

Kesho Ram vs Delhi Administration on 3 April, 1974

Equivalent citations: 1974 AIR 1158, 1974 SCR (3) 827, AIR 1974 SUPREME COURT 1158, 1974 4 SCC 509, 1974 SCC(CRI) 545, 1974 SCD 675, 1974 2 SCJ 367, 1974 3 SCR 827, 1975 MADLW (CRI) 38

Author: M. Hameedullah Beg

Bench: M. Hameedullah Beg, Ranjit Singh Sarkaria

PETITIONER:

KESHO RAM

Vs.

RESPONDENT:

DELHI ADMINISTRATION

DATE OF JUDGMENT 03/04/1974

BENCH:

BEG, M. HAMEEDULLAH

BENCH:

BEG, M. HAMEEDULLAH

SARKARIA, RANJIT SINGH

CITATION:

1974 AIR 1158

1974 SCR (3) 827

1974 SCC (4) 509

ACT:

Delhi Municipal Corporation Act 1957--Ss. 154, 155 & 161 read with Secs. 353/332 333 of I.P.C.--Whether seizure and detention of animal u/s 161 possible without notice u/s. 154 for recovery of milk tax--If notice optional.

HEADNOTE:

The appellant was convicted u/s 353/332/333 of the Indian Penal Code and was sentenced accordingly. The prosecution case was that the appellant obstructed 3 inspectors and a peon of the Delhi Municipal Corporation, when they went to seize the appellants' buffalo in the discharge of their duty to realise the milk tax from him and struck one of the officers on the nose with the result that it bled and was found fractured.

The main contention of the appellant was that the attempt to realise the arrears of milk tax and recovery charges was

illegal because no demand noticed under Sec. 154 of the Act was served on the appellant, and therefore, he had the right of private defence.

The prosecution relied on Sec. 99 Indian Penal Code which provides that there is no right of private defence against an act of a public servant, done in good faith under colour of his office, though that act may not be strictly justifiable by law. Further according to the prosecution, Sec. 161 of the Act empowered the Inspector of the Corporation to seize and remove the appellant's buffalo for non-payment of tax and the section gave them an over-riding power to resort to seizure and detention of the animal. Therefore, according to the prosecution, the appellant was guilty of the offences charged.

Dismissing the appeal,

HELD : (1) Although the interpretation placed by the High Court that seizure and detention of a vehicle or an animal is possible under sec. 161 at anytime after the tax has become due' when read in the light of other provisions of the Act, it has to be remembered that section 161 would become the repository of a rather drastic power of acting without previous notice to seize any animal' or vehicle at any time after the tax became, due, and thereby, of seriously injuring even innocent individuals who may have every intention and the capacity to pay the demanded tax, but may have defaulted only by some oversight and may be unable to produce the required money on the spot. It is well settled that out of two possible interpretations, the one which confines the content of such power of seizure to reasonable limits and fair modes of operation should be preferred. [831 D]

Therefore, although Sec. 161 of the Act can be used 'at any time'. against a defaulter, yet a defaulter in view of sees. 154 and 155 of the Act would be a person who refuses to pay within a period specified in Sec. 155 of the Act after a notice of demand u/s. 154 of the Act. Although the demand of notice is optional, yet, but the option has to be exercised if it is intended to invoke the powers contained in sec. 161. [831 F]

(ii) The Inspectors were acting honestly in exercise of the powers delegated' to them, but they had erred in the exercise of their powers. They, however, cannot be presumed to know that a notice under sec. 154 must precede any attempt of seizure. Therefore. there was no legal defect which vitiated their actions. Sec. 99 , therefore, did confer a protection upon the employees of the Corporation who acted in good faith under the colour of their office. But since they acted in an improper manner in demanding immediate payment, the sentences imposed upon the appellant were excessive. The sentences, therefore, were reduced to the period already undergone by the appellant but the convictions were upheld. The fine imposed upon the appellant was also set aside.[832 A-C]

JUDGMENT :

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 199 of

910. Appeal by Special leave from the judgment and order dated the 12th November, 1969 of the Delhi High Court at New Delhi in Criminal Appeal No. 103 of 1968.

Harbans Singh, for the appellant.

Govind Das, for the respondent.

The Judgment of the Court was delivered by BEG, J.-The High Court of Delhi had confirmed the conviction „of the appellant under Section 353/332/333 of the Indian Penal , Code, and a sentence of one year's regorous imprisonment on each ,count, _and also to be fine of Rs. 400/-, and, in default of payment ",of fine, to four months further rigorous imprisonment under section 333 Indian Penal Code. The appellant has come to this Court by ,grant of special leave.

It was alleged that the appellant had, on 17-3-1967, at 4,30 p.m., in Rameshwar Nagar, obstructed Sarvshri Rattan Singh, Maharaj Singh ;and Raghbir Singh, Section Inspectors, and Dunger, a Peon of the Delhi Municipal Corporation, when they went to seize a buffalo belonging to the appellant in the discharge of their duty to, realise the milk tax from him, and struck Rattan Singh on the nose with the result that it bled and was also fractured.

The Main contention on behalf of the appellant is that the attempt to realize Rs. 153.75 as arrears of milk tax together with Rs. 10/ as recovery charges was illegal, because compliance with the provisions of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as 'the Act'), for the payment and recovery of taxes, and, in particular with the requirements for a notice of demand contained in Section 154 of the Act, was wanting so that he had a right to private defence.

An attempt was also made to argue that the Inspectors who went to realise the milk tax by seizing the buffalo were not duly empowered ,by the Commissioner to do so. An order of the Commissioner dated 22-7-1959 under Section 491 of the Act, delegating the Commissioner's powers to Inspectors of the Corporation, set that question, at rest. We do 'not think it could be argued that Section 491 requires the con- ferment of the Commissioner's powers upon every Inspector by name. It is enough if there is a general order, as there is in this case, indicating the class of officers to whom the Commissioner had delegated his .powers under any section. We are supported in this view by the case of Kanwar Singh vs. Delhi Administration.(1) We find that it has not been contended anywhere that the Inspectors ,did not act under the colour of their office. The appellant did not plead, in defence, that the officers concerned were not known to him as Inspector-, of the Corporation authorised to collect tax or that they could not show any authority for performing their duties. Hence, (1) [1965] (1) SCR p. 711 he prosecution has relied upon Section 99 of the I.P.C. which lays

town :

"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 a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law".

On facts found, it has to be assumed that the appellant had objected to the taking of his buffalo, and, as this was of no avail, he had given a blow to Rattan Singh on the nose which bled and was also fractured as a result. It is true that, if the act against which a right of private defence is pleaded is not done in good faith the protection of Section 99 I.P.C. will not extend to it. It has, therefore, to be determined whether there was any such non-compliance with the provisions relating to the realisation of the tax, in attempting to take away the buffalo of the appellant, as to amount to want of good faith.

The High Court had accepted the submission on behalf of the Prosecution that Section 161 of the Act empowered the Inspectors of the Corporation to seize and remove the appellant's buffalo for nonpayment of the tax as it gave an over-riding power to resort to this method of enforcing payment "a. any time after the tax has become due.-." Section 161 of the Act lays down :

" 161 (1) If the tax on any vehicle or animal is not paid, the, instead of proceeding against the defaulter by distress and sale of his other movable property as hereinbefore provided, the Commissioner may, at any time after the tax has become due, seize and detain the vehicle or animal or both and, if the owner or other person entitled thereto does not within seven days in respect of a vehicle and two days in respect of an animal from the date of such seizure and detention, claim the same and pay the tax due together with the charges incurred in connection with the seizure and detention, the Commissioner may cause the same to be sold and apply the proceeds of the sale or such part thereof as is required in discharge of the sum due and the charges incurred as aforesaid. (2) The surplus, if any, remaining after the application of the sale-proceeds under sub-

section(1) shall be disposed of in the manner laid down in sub-sections (6) and (7) of Section 158".

Section 152 provides that a tax levied under the Act becomes payable "on such dates, in such number of instalments and in such manner as may be determined by bye-laws made in this behalf". tax on an animal must be deemed to have become due without 'lie need to present a bill because Section 153 reads as follows :

"153(1) When any tax has become due, the Commissioner shall cause to be presented to the person liable for the payment thereof, a bill for the amount due Provided that no such bill shall be necessary in the case of

(a) a tax on vehicles and animals;

(b) a theatre-tax; and

(c) a tax on advertisements.

(2) Every such bill shall specify the particulars of the tax and the period for which the charge is made".

Nevertheless, Section 154 reads as follows :

" 154(1) If the amount of the tax for which a bill has been presented under Section 153, is not paid within fifteen days from the presentation thereof, or if the tax on vehicles and animals or the theatre-tax or the tax on advertisements is not paid after it has become due, the Commissioner may cause to be served upon the person liable for the payment of the same a notice of demand in the form set forth in the seventh Schedule.

(2) For every notice of demand which the Commissioner causes to be served on any person under this Section, a fee of such amount not exceeding five rupees as may be determined by bye-laws made in this behalf, shall be payable by the said person and shall be included in the cost of recovery". Then comes Section 155, which runs as follows :

"155(1) If the person liable for the payment of any tax does not, within thirty days of the service of the notice of demand under Section 154, pay the sum due and if no appeal is preferred against such tax, he shall be deemed to be in default.

(2) When the person liable for the payment of any tax is deemed to be in default under-

sub-section (1), such sum not exceeding twenty per cent. of the amount of the tax as may be determined by the Commissioner may be recovered from him by way of penalty, in addition to the amount of the tax and the notice-fee payable under sub-section (2) of section 154.

(3) The amount due as penalty under sub-

section (2) shall be recoverable as an arrear of tax under this Act."

The argument of the learned Counsel for the appellant, based upon the provisions of Section 154 and Section 155 of the Act, is that, unless Section 154 is complied with, so that a notice of demand is served upon a person from whom tax has become due, he cannot file an appeal. It was emphasized that he will "be deemed to be in default" only if the demand is not satisfied within 30 days and no appeal is filed against it. It was urged that Section 155 thus, indirectly, provides the meaning of the word "defaulter" as used in Section. 161 of the Act. Furthermore, it is contended that, unless a person is a defaulter within the meaning of Section 155 of the Act, no proceeding can be taken

against him under Section 161 of the Act. The High Court had met this argument by holding that this interpretation would make it unnecessary to have inserted the words in Section 161 "at any time after the tax has become due". It held that these words are to be given their literal meaning and due effect.

On behalf of the appellant, support was sought from the provisions of Section 156, Section 157, and Section 159 of the Act to contend that recoveries by sale and distress have to be preceded by notices and demand. It was pointed out that, even in the case of recovery of tax from a person likely to leave Delhi soon, Section 159 required a notice of demand for immediate payment. Hence, it was urged that the procedure laid down for seizure of vehicles and animals in Section 161 of the Act is an alternative only to the procedures of recovery by distress and sale but does not dispense with the notice required under Section 154 of the Act or else it would become much too drastic an alternative which could be used arbitrarily. We think, that, 'although the interpretation placed by the High Court upon the provisions of Section 161, read in the light of other provisions of the Act, is possible interpretation, it has to be remembered that Section 161 would become the repository of rather drastic power, of acting without previous notice, to seize any animal or vehicle at any time after the tax has become due, and, thereby, of seriously injuring even innocent individuals who may have every intention and capacity to pay the demanded tax, but may have defaulted only 'by some oversight and may be unable to produce the required money on the spot. It is well settled that, out of two possible interpretations, the one which confines the content of such power of seizure to reasonable limits and fair modes of operation should be preferred lest the validity of the provision itself becomes questionable. The provisions of the Act, set out above, are capable, we think, of being reasonably so interpreted as to confine the ambit of power contained in Section 161 of the Act to situations in which the person from whom the tax is to be realized can be deemed to be a defaulter. In other words, although Section 161 can be used "at any time" when the person against whom it is to be used is shown to be a "defaulter", yet a defaulter, in view of the provisions of Sections 154 and 155 of the Act, would be a person who refuses to pay within the period specified in Section 155 of the Act after a notice of demand under Section 154 of the Act. No doubt the demand by notice for a tax on an animal is optional. But, the option has to be exercised if it is intended to, invoke the powers contained in Section 161. We, however, do not think that, in view of the provisions of Section 99 I.P.C. it is enough to hold that there had been no notice of demand in the instant case. The action of the Inspectors did not become vitiated by bad faith simply for that reason. They were acting honestly in the exercise of the powers delegated to them by the Commissioner. Their attempt to recover the tax due, by seizure of the animal, was not entirely outside the law. All that could be said' was that they had erred, even if sadly, in the exercise of their powers.

The Inspectors could not be fairly presumed to know that a notice under Section 154 of the Act must precede any attempt to seize the 10-L84Sup.C.1.175 buffalo as the law has been anything but clear on a subject on which there has been no previous decision of this Court. The view of the Delhi High Court supported the view that no legal defect at all vitiated the actions of the Inspectors. As already stated, there was no plea that the Inspectors did not act in a bona fide manner or that they were unaware of the defect in the procedure adopted. All that the appellant told them was that he did not have ready money to pay up instantly. He did not refuse to pay. In these circumstances, we think that Section 99 did confer a protection upon the employees of the Corporation who acted in good

faith under the colour of their office. But, in as much as they had acted in an improper manner in demanding immediate payment and tried to seize the animal prematurely under ,a misconception about the mode of exercise of their powers under .Section 161 of the Act, the sentences imposed upon the appellant are excessive.

We think that the ends of justice will be served by maintaining the .,convictions but reducing the sentences to the period already undergone by the appellant. Consequently, we set aside the fine imposed upon the appellant and reduce the sentences passed upon him to the period already undergone. With this modification, this appeal is hereby dismissed.

Appeal dismissed.