
(1957) 12 AP CK 0017
In the Andhra Pradesh High Court

Chunduru Subba Rao

APPELLANT

Vs

Chunduru Subba Rao and Co.

RESPONDENT

Date of Decision : 09-12-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1958 AP 403 : (1958) CriLJ 739

Hon'ble Judges : Satyanarayan Raju, J

Bench : Single Bench

Judgement

Satyanarayana Raju, J.—The plaintiff is the appellant in the above second appeal which arises out of a judgment of the Subordinate Judge's Court of Guntur, reversing a decree and judgment of the District Munsiff's Court. The respondent is the State of Andhra, represented by the District Collector, Guntur.

2. For a proper appreciation of the contentions raised in the appeal, it is necessary to state the material facts. The plaintiff is the proprietor of Chundury Subba Rao and Co. at Guntur. On the 18th June, 1948, he purchased ten bags of Semolina from M S Moosa Salt, Madras, for a sum of Rs, 1150-5-0 and transported the same to Guntur by lorry. As the plaintiff could not dispose of the semolina at Guntur, he got it retrans-ported to Madras by rail.

He entrusted the railway receipt to his agents, Messrs. K. V. Sessaiah Chetty and Co. at Madras, and requested them to take delivery of the goods. The ten bags were delivered to Sessaiah Chetty and Co. It was reported to the Collector of Madras that the transport was not covered by a permit and the Assistant Commercial Tax Officer, Central Collector's Office, Madras, seized the above, said ten bags from Sessaiah Chetty and Co.

3. On the 4th March, 1949, the plaintiff was convicted in C.C. No. 3820 Of 1948 on the file of the Additional First Class Magistrate Guntur for having transported the 10 bags of Semolina from Madras to Guntur in violation of the Notification to the .Appendix to G. O. Mis. 550, dated the 18th June, 1948, and was sentenced

to pay a fine of Rs 100/-. The ten bags of semolina were sold by" the Collector of Madras for Rs. 781-12-2 and the sale proceeds were deposited in the Court of the Second Presidency Magistrate. On the 5th July, 1950, the plaintiff issued a notice to the Collector, Madras, requesting him to make arrangements for payment of the sale proceeds to him.

This was followed by a letter, dated the 27th September, 1950 from K, V. Sessaiah Chetty and Go., to the Commissioner, Civil Supplies, Madras, requesting him to pay the value of the ten bags Of Semolina to them. On the 13th November, 1950, the Commissioner of Civil Supplies informed Sessaiah Chetty and Co., that the sale proceeds were with the Collector of Guntur for disposal in accordance with the judgment pronounced by the Additional First Class Magistrate, Guntur, and they were therefore requested to approach the Collector, Guntur. On the 18th fciovenber, 1950, the District Collector wrote to (the Additional First Class Magistrate asking for Information as to what orders had been passed regarding the disposal of the sale proceeds.

In reply thereto, the Additional First Class Magistrate wrote to the Collector on the 23rd November. 1950 stating that the judgment in the Register of Summary Trials showed that no order had been passed regarding the disposal of the property. On the 31st January, 1951, the district Collector again wrote to the Magistrate asking him to pass necessary orders regarding the. disposal of the net sale proceeds of the property deposited in the Court, of the Second Presidency Magistrate, Madras.

On the 8th February, 1951, the Collector again sent a communication to the Magistrate, enclosing therewith the petition dated 1st February, 1951, received from the plaintiff and requesting him to pass early orders regarding the Beposal of the sale proceeds. In his proceedings, dated the 18th March, 1951, the Additional First elass Magistrate, Guntur, made the following order:

The sale proceeds of 10 bags of Semolina amounting to Rs. 781-12-2 deposited in the Court of the Second Presidency Magistrate, Madras, are Ordered to be confiscated to Government.

4. On the 1st of November, 1952, the plaintiff instituted O. S. No, 699 of 1952 on the file of the District Munsif's Court, Guntur, seeking recovery of Rs. 1,200/-, comprising a sum of Rs 1,150-5-0 being the value of ten bags of Semolina and interest thereon. He submitted that the order of the Magistrate directing confiscation of the sale proceeds, was illegal, arbitrary and opposed to equity and contrary to law as the said order was made long after the judgment to C.C. No. 3820 Of 1948.

The defendant pleaded that the order of confiscation was in accordance with the provisions of law as laid down in Section 517, Or. P. C, and that therefore the plaintiff could not question the said order in a civil suit, that the only remedy open to him was to take the matter in appeal u/s 520, Cr.PC which he failed to do, and that therefore the suit claim was not maintainable.

5. On these pleadings, the following material issue was raised:

Whether the order of the Additional First Class Magistrate, Guntur confiscating the suit property is illegal and not binding on the plaintiff?

6. On a consideration of the relevant documents, the District Munsif held that the order passed by the Additional First Class Magistrate, Guntur, confiscating the suit amount, was illegal and not binding on the plaintiff and he decreed the suit. Against the said decree, the State of Andhra preferred an appeal to the Subordinate Judge's Court, Guntur. The appellate Judge held that the Order of confiscation was not illegal, and even if it were illegal, the plaintiff was not entitled to claim recovery of the amount which represented the value of the "contraband," without getting the order of confiscation passed by the Magistrate set aside. So holding, the Subordinate Judge allowed the appeal and reversed the decree passed by the trial Court in favour of the plaintiff. Hence this appeal.

7. When this appeal came up for hearing before me on the 11th April, 1957, I called for findings from the Subordinate Judge, Guntur, on the following questions;

1) Whether the Magistrate who passed the order of confiscation on the 18th of March, 1961, was the same Magistrate who convicted the appellant on the 4th of March, 1949, in C.C. No. 3820 of 1948?

2. Whether the amount of Rs. 781-12-2 was in deposit in the Additional First Class Magistrate's Court No. 1, Guntur or in the Presidency Magistrate's Court at Madras on the 18th of March 1951 when the order of confiscation was passed by the Magistrate?

8. Pursuant to that order, the Subordinate Judge has submitted the following findings:

1. Though the Court which convicted the appellant and which passed the order of confiscation are the same, the Magistrate who convicted the appellant and the magistrate who passed the confiscation order are different persons."

2. "The amount of Rs. 781-12-2 was not in deposit on 18-3-1951 either in the Additional First Class Magistrate's Court No, 1. Guntur, or in the Presidency Magistrate's Court, Madras, but with the District Collector, Guntur.

9. It is contended for the appellant that the order of confiscation passed by the Additional First Class Magistrate is not in truth and effect an order u/s 517 of the Criminal Procedure Code and that no notice having been given to the appellant, the order violates the principles of natural justice. It is urged by the learned Government Pleader that no notice is necessary before an order u/s 517 is passed, that the appellant should have sought the remedy provided under 5. 520 of the Code to have the order of confiscation set aside and that the civil Court has no Jurisdiction to entertain the suit.

10. The order of confiscation proceeded on the basis that the amount of Rs.

781-12-2, representing- the sale proceeds of the ten bags of Semolina were lying in deposit in the Court of the Second Presidency Magistrate, Madras. As a matter of fact, the amount was actually in deposit with the District Collector, Guntur, That is the finding now returned by the Subordinate judge, and on this matter there is Indeed no controversy.

11. As appears from Ex. B-6, dated 18th .November, 1950, the letter addressed by the District Collector to the Magistrate, a prosecution was also initiated against Messrs. K. V. Seshiah Chetty and Co. in the Court of the Second Presidency Magistrate, Madras, and that seems to have been the reason why the sale proceeds were deposited in that Court. That case was eventually withdrawn and the Second Presidency Magistrate passed no orders with regard to the disposal of the also proceeds. Subsequently the said sale proceeds were remitted to the District Collector, Guntur.

12. The appellant was prosecuted in the Court of the Additional First Class Magistrate, Guntur, and was convicted on the 4th March, 1949. The order of confiscation was Passed on the 18th March, 1951, nearly two years after the disposal of the criminal case without any notice to the appellant. The correspondence which passed between the District Collector and the Magistrate" discloses that the Collector was pressing the Magistrate to pass necessary orders regarding the disposal of the amount of sale proceeds. A note made by the office of the Magistrate on Ex. B-8 Ds as follows:

The connected case record is herewith put. Orders for the disposal of Bs. 781-12-2 may kindly K>e passed as directed by the Collector.

On this, the Magistrate, made the following endorsement:

Mr. Ankayya Naidu told me that in a ease where the trying Magistrate has not passed orders, D. M. (District Magistrate) only is competent to pass orders, (not legible) the order and address Mr. Naidu, if necessary.

This was on the 6th February, 1951. On 18-3-1951, the Magistrate passed the following:

Proceedings of the A, F. C, Magistrate, No, J Gwntur.

Name :Sri K, Koteswara Rao, B.A.

Sub :Rationing semolina Transport of 10 bags from Madras to Guntur without a permit Prosecution of Sri Chunduru Subba Rau of Guntur Disposal of case property Orders Requested.

Ref:Guntur Dt. Magistrate"s R. C. G5-1950-51 dated 30-1-1951.

ORDER:

The sale proceeds of 10 bags of Semolina amount to Rs. 781-12-2 deposited in the Court of the Second Presidency Magistrate, Madras, are ordered to be confiscated to Government." On the very same day, the Additional First Class

Magistrate, communicated a copy of his proceedings to the District Collector, Guntur. I find it most difficult to construe the proceedings of the Additional First Class Magistrate, confiscating the sale proceeds, as a judicial order. The District Collector, who happens to be the District Magistrate also, directed the Additional First Class Magistrate to pass necessary orders, and he did so.

A reading of the relevant correspondence leaves no doubt in my mind that it is not a judicial order. The proceedings were not communicated to the appellant though a copy of it was sent to the District Collector. Having regard to the nature of the proceedings passed by the Magistrate it follows that the appellant could not canvass the correctness of the order in a judicial proceeding. Moreover the order having been passed without notice to the appellant to show cause, there is a clear contravention of the principles of natural Justice. The impugned order is therefore illegal.

13. It is contended by the learned Government Advocate that the appellant should have preferred an appeal u/s 520 of the Criminal Procedure Code and should have got the order vacated. In view of my conclusion that the Order was passed outside the provisions of Section 517 Cr. P. C., no question of the appellant, preferring an appeal therefrom under the provisions of the Code, would arise. Even assuming that the order was one passed u/s 517, there is no provision in the Criminal Procedure Code by and under which a right of appeal is provided against an order passed u/s 517.

Construing the words "Any court of appeal may direct any order u/s 517" in Section 520 of the Code of Criminal Procedure, Mr. Justice Somasundaram, has held in *Sakkarai Kannu Pillai, In re* 1954-1-Mad L. J. 478 : AIR 1954 Mad 771 (A) that those words do not connote that a right of appeal is granted u/s 520, against an order passed u/s 517 and that they only mean any Court to which an appeal lies from the Court which convicts and from which an appeal is provided.

14. No right of appeal having been provided under the Criminal Procedure Code, there is no bar to the maintainability of the civil suit. It is true that in the written statement filed by the Government the plea has been raised that the civil court was not competent to entertain the suit, but no issue was framed by the trial Court covering this contention. The trial Court, therefore, rightly did not address itself to this question. The appellate court held that as the order of confiscation was not set aside in a competent Court of law, it was not open to the plaintiff to seek recovery of the amount of the sale proceeds.

In this Court it is contended that the civil Court was not competent to entertain the suit. I find myself unable to accede to this contention. The decision in *Secretary of State v. All Jagannadhrama* ILR 1941 Mad 850 : AIR 1941 Mad 539 (B) relied on by the Government Pleader as supporting his contention, is clearly distinguishable. In the case before the Full Bench, the president of the Union Board filed a suit against the secretary of State for recovery of a certain amount imposed as a surcharge for the Board's failure to collect certain arrears of tax. It

Was contended by the Secretary of State that the Court had no jurisdiction to try the suit.

Relying upon Rule 6 of the Rules framed under the Madras Local Boards Act, the Full Bench, reached the conclusion that it impliedly excluded the right to file a suit in respect of an improper surcharge imposed under Rule 6, and that as the power to surcharge arises not under the common law, but under the statutory rules, the remedy provided by the rules in case of an improper surcharge alone is open and a civil suit in respect of it is barred. The jurisdiction of the civil court was explicitly excluded by the rule and the liability being statutory, as opposed to the liability under the common law, it was held that the party must adopt the remedy given to him by the statute.

15. u/s 9 of the Code of Civil Procedure, Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The general rule of law is that when a legal right and an infringement thereof is disclosed and a cause of action is disclosed, and unless there is bar to the entertainment of a suit, the ordinary civil courts are bound to entertain the claim. I do not find any warrant for holding that there is either a statutory or an implied bar to the maintainability of the present action.

16. For all the above reasons, I hold that this appeal must be allowed. The result is the decree of the trial Court is restored with costs here and in the Courts below. No leave.