

(1936) 10 AHC CK 0003
In the Allahabad High Court

Bateshwari Prasad

APPELLANT

Vs

Secretary of State

RESPONDENT

Date of Decision : 27-10-1936

Acts Referred:

Citation : (1936) 10 AHC CK 0003

Hon'ble Judges : Bennet, J

Bench : Single Bench

Judgement

Bennet, J.—This is a second appeal by the plaintiff whose suit against the Secretary of State for India in Council for Rs. 114-8-0 and a declaration that certain articles belong to the plaintiff has been dismissed by the two lower Courts. The suit arose as follows : The wife and sister-in-law of the plaintiff picketed the local Government Intermediate College during non-co-operation days and were prosecuted for trespass u/s 447, I.P.C, and fined Rs. 25 each by a criminal Court, the S.D.M. of Etawah. As the fine was not paid the criminal Court issued warrants to the Station Officer of Etawah Kotwali for recovery of the fines by attachment and sale of the moveable property belonging to the two accused, and certain property was attached, and an objection was made by the plaintiff that the articles belonged to him and not to the accused. The criminal Court disposed of this objection u/s 386, Criminal P.C., and held that the articles did belong to the accused and dismissed the objection. The articles were therefore sold and the proceeds were ere. dited to Government. The Court below has found that no. suit lies against the Secretary of State as no cause of action is alleged against him as the Secretary of State did not make the attachment, nor was any action taken by any person for whom the Secretary of State is legally liable. The Court below referred to a, Full Bench ruling of this Court reported in Secretary of State v. Sukhdeo (1899) 21 All. 341. In that case there was a very similar matter in which the plaintiff claimed that certain articles of his had been seized, and sold for payment of a fine inflicted on another person.

2. The Full Bench of this Court held on p. 345 that the Rs. 10 received by the

Secretary of State as the proceeds of the articles did not in any way make the Secretary of State liable. The origin of the liability of the Secretary of State arises from Section 32 of the Government of India Act of 1915 as amended in 1919, which states that the same remedies exist against the Secretary of State as a plaintiff might have had against the East India Company. Now the East India Company has never been held to be responsible for the acts of judicial officers. It was in origin a commercial company and it undertook the executive Government of the country, but it did not undertake any responsibility for the Courts which were set up in this country. Under the Bengal Regulation 3 of 1793, paras. 10 and 11, the East India Company undertook to be defendant for the acts of certain officers pursuant to a special order of the Governor-General in Council. These officers were stated to be Collectors, Assistants and Native Officers of Revenue, Commercial residents, etc., officers of salt, customs and mints, and the preamble sets out that claims would be submitted to the Courts which arose from revenue collection, the investments of the company "and all other financial or commercial concerns of the public." It is to be noted that the company did not in any way undertake any liability for judicial officers or judicial acts. The Courts remained entirely separate from the company and the company had no liability whatever for the acts of the Courts. This division of Government into executive Government and judicial Government is one which cannot be too clearly expressed and under the company there was no liability whatever of the executive Government for the acts of the judicial. Learned Counsel for the appellant referred to the ruling in *Secretary of State v. Sukhdeo* (1898) A.W.N. 173, where the plaintiff's property was wrongfully seized by a Magistrate and sold for a fine which was against the son of the plaintiff. The case in the first instance was heard by a Bench of two Judges of this Court and the two Judges agreed that the Crown was not liable to pay compensation for the illegal acts of its servants, but they held that it was bound to make restitution but only to the extent by which it had received benefit from the illegal acts. There was a Letters Patent appeal by the Secretary of State against that decision and the Letters Patent Appeal was heard by a Bench of three Judges and is reported in *Secretary of State v. Sukhdeo* (1899) 21 All. 341. This is the case referred to by the lower Court which I have mentioned already and the Full Bench held that on the facts of that case, which were similar to the present, and the articles in question had been sold, the Secretary of State was not liable in any way whatever and the plaintiff's suit was dismissed in toto with costs.

3. The question has also been considered by a Bench of this Court in *Ram Shankar Vs. Secretary of State and Another* and in my judgment in that case I mentioned this ruling but I did not mention the Full Bench ruling which followed it on Letters Patent Appeal. The case of *Ram Shankar Vs. Secretary of State and Another* was a somewhat similar case to the present where the plaintiff claimed to realize from the Secretary of State an amount of rent which should have been paid by an Official Receiver appointed by an insolvency Court. The principle laid down in that ruling was that the Secretary of State had no concern whatever

with the acts of the Courts or with the acts of the persons acting under the orders of the Courts. The broad principle therefore is that there is no liability whatever of the Secretary of State for acts of the Courts or the consequences of those acts. Learned Counsel argued that because the Secretary of State had benefited by the sum of money realized by the sale therefore a suit would lie. I am of opinion that this principle is also unsound and no restitution could be made although the two learned Judges who originally heard the case of Secretary of State v. Sukhdeo (1898) A.W.N. 173 were of the contrary opinion. It appears to me that to hold that the Secretary of State was bound to restore a sum of money received by him under the circumstances of the present case would make him equally liable to a suit for restoration of any fine imposed by the criminal Courts. In both cases the Secretary of State does benefit by receiving a sum of money, but the receipt of the sum of money does not in my opinion involve the Secretary of State in any liability for restitution because the payment of the sum of money is under the orders of the Courts and the Secretary of State has no responsibility whatever for the acts of the Courts or the results of those acts.

4. For these reasons I consider that no ground has been made out for interference with the decree of the lower Court in appeal. Accordingly I dismiss this second appeal with costs. As points of law have been raised I grant permission for a Letters Patent appeal.