
(1912) 12 CAL CK 0034
In the Calcutta High Court

Kailash Chandra Nag

APPELLANT

Vs

Secretary of State for India

RESPONDENT

Date of Decision : 17-12-1912

Acts Referred:

Police Act, 1801 — Section 15(4)

Citation : (1913) ILR (Cal) 452

Hon'ble Judges : Stephen, J;D. Chatterjee, J

Bench : Division Bench

Judgement

Stephen and D. Chatterjee, JJ.—The facts of this case, so far as they are material to the decision of the questions before us in second appeal, are as follows:

2. In August, 1907, the Government of Eastern Bengal and Assam, acting u/s 15 of the Police Act 1801 (as amended by the Amendment Act of 1895), declared that from the conduct of the inhabitants of certain parts of the district of Mymensingh it was expedient to increase the number of police in those places. Their number was accordingly increased, and u/s 15(4) it became the duty of the District Magistrate to apportion the costs among the inhabitants of the places in question: but the apportionment was, as is admitted by the respondent, made by a Deputy Magistrate. The present appellants appealed to the District Magistrate to alter the apportionment, and he dismissed the appeal, but it is impossible to hold that this amounted to the making of an apportionment by him, under the rather stringent terms of the Sub-section in question. After the dismissal of the appellant's appeal, the amount assessed on him was recovered, u/s 16, by distress, and we must suppose was applied to the maintenance of the police force, as provided in that section.

3. The first point raised before us is whether the amount of his apportionment was legally realised from the appellant, and, for the reasons we have stated, we must hold that it was not.

4. A second question then arises whether the Secretary of State was rightly

sued. The wrong that the plaintiff alleges he has suffered is that money has been unlawfully taken from him the remedy he seeks is that it may be restored to him. We must suppose that the money has, at one time at least, been at the disposal of the Local Government, and been applied by its officer according to law. On these facts, the liability to repay the money has been incurred by some one: has it been incurred on account of the Government of India? If it has, the revenues of India are chargeable (21 and 22 Vict., Clause 106, Section 42), and the Secretary of State, to whose control the revenues of India are subject, is the right person to be sued (*Id.*, Section 41), and in considering this question we may take the Government of India to be, not the Governor-General in Council, but, to use an older phrase, "the superintendence, direction and control of the country" *Sivabhaian v. Secretary of State* ILR(1904) 28 Bom. 314, 321 which seems to include the Local Government. We are of opinion that we must answer the question we have, propounded in the affirmative. It has not been argued before us that the Local Government has power to raise any money which is not under the general control of the Secretary of State, and we are not aware that his liability for money raised under colour of the law for the benefit of the Local Government has been saved, as it may have been in the case of money levied or received by a Municipal Corporation or a District Board. Consequently, applying the rule laid down in *Sivabhajan v. Secretary of State* ILR(1904) 28 Bom. 314 the conditions which would afford a principal exemption for the act of an agent have not been excluded, as a principal cannot retain money improperly received for his use by his agent.

5. The same result may be reached by another road. The money in question in this case was received for the benefit of the Local Government, for it was received to defray the expenses of a police force under its immediate control, according to its disposal. Suits against the Government of India may be instituted against the Secretary of State, u/s 416 of the Code of Civil Procedure, 1882, under which this suit was brought, and by Section 2 of the same Act the Local Government is included in the expression "the Government of India." If the Local Government is liable, it is therefore correctly sued as the Secretary of State in Council, and we have not been invited to decide any question of liability that may arise between the Secretary of State and the Local Government.

6. We are, therefore, of opinion that this suit is rightly brought against the Secretary of State, and this appeal is therefore allowed; the judgment of the lower Appellate Court is set aside, and the suit is decreed in favour of the plaintiff, who is entitled to his costs in all the Courts.