

## **S. Gurnam Singh vs State Through Municipal Board, Rae ... on 29 January, 1953**

**Equivalent citations: AIR1953ALL539, AIR 1953 ALLAHABAD 539**

ORDER

Mukerji, J.

1. These are three connected applications in revision by S, Gurnam Singh who has been convicted in three cases under Section 155, Municipalities Act and sentenced to pay a fine of Rs. 35/- each in two cases and a sum of Rs. 30/- in another case.

2. The allegation of the Municipal Board was that Gurnam Singh owned a truck which bore registered No. USU 166 and that on this truck Gurnam Singh brought into the Municipal limits of Rae Bareilly old furniture and bairies which were liable to octroi duty on three different dates, namely, 12th May, 13th May and 22nd May, 1951, without paying the necessary duty. The case of the Municipal Board further was that the driver of the truck was attempted to be stopped at the octroi barrier for the collection of duty but he told the person in charge that the necessary duty would be paid by Gurnam Singh, later, and on this assurance the person in charge of the octroi barrier let the truck with the goods pass.

3. The defence of Gurnam Singh was that he did not bring into the Municipal limits goods chargeable with octroi duty on the dates on which he was alleged to have brought them. The defence version was disbelieved by both the Courts below who found that the truck did bring on the three dates articles belonging to Gurnam Singh from Fursatganj Aerodrome where Gurnam Singh had admittedly purchased a large stock of old furniture and bairies.

4. Learned counsel appearing for Gurnam Singh has argued these revisions mainly on the question of law. His submission was that there being no evidence on the record to indicate either that Gurnam Singh brought the goods within the municipal limits or in any manner aided or abetted their entry into the municipal limits, he could not be convicted under the provisions of Section 155, Municipalities Act. Reliance was placed by learned Counsel on the decision of -- 'Emperor v. Ram Narain', AIR 1936 All 88 (A). In this case Niamatullah J. held that the words of Section 155 were not comprehensive enough to justify the conviction of the proprietor of, a firm to which dutiable articles are consigned unless it is shown by evidence that the proprietor of the firm himself introduced or did some act amounting to abetment of introduction within the limits of the Municipality goods on which duty should have been paid.

It was on the strength of this observation that learned Counsel submitted that in the case before me

there was no such evidence and therefore he claimed an acquittal. In the cases with which I have to deal there is in my judgment circumstantial evidence which points to one and only one conclusion, namely that it was Gurnam Singh and no one else to whose interest it was to introduce the goods into the municipal limits of Rae Bareilly without payment of octroi duty. This becomes clear from the fact that the truck on which the goods were being carried belonged to Gurnam Singh; the driver who was driving the truck was in the employ of Gurnam Singh; the goods which were consigned were of the same description as the goods which Gurnam Singh admittedly had purchased at a sale sometime back: it was clear from the evidence that Gurnam Singh had been "introducing" or bringing into the municipal limits similar goods from Fursatganj Aerodrome. From the aforementioned circumstances the conclusion to my mind is irresistible that it was Gurnam Singh who was primarily instrumental in getting the goods into the municipal limits. The fact that octroi was not paid is admitted.

In similar circumstances a Bench of the Oudh Chief Court held that the owner, although not actually transporting goods himself, can be made liable under the provisions of Section 155, Municipalities Act. This decision is reported in -- 'Emperor v. Gopal Krishna', AIR 1944 Oudh 210 (B). At page 212 it was pointed out that a proprietor could be convicted in a case in which the circumstances showed that he must of necessity have taken part in evading payment of duty through the instrumentality of his servants or labourers. The decision in -- 'Emperor v. Ram Narain', (A) by Niamatullah J. was also noticed by the Bench of the Oudh Chief Court and their Lordships pointed out the distinction that existed between the case which was before Niamatullah J. and the case with which they were concerned. In my judgment the decision in -- 'Emperor v. Gopal Krishna', (B) by the Chief Court applies more appropriately to the cases before me and I am in respectful agreement with the views expressed by the learned Judges in that case.

5. In the result I am of the opinion that there is no substance in either of these three revisions and I accordingly dismiss them.