

Municipal Board, Hardoi vs State Through Gauri Shankar on 8 April, 1954

Equivalent citations: AIR1955ALL109, 1955CRILJ286, AIR 1955 ALLAHABAD 109

ORDER

Beg, J.

1. This is a revision against an order of acquittal filed by the Municipal Board, Hardoi.
2. It would appear that one Gauri Shanker, son of Kalika Prasad, had been carrying on a grocer's shop in the town of Hardoi. As a grocer, he had also been dealing in biris. The Municipal Board, Hardoi, suspected that he had been importing goods especially biris within the Municipal limits without payment of the octroi dues. In order, however, to ascertain the truth, they issued a notice against Gauri Shankar under Section 158, U. P. Municipalities Act, 1916 (Act 2 of 1916). This notice is dated 2-7-1952, and is to the following effect:

"Notice under Section 158 of the Municipalities Act is hereby given to furnish accounts within three days to ascertain whether full tax has been paid on the import of goods, especially on biris or not."

Gauri Shankar refused to accept this notice and did not furnish the accounts demanded from him. Under the circumstances the Municipality had no other alternative but to prosecute him under Section 158, Municipalities Act.

3. The accused pleaded not guilty and denied that he had received any notice or information to furnish accounts. In view of the defence set up by the accused, evidence was led on behalf of the prosecution to prove that the accused was served with the above mentioned notice. The trial Court believed the evidence that notice was served on the accused. Accordingly it found the accused guilty of having committed an offence under Section 158, Municipalities Act, and sentenced him to pay a fine of Rs. 250/- or in default to undergo six months' simple imprisonment. An appeal having been filed by the accused, the learned Sessions Judge, Hardoi, allowed the appeal, set aside the conviction and acquitted him of the offence with which he was charged.

4. Dissatisfied with this judgment, the Municipal Board, Hardoi, have filed this revision against the acquittal of Gauri Shankar.

5. The sole point argued by the learned counsel for the applicant was that the lower appellate Court's interpretation of Section 158, U. P. Municipalities Act, was not correct. The view taken by the lower

appellate Court was that Section 158 was not applicable to the present case, as the accused could not be said to be liable to pay a tax under the U. P. Municipalities Act. In order to appreciate the legal position, Section 158, U. P. Municipalities Act, may be cited. It runs as follows:

"158(1) The Board may by written communication call upon an inhabitant of the municipality to furnish such information as may be necessary in order to ascertain--

(a) whether such inhabitant is liable to pay a tax imposed under this Act;

(b) at what amount he should be assessed;

(c) the annual value of the building or land which he occupies and the name and address of the owner. (2) If an inhabitant so called upon to furnish information omits to furnish it or furnishes information which is untrue, he shall be liable upon conviction to a fine which may extend to five hundred rupees."

6. On behalf of Gauri Shankar the opposite party it is argued in this Court that a person is not liable to pay octroi duty, except at the barrier, and that once the goods have entered the municipal limits, he cannot be said to be liable to pay any octroi duty or tax. In this connection reliance is placed by the learned counsel on a ruling of the Allahabad High Court in --'Municipal Board, Bareilly v. Abdul Aziz Khan', AIR 1934 All 795 (A). In that case, it was held that where a person does not pay the octroi duty imposed upon him under the Act, it is not possible for the Municipal Board to recover this amount by a civil suit. I am of opinion that this ruling has no bearing on the question that confronts the Court in the present case.

The question arising in the present case is whether the accused was liable to pay a tax imposed under this Act. It might be that the tax was not recoverable from him by a civil suit. It might further be that the Municipal Board have no mode available to them for the recovery of it from the accused, but the question is whether he was liable to pay it under the Act. I have no doubt that he was liable to pay the said tax under the Act. Reference in this connection may be made to Section 128, U. P. Municipalities Act, which specifies the taxes which the Board may impose within the municipal limits. Under Section 128, Municipalities Act, the Board is authorized to levy various kinds of taxes. Sub-clause (viii) authorizes a Municipal Board to levy "an octroi on goods or animal brought within the municipality for consumption or use therein."

Sub-clause (xiii) authorizes a Municipality to levy "a tax on goods imported into or exported from any municipality in which an octroi was in force on 6-7-1917, or with the previous sanction of the Central Government, any other municipality."

7. Under the above circumstances it is rightly conceded that the Municipal Board could levy a tax on biris. It has also been conceded that a tax on biris was actually levied by the Municipal Board. The power to levy such a tax or octroi duty has not been challenged Rules 142, 144, 154 and 155 lay down the method for the collection of such duty at the barrier. Rules 150 and 165 lay down the method for the collection of such duty after the goods have crossed the barrier and have been intercepted by the

Inspector.

In view of these provisions, there can be no manner of doubt that if biris were imported within the municipal limits, a liability to pay the octroi duty would be created. Once it is established that a liability to pay an amount is created that liability can only be discharged either by payment of the said amount or by some other method provided by law. The fact that the amount is not recoverable by a resort to law Courts does not mean that the liability itself has been Wiped off. It is possible for a liability to exist without any such liability being enforceable in a Court of law. An instance of it may be provided by a case where a claim for a certain amount might be barred by the law of limitation.

8. The argument that the accused was not liable to pay any octroi duty, because its amount could not be recovered in a Court of law overlooks the fact that no such limitation is contemplated by Section 158(a), Municipalities Act. In order to empower the Municipality to issue a notice under Section 150 (a) of the said Act, all that is necessary is that "such inhabitant is liable to pay a tax imposed under this Act". If the accused was liable to pay the tax and did not pay it, the liability would subsist until the amount was paid off, even though it could not be recovered or enforced by means of a civil action.

9. It is significant that Section 158 does not define the purpose for which the information is required. Such information might be required by the Municipal Board for the purpose of prosecuting the accused under Section 155, Municipalities Act. Under Section 155, Municipalities Act, a person evading payment of octroi is liable to be punished and convicted in respect of it. A perusal of Section 155 would also indicate that under that section a person, who had failed to pay the octroi duty, is deemed to be "liable to the payment of octroi". Thus under Section 155 also, the liability is treated as a subsisting liability. Further, the penalty provided for such an offence under Section 155 is a fine extending "either to ten times the value of such octroi or to fifty rupees, whichever is greater and which shall not be less than four times the value of such octroi."

It is clear, therefore, that an assessment of the actual amount of octroi duty would also be necessary not only for the launching of prosecution against the opposite party, but also for the purpose of determining the penalty to be levied by way of fine on the person contravening the provisions of the Act.

10. Thus the scheme of the Act itself clearly shows that even though the liability might not be enforceable in a civil Court, it is recognized as a subsisting and a continuing liability under the Act. Unless the liability was deemed to be a subsisting or a continuing one, no conviction under Section 155, U. P. Municipalities Act would be possible. The argument advanced on behalf of the opposite party seems to make a confusion between the liability to pay the tax and its recoverability in a Court of law. In my opinion these two facts must be kept quite distinct and separate. One has nothing to do with the other.

In this view of the matter it is quite clear to me that the liability created did continue to exist and the opposite party was liable to pay the tax for which the Act had made provision. The utmost that can be said is that the liability which was at the initial stage actual became at a subsequent stage merely

a potential or hypothetical one owing to its irrecoverability, but the liability continued to exist all the same. The argument advanced on behalf of the opposite party seems to me to be a curious one. It comes to asserting that a liability to pay a certain amount is wiped out, if a person manages to evade payment of it either at the time when it became due or adopts a device so as to make it unenforceable by a subsequent civil action. This interpretation of the section, to my mind, would be quite unreasonable. It would obviously lead to results that are unfair and inequitable and should for that reason be avoided.

11. The further argument advanced on behalf of the opposite party, that no liability existed after the introduction of the goods within the municipal limits also does not appeal to me. The rules made under the Municipalities Act provide for the collection of octroi duty not only at the barrier, but even after the goods have been introduced within the municipal limits. If the clerk at the barrier has failed to collect the duty, under Rules 150 and 165 it is still open to the Inspector to intercept the goods on the route and collect the duty. It will be impossible for the Inspector to demand payment and to make collection at that stage, if it is held that after the entry of the goods within the municipal limits the liability to pay the octroi duty was wiped out.

12. There is another reason why I think that the argument on behalf of the opposite party should not be accepted. Evidence of the contravention of the law in such cases will only be in the hands of the accused and unless it is possible to summon such records from him, it will be difficult for the Municipal Board to take action in such cases. In this connection the learned counsel for the opposite party has argued that it is against the principle of criminal law to compel an accused to provide incriminating evidence against him.

In my opinion this argument is fallacious and overlooks the fact that the evidence is called for merely for the purpose of investigating the matter and the person against whom notice is issued is not an accused at that stage. The Criminal P. C. itself provides powerful methods of securing evidence and of taking possession of it during the course of investigation. If it is possible for the investigating officer to force an entry into the house of the accused and to make a search of his house for the purpose of collecting incriminating material against him, I cannot see any reason why it should not be possible for the Municipal Board to adopt a more polite method of effectuating the same purpose by requiring the accused to furnish such evidence as is in his possession relating to a matter under inquiry.

13. The conduct of the accused in the present case also appears to me to be thoroughly dishonest. When his prosecution was launched, the defence that he took was that he never got any information and could not, therefore, comply with the notice for that reason. The Municipal Board having succeeded in establishing to the hilt in the trial Court that such a notice was actually served on him, he altogether changed the line of his defence at the appellate stage by taking refuge in the technicalities of law.

At the appellate stage he shifted his position and on his behalf his counsel stated that it was not disputed that a notice under Section 158, Municipalities Act was served on his client. He further conceded that the accused did not comply with the requirements of this notice. A defence conducted

in this fashion naturally deprives the accused of all sympathy at the hands of the Court. His own defence was not that he interpreted the law in the fashion in which it is sought to be interpreted on his behalf by his learned counsel. The defence that he took was obviously false and baseless.

14. If the interpretation sought to be placed on his behalf is accepted, it will be difficult, if not impossible, to detect evasion of octroi duty by persons stealthily importing dutiable goods. They would not be liable to refund the money in civil Court. Further, they would refuse to provide any information and would thereby escape all punishment in the criminal Court as well. The result will be that a premium would be placed on dishonesty and fraud. This should not be allowed.

15. I may also mention that the learned counsel for the applicant has further argued that the notice in question also fell under Sub-clause (b) of Section 158. Under this sub-clause, the Municipal Board would be entitled to call for information with a view to ascertain the amount at which the octroi duty should be assessed. In order to demand compliance with notice under Sub-clause (b) of Section 158, the question of liability to pay would not arise at all. It is enough if the duty is required to be assessed. It would be open to the Municipal Board, and in fact necessary, to assess his amount for the purpose of enabling the court to determine the amount of fine for which he would be liable under Section 155 of the Act.

16. On behalf of the opposite party, it has been argued that such assessment can only be done at the barrier and not afterwards. This argument is not warranted by the terms of Section 158 as well as by rules reference to which has been made above. Moreover, at the barrier an assessment can only be made by the clerk, who is posted there. On the other hand Section 158 entitles or authorizes the Municipal Board to make the assessment. The Municipal Board can only make the assessment subsequent to it.

17. Whichever view of the matter is taken I am of opinion that it would not be correct to hold that the notice issued by the Municipality was not covered by Section 158 of the Act. If this interpretation of Section 158 is accepted, then the acquittal of the opposite party will have to be set aside.

18. I accordingly allow this revision application and set aside the acquittal of the opposite party. The next question to be determined is as to what consequential order should be passed. It is open to me either to order a retrial of the opposite party or to remand the case to the lower appellate Court for passing a fresh order.

19. The learned counsel for the opposite party says that he would prefer to have a retrial by a Magistrate, I accordingly remand the case for a retrial of the opposite party. The file of the case should be sent to the District Magistrate concerned to be forwarded to some Magistrate competent to try and dispose of the case according to law.