which will not be strictly justified by law. In the present case the act was fully justifiable by the law. There was thus no right of private defence that could be claimed by the appellants. [13B-C].

8

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 24 of 1963.

Appeal by special leave from the judgment and order dated November 19, 1962, of the Punjab High Court (Circuit Bench) at Delhi in Criminal Revision No. 337-D of 1962. R. L. Kohli, for the

appellants.

H. R. Khanna and R. N. Sachthey, for the respondent. The Judgment of the Court was delivered by Mudholkar J. This is an appeal by special leave from the summary dismissal of the appellants' application for revision by the High Court of Punjab.

Eight persons were tried by the Assistant Sessions Judge, Delhi, for offences under s. 148, S. 333/149, and s. 332/149, Indian Penal Code. He acquitted five of them but convicted the three appellants before us of all the three offences and sentenced them to undergo rigorous imprisonment for one year in respect of the offence under S. 148, rigorous imprisonment for two years in respect of the offence under S. 332/149, rigorous imprisonment for three years for the offence under S. 333/149 and ordered that all the sentences will run concurrently. In appeal the Additional Sessions Judge, Delhi, set aside the convictions and sentences passed on the appellants for offences under S. 148 and S. 333/149, altered the conviction of each of the appellants from one under S. 332/149 to S. 322 simpliciter and awarded the same sentence in respect of it as had been awarded by the Assistant Sessions Judge in respect of the offence under s. 332/149.

Briefly stated the prosecution case was that on September 16, 1961, Mukhtiar Singh, Licensing Inspector of the Delhi Municipal Corporation organised a raiding party for catching stray cattle within the limits of the Corporation. The party consisted of Balbir Singh, Enforcement Inspector, H. K. Bhanot, Sanitary Inspector, Kishan Singh, Head Constable, three foot constables and five cattle-catchers. The party reached the neighbourhood of Mori Gate Chowk at about 5 a.m. and rounded up about 25, or 30 stray cattle consisting of buffaloes and cows. While they were taking them to the Nigambodh Ghat cattle pound via Nicholson Road, the three appellants who were carrying lathis with them approached the party and threatened them that unless they released the cattle they would have to face serious consequences. The members of the party informed them who they were and the cattle-catchers showed them their identity cards.

They explained to them that it was their duty to catch stray cattle, to impound them and that the appellants could get them released by taking the steps provided by the rules. This, however, only enraged the appellants who raised shouts asking their friends to come along with lathis in order to help them to get the cattle released by force. Upon hearing the shouts the other accused persons arrived at the spot with lathis, joined the appellants and all of them assaulted the members of the party, caused injuries to them and got the cattle released by force. As a result of the assault, P.W. 2 Kishan Singh sustained a grievous injury as well as some simple injuries, P.W. 14 Khem, P.W. 20 Padam Singh, P.W. 10 Iqbal Singh, P.W. 19 Nil Bahadur, P.W. 12 Ram Mehar sustained simple injuries. The incident was seen by a number of persons who happened to come to the spot at that time.

Eventually a report was lodged with the police, investigation was taken up and the appellants and the other accused were placed before a First Class Magistrate, who, after making a preliminary enquiry, committed them for trial by the Court of Sessions.

We are not concerned with the defence of the accused persons who were acquitted. The defence of the appellants was that they were bringing the cattle after grazing and watering them and that when they approached Mori Gate at about 4.30 a.m. a group of persons under the employment of the Corporation met them, belaboured them and eventually took them in a van to the police station. The appellants further say that they had acted in the exercise of their right of private defence of their property. Their defence has been rejected 'by the courts below.

Before us Mr. Kohli who appears for the appellants has raised two points. The first point is that the raiding party had no authority to seize and impound the cattle and the second point is that the appellants who were the owners of the cattle had a right of private defence of their property, that what they did was in exercise of that right and that, therefore, their conviction under s. 332 was bad in law.

The power to impound stray cattle is contained in s. 418(1) of the Delhi Municipal Corporation Act, 1957 (66 of 1957), which runs thus :

"If any horses, cattle or other quadruped animals or birds are kept on any premises in contravention of the provisions of section 417, or are found abandoned and roaming or tethered on any street or public place or on any land belonging to the Corporation, the Commissioner or any officer empowered by him may seize them and may cause them to be impounded or removed to such place as may be appointed by the Government or the Corporation for the purpose and the cost of seizure of these animals or birds and Of impounding..... or removing them and of feeding and watering them shall be recoverable by sale or by auction Of those animals or birds;"

The proviso which would be relevant in connection with another point runs thus:

"Provided that any one claiming such animal or bird may, within seven days of the seizure, get them released on his paying all expenses incurred by the Commissioner in seizing, impounding or removing and in feeding and watering such animal or bird, and on his pro- ducing a licence for keeping these animals and birds issued under the provisions of section

417."

The power under this section can be delegated by the Com- missioner. But according to Mr. Kohli delegation of this power has not been established in this case. It is true that the Order of the Commissioner delegating the power under s. 418(1) is not on the record of the case. It has, however, been placed before us along with the statement of the case. That order runs thus:

"In exercise of the powers conferred on me by section 491 of the Delhi Municipal Corporation Act, 1957, I hereby direct that the power conferred on me under section 418(1) of the said Act shall subject to my supervision, control and revision be exercised also by the Municipal employees mentioned in column 3 of the schedule

given below to the extent stated in column 4 of the schedule.

Sd/- P. R. Nayak, Commissioner, Municipal Corporation of Delhi.

SCHEDULE

-

Section Nature of power Designation of Scope Municipal employees 418(1) Seizure of certain Licensing Inspectors In respect of animals Licensing Inspectors stray cattle only do Mr. Kohli, however, said that the delegation of power is in- effective because, according to him, it purports to make a general delegation of power and does not specify the names of persons to whom the power is delegated. A perusal of the schedule below the order shows that the power of seizure of certain animals is specifically delegated and it is clearly indicated in column 4 thereof as follows:

"In respect of stray cattle only"

In the third column the designation of the municipal employees to whom the power is delegated has also been given. The section does not require the names of the particular officers in whose favour the delegation is made to be mentioned. What it requires is to specify the officers to whom the power is delegated. This only means that the designation of the officers to whom the power has been delegated need only to be mentioned. That has been done. We may add that s. 491 of the Delhi Corporation Act permits delegation to any municipal officer or employee and, therefore, specific individual authorisation is not necessary.

Then Mr. Kohli says that the words in the order of delegation shall subject to my supervision, control and revision be exercised also by the Municipal employees mentioned in column 3 of the schedule" would show that the Commissioner's actual presence on the spot was necessary. It is sufficient to say that "shall subject to my supervision etc.," does not mean "under my supervision etc." All that the order contemplates is that the delegation of power to the municipal employees is not absolute but subject to the overall authority of the Commissioner. This cannot mean that whenever a delegated power is being exercised by the municipal employees the Commissioner shall be required to be present.

Mr. Kohli strenuously contended that the cattle could not be said to have been "abandoned" because the appellants who are their owners were actually present near the animals when they were rounded up. But this contention is contrary to the finding of each of the courts below which is to the effect that the rounding up operation took half an hour and that it was after the cattle were rounded up and were being taken to the cattle pound that the appellants appeared on the scene. This finding cannot be allowed to be challenged. A more serious contention of Mr. Kohli, however, is that under s. 418, cattle, which the Corporation can impound, must be ownerless or tethered on any street or public place or land belonging to the Corporation. Admittedly the cattle in question were not tethered on any such place and, therefore, Mr. Kohli contends that their seizure was not permissible.

In support of his contention that "abandoned" implies the complete leaving of a thing as a final rejection of one's responsibilities so that the thing becomes "ownerless", Mr. Kohli has referred us to the Law Lexicon and Oxford Dictionary. The meanings relied on by him are as follows:

"A thing banned or denounced as forfeited or lost, whence to abandon, desert, or forsake as lost and gone." Wharton's Law Lexicon. "To let go, give up, renounce, leave off ; to cease to hold, use or practise." The Oxford English Dictionary, Vol. 1.

In the Oxford Dictionary the word is also said to mean "to let loose; to set free; to liberate". Several other meanings of the word have been given both in that dictionary as well as in Wharton's Law Lexicon. In the latter as also in Jowitt's The Dictionary of English Law under 'abandonment' are given cases from which it would appear that different meanings have been given to 'abandonment' in different statutes.

It will thus be seen that the meaning to be attached to the word 'abandoned' would depend upon the context in which it is used. In the context in which it occurs in S. 418(1), the meaning which can reasonably be attached to the word "abandoned" is 'let loose' in the sense of being 'left unattended' and certainly not 'ownerless'. It is the duty of the court in construing a statute to give effect to the intention of the legislature. If, therefore, giving a literal meaning to a word used by the draftsman, particularly in a penal statute, would defeat the object of the legislature, which is to suppress a mischief, the court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will 'advance the remedy and suppress the mischief'. (see Maxwell on Interpretation of Statutes, 11th edn. pp. 221-224 and

266). In the Act before us when the legislature used the word "abandoned" it did not intend to say that the cattle must be ownerless. This is implicit in the proviso to sub-

s. (1) of S. 418 which says that any one 'claiming' an animal which has been impounded under that sub-section can, within 7 days of seizure, get it released on fulfilling certain conditions. Such a claim could only be made by a person who is the owner of the animal impounded or who has at least the custody of the animal. We cannot, therefore, accept the first point raised by Mr. Kohli. Upon the finding that the raiding party was entitled in law to impound the cattle no question of private defence arises. For, S. 99 of the Indian Penal Code specifically says that there is no right of private defence against an act which does not reasonably cause the apprehension of death or of previous hurt, if done, or attempted to be done by the direction of a public servant acting in good faith under colour of his office. 'Me protection extends even to acts which will not be strictly justifiable by law. But here the act was fully justifiable by the law. There is thus no substance in the second point either.

The appeal is dismissed.

Appeal dismissed.

p./64 -- 2