

(1964) 01 MAD CK 0022
In the Madras High Court
In Re: Rajamal and Others

Date of Decision : 29-01-1964

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 11, 31
Stamp Act, 1899 — Section 27, 61, 62(1)(a), 62(1)(b), 62(a)

Citation : (1965) CriLJ 286 : (1964) ILR (Mad) 421 : (1964) 77 LW 307

Hon'ble Judges : Kunhamed Kutti, J

Bench : Single Bench

Judgement

Kunhamed Kutti, J.—This revision case arises out of a complaint filed by the District Registrar, Coimbatore against the petitioners u/s 64

read with Section 27 of the Indian Stamp Act, for having executed and got registered before the Joint Sub Registrar, Coimbatore, a deed of

"exchange" as a "settlement deed" with intent to defraud the State by their failure to give full facts regarding the value of the properties and the

nature of the transaction. The document purported to make over the A schedule properties therein belonging to the petitioners 2 and 3 to the first

petitioner and her minor daughter in exchange for the properties described in the B schedule belonging to the first petitioner subject to the

encumbrances set out in the C schedule. It was found on investigation that the A schedule properties were worth only Rs. 18,500 while the B

schedule properties were worth Rs. 1,67,020 and that by getting the document registered, the State had been defrauded to the tune of Rs. 5025,

on account of stamp duty. The petitioners were then called upon to pay the aforesaid amount and surcharge, Rs. 6680-80 nP, the total of which,

after deducting the stamp duty already paid, came to Rs. 11,254-30 nP. The prosecution which gave rise to this case was the result of the

petitioners" evasion to pay the aforesaid amount.

2. The plea of the petitioners was that they had not suppressed any fact before the Registrar and that they had placed before him all the relevant

facts. The courts below negated this plea. The further point urged before the learned District Magistrate in appeal that valid sanction had not been

obtained for the prosecution was also not upheld by him; so that he found the petitioners to be rightly guilty of an offence under the Registration

Act; in his view not u/s 64(a) read with, Section 27 of the Act, but u/s 62(1)(b) and while altering the conviction into one under the latter section,

confirmed the sentence of fine of Rs. 200 as appropriate. It is contended before me that want of sanction u/s 62(1)(b) has vitiated the conviction.

The sanction accorded in this case was u/s 64 read with Section 27 of the Stamp Act, and the same was to this effect:

Under Section 70(1) of the Indian Stamp Act, 1899 (Act II of 1899), the District Registrar, Coimbatore, hereby sanctions the prosecution of

Srimathi Rajammal, Chinna Pappa (alias) Ramaswami Goundan and Chinna Karuppathal, for an offence u/s 64 read with Section 27 of the Indian

Stamp Act as they have failed to set forth fully and truly the value of the B schedule property in document No. 1767/1960 dated 30-6-1960, of

Joint Second Sub-Registrar's Office, Coimbatore, and executed by the above three persons with a view to evade the proper stamp duty due to

Government.

The trial Sub-Magistrate, found the petitioners guilty as charged and convicted and sentenced them u/s 64 (a) read with Section 27. The learned

District Magistrate, however, took the view that the petitioners had not wilfully suppressed the real value of any of the properties as alleged in the

complaint and that all that could be said was that they wanted to make it appear that the document was not an exchange deed, but an instrument in

the nature of a settlement-cum-release deed. He observed:

It is an open document without suppression of any detail. No doubt the appellants have styled it as a settlement-cum-release deed. They are

entitled to call it by whatever name they choose. Otherwise, the facts and circumstances affecting the chargeability of the instrument with the

amount of the duty with which it is chargeable are fully and truly set forth in the instrument itself. So they cannot be convicted with the intent to

defraud the Government u/s 64 (a) read with S. 27 of the Stamp Act.

3. The learned District Magistrate then considered the question whether in the circumstances, the petitioners do not come u/s 62(i)(b) which rendered liable for conviction any one executing or signing any instrument not covered by Section 62(1) (a) and chargeable with duty without. the same being duly stamped; and, after considering. the definition ""duly stamped"" under the Act, he held that quite apart from the question of mens rea, the petitioners are liable, for conviction u/s 62(i)(b).

4. The argument before me is that when the appellate Judge found the offence disclosed to be one actionable u/s 62(i)(b) and not u/s 64 (a) read with Section 27, fresh sanction should have been obtained; and in support of this argument, the learned Counsel for the petitioners relied on three

cases : Empress v. Janki, ILR 7 Bom 82, Queen Empress v. Rahmatalikhan ILR 9 All 210 and Maya Shah v. Emperor AIR 1933 Lah 959. In the

first of these cases, the plaintiff In a suit had produced an instrument on plain paper which, was liable to be stamped. The instrument was executed

by the defendant and on plaintiff's refusal to pay the stamp duty and penalty after the defendant was called upon to pay the amount, the instrument

was impounded. The Collector sanctioned the prosecution of both plaintiff and defendant without requiring either of them to pay the duty and

penalty and the defendant was convicted u/s 61 ,of the Stamp Act (I of 1879) and the plaintiff for abetment of the offence. The Bombay High

Court held that the convictions were illegal since the Collector had failed to allow an opportunity of paying the duty and penalty and that mere

receipt by the plaintiff of an unstamped instrument did not constitute the offence of abetment of the execution of such instrument. The Judgment in

the case is a short one and does not afford any guidance regarding the point involved in the present case where the Registrar had already called

upon the petitioners to pay the requisite duty and penalty.

5. In ILR 9 All 210, which also was under Act I of 1879, the respondent had failed to cancel the one anna receipt stamp affixed to his salary bill

and in an appeal against his conviction, the District Magistrate held that upon the evidence, the conviction should have been for abetment and not

for the principal offence and altered the conviction into one u/s 109 I. P. C. In revision against his altered conviction, the Allahabad High Court

held that salary bill was an Instrument which was required to be stamped before

or at the time of the execution and was not an instrument of the kind contemplated by the first paragraph of Section 11 of the Act I of 1879. Consequently, there was no abetment of any offence under Sections 31 and 62 of the Act; that the offence which appears to have been committed was under second paragraph of Section 61, but that no sanction having been given by the Collector u/s 69 for a prosecution u/s 61, it was not advisable to interfere further than by setting aside the conviction and sentence. Here again, the offence committed was found to be not abetment but the offence itself.

In the case on hand, the question is whether on the facts proved the offence was liable to punishment u/s 61-A read with Section 27 or u/s 62(i)

(b). The learned District Magistrate, as I have already stated, found it to fall, more appropriately u/s 62(1) (b). The question is whether in such circumstances, fresh sanction is necessary and for want of such sanction, the prosecution has to fall. The learned magistrate's reasoning for altering the section, I may confess, has not carried much conviction with me on the facts of this case. Even so, the question is whether, when an offence purported to fall under one section is found to fall under a different section but sanction is accorded specifying the former section, that would be a sufficient circumstance to vitiate the conviction for want of sanction under the latter section.

6. Section 70(1) of the Stamp Act precludes any prosecution in respect of any offence punishable under the Act being instituted without the sanction of the Collector or such other officer as the State Government generally, or the Collector specially authorises in that behalf. There is no contention that the Registrar who sanctioned the prosecution in this case was not competent to accord sanction u/s 70(1) of the Act. In according sanction, he has, in addition to indicating the section under which the offence falls, specified the nature of the offence, namely that the executants of the document had failed to set forth fully and truly the value of the B schedule property with a view to evade the proper stamp duty due to Government.

7. Section 62(1) (b) makes it an offence for any person to execute or sign otherwise than as a witness any instrument other than those specified in clause (a) chargeable with duty without the same being duly stamped. The

learned District Magistrate has convicted the petitioners under this section; and the sanction, notwithstanding the sections specified therein, covers the offence for which the District Magistrate has now convicted the petitioners. It seems to me, therefore, that the plea of want of sanction, is not strictly tenable in this case.

8. Nor does the Lahore case referred to above help the petitioners. The offences under Sections 62(b) and 64(a) are not respectively, as pointed out in this case, minor and major offences, and so it was held that it cannot be presumed that a sanction to a prosecution u/s 64 (a) is a sanction by implication to a prosecution u/s 62(b). But, this was a case where no sanction of any kind had been proved and the serious defect in the proceedings found by the learned Judge was the omission by the trial Magistrate to direct the attention of the accused to the fact that though the complaint was brought u/s 64(a), they also stood in jeopardy u/s 62(a).

9. There is no such complaint in the present case; and it seems to me that in the circumstances of this case, the objection regarding want of sanction has to be overruled.

10. I have carefully gone through the document executed by the petitioners which is in Tamil after getting it translated into English by the office. I am satisfied that taken as a whole, it is for all intents and purposes a deed of exchange and not a deed of settlement. It has, therefore, to be charged with stamp duty as a deed of exchange and not having done that, the conviction of the petitioners u/s 62(i)(b) can hardly be questioned even if they had no deliberate intention to defraud the Government.

11. This petition has, therefore, to fail and same is dismissed.