

(1974) 12 MP CK 0006
In the Madhya Pradesh High Court
Case No : C. Rev. No. 186 of 1970

Mahabir Kirana Bhandar, Ashoknagar	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision : 11-12-1974

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 25

Citation : (1978) ILR (MP) 294 : (1975) JLJ 147

Hon'ble Judges : S.M.N. Raina, J

Bench : Single Bench

Advocate : N.K. Jain, for the Appellant; H.D. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

S.M.N. Raina, J.—This is a revision petition u/s 25 of the Small Cause Courts Act.

2. The plaintiffs in this case are the partners of registered firm carrying on grocery business at Ashoknagar. The consignment of Jaggery, which according to the plaintiff applicants consisted of 766 Paris (Packages) weighing 93 quintals was booked from Anakapali to Ashokanagar vide R.R. No. 690320 (Ex. P-3) dated 8-11-67. The R.R. was sent to the plaintiffs-applicants through the bank and was obtained by them on payment of a sum of Rs. 9847.96 as consideration thereof vide Ex. P-2, When the applicants took delivery of the goods 11 packages of Jaggery weighing 1 quintal and 40 kgs. were found short. The applicants, therefore, filed a suit against the Union of India represented by the General Managers of the Western-Southern and South-East Railways for recovery of sum of Rs. 315 on account of the loss sustained by them due to shortage in goods, which were booked at railway risk after due notice to them.

3. The suit was resisted by the non-applicants and was dismissed mainly on the ground that the loss was not proved. Being aggrieved thereby, the applicants have filed this revision petition.

4. The contention of the railway administration is that as the consignment

consisted of one full wagon load; the railway authorities did not either count the packages of Jaggery or actually weighed the goods, but accepted the number of packages and the weight as given by the consignor and on that basis prepared the R.R. (Ex. P-3). So the basic point for consideration in this case is whether it has been satisfactorily established that the consignment consisted of 766 packages weighing 93 quintals, it being not disputed that actually 755 packages weighing 91 quintals and 60 Kgs. were received at the destination. The position would have been simple, if the consignor or someone who loaded the goods had been examined to prove this fact. But this has not been done and the contention of the learned counsel for the plaintiffs-applicants is that an inference to that effect should be drawn from the R.R. (Ex. P-3) in which it is stated that 766 packages weighing 93 quintals were booked.

5. Brijnath Sharma (D.W.1) testified that letters "S. C" in Ex. P-3 meant "said to contain" and the letters "S.W. A. meant" sender's weight accepted". He further stated that when the railway employees do not themselves count the packages or get the consignment weighed they make an abbreviated note to that effect in the R.R. The learned counsel for the plaintiffs-applicants did not dispute that the aforesaid abbreviated notes have been made in the R.R. (Ex. P-3) in question. But he submitted that inspite of this, the Court should presume that what was slated therein was correct in the absence of any evidence to the contrary.

6. In *Dominion of India v. Firm Museram Kishunprasad* 1950 N L J 128 : A I R 1950 Nag. 85., a Division Bench of the Nagpur High Court held that where it is not proved that the railway servants had loaded the goods after verifying the number of packages, the wagon having been placed at the service of the consignor, and the number stated was accepted as correct for the purpose of charging freight and the receipt qualified the number by stating that the wagon was said to contained 255 bags, it was no admission on the part of the railway that the wagon contained 255 bags. This decision was relied upon by the Madras High Court in *Union of India v. S.P.L. Lekhu Reddiar* and another A I R 1956 Mad. 176. It was held therein that where the goods were loaded in the wagon by the sender and not by the railway servants and the information given by the sender was accepted as correct for the purpose of charging freight, there was no admission on the part of the railway authorities that the wagon contained the number of bags mentioned in the railway receipt and the railway would not be liable merely because the number of bags in the wagons were found less than the number specified in the railway receipt. I entirely agree with this view.

7. Where a wagon is placed at the disposal of the consignor for loading and the railway receipt is prepared by the railway servants on the basis of the representations made by the consignor or his agent regarding the number of packages and weight thereof without actual verification, the railway receipt cannot be treated as an admission on the part of the administration as to the number of packages and the weight of the consignment specified therein and the

liability for shortage cannot be fastened merely on the basis of the railway receipt. In such a case, it is for the consignor or the consignee, as the case may be, to prove what was actual the number of packages loaded in the wagon and their weight by direct evidence. Thus, it was for the plaintiffs to prove that actually 766 packages of jaggery weighing 93 quintals were loaded in the wagon. Having failed to do so, their claim was rightly dismissed.

8. It may also be mentioned here that there is no allegation in the plaint that the seals of the wagon suggest that there was any pilferage during transit. All that has been proved is that the number of packages delivered was less than the number of packages specified in the railway receipt (Ex. P-3). As pointed out above, the claim could not be decreed on the basis of the railway receipt in the circumstances of the case.

9. There is, therefore, no justification for interference in this case and the petition is hereby dismissed. I do not, however, make any order as to costs in the circumstances of this case.