

(1960) 12 KL CK 0004
In the High Court Of Kerala
Case No : Crl R. P. No. 81 of 1960

Mayan Pathumma Hajumma

APPELLANT

Vs

Bill Collector, Kalpetta Panchayat Board and Another

RESPONDENT

Date of Decision : 08-12-1960

Acts Referred:

Citation : (1961) KLJ 272

Hon'ble Judges : P. Govinda Menon, J

Bench : Single Bench

Advocate : V. Rama Shenoi and R. Raya Shenoi, for the Appellant; K. Kuttikrishna Menon Respondent No. 1 and Public Prosecutor, Respondent No. 2, for the Respondent

Judgement

P. Govinda Menon, J.—The accused in summary Trial Case No. 14/59 who has been convicted under S. 115 of the Madras Village Panchayats Act (Act X of 1950) read with Rule 31(1) of the Village Panchayat Rules has filed this revision petition. The charge against her was that she did not pay the house tax of Rs. 77.78 due to the Kalpatta Panchayat Board for the half year ending 31-3-1959. The only point that is argued in this case is that the prosecution has failed to establish that distraint of her property was impracticable and so a criminal prosecution will not lie.

Rule 23 refers to the service of the bill on the person.

Rule 24(1) reads as follows:

If the amount of the tax demanded is not paid within fifteen days from the service of the bill or the giving of the direction referred to in rule 11, and the person from whom the tax is due has not shown cause to the satisfaction of the executive authority why it should not be paid the executive authority may recover by distraint under his warrant and sale of the moveable property of the defaulter the amount due on account of the tax together with the warrant fee and the distraint fee and with such further sum as will satisfy the probable

charges that will be incurred in connection with the detention and sale of the property so distrained:

Provided ...

(2) If for any reason the distraint or a sufficient distraint of the defaulter's property is impracticable the executive authority may prosecute the defaulter before a Magistrate.

Sub-rule (4) mentions how distraint should be effected. So it is the duty of the prosecution to prove that the provisions of the rule had been complied with and that distraint was impracticable. In the complaint which is in printed form there is the statement that the distraint of the accused's property for the recovery of the amount was found to be impracticable. P. W. 1 is the bill collector of the Panchayat who has filed this complaint. He says that distraint warrants were issued against the accused that he went to execute them to the house of the accused and that he could not meet the accused and so returned the warrants. He admitted in cross-examination that the people told him that the accused was inside the house, but no attempt was made by him to meet her. There is also no evidence that subsequent to that he made any attempt to distraint the property as contemplated under S. 24(4). He also does not say that distraint was found impracticable. It is only when the distraint of the property is found impracticable that the Panchayat is entitled to launch the prosecution.

2. In a similar case in *Balakrishnan v. President Puzhathy Panchayat* (1960 11 K. L. R. 608 = 1960 K. L. J. 1346) it was held that in such circumstance the prosecution is incompetent. Reference has been made in that decision to two other decisions reported in 1960-11 M. L. J. Short Notes 34 (*Venkatarathinamma v. Corporation of Madras*) and 1954 K. L. T. 419 (*Municipality of Quilon v. P. S. George*). I am in respectful agreement with the views expressed in the above decisions. The conviction is therefore unsustainable in law and it is hereby set aside. Fine, if any, paid will be refunded.