
(1972) 03 AHC CK 0044
In the Allahabad High Court
Case No : Criminal Ref. No. 136 of 1970

Municipal Board

APPELLANT

Vs

Sumat Kumar Jain

RESPONDENT

Date of Decision : 09-03-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 439(3)
Uttar Pradesh Municipalities Act, 1916 — Section 155

Citation : (1972) 42 AWR 295

Hon'ble Judges : S.D. Khare, J;M.H. Hussain, J

Bench : Division Bench

Advocate : Deoki Nandan, for the Appellant; R.P. Goel, for the Respondent

Final Decision : Partly Allowed

Judgement

S.D. Khare, J.—The Tahsildar-Magistrate, second class, Firozabad, Agra, on 13th September, 1968, convicted Sumat Kumar Jain, opposite party, of the infringement of Rule 144 of the Municipal Account Code and for evasion of octroi punishable u/s 155 of the U.P. Municipalities Act and imposed upon him a fine of Rs. 25/- for the infringement of Rule 144 and Rs. 200/- for evasion of octroi u/s 155 of the U.P. Municipalities Act. The Municipal Board, Firozabad, (Agra) filed a revision against that order in the court of session and the learned Civil and Sessions Judge, Agra, has made a reference to this Court with the recommendation that the sentence awarded being inadequate should be enhanced from Rs. 200/- to Rs. 2,400/-

2. The evidence led by the prosecution fully established that Sumat Kumar Jain, opposite party, had introduced within the Municipal limits of Firozabad 221 bundles of corrugated iron sheets weighing 21.7 tons on 23rd August, 1960. The delivery of the goods was received by him at the railway station Firozabad. The opposite party, however, did not pay the octroi duty which on the said goods should have been Rs. 600/- only.

3. It is clear from the record and also from the findings of the Tahsildar Magistrate that Sumat Kumar Jain was liable to pay Rs. 600/- as octroi duty on the goods which he introduced within the Municipal limits of Firozabad (Agra) on 23rd August, 1960. On a complaint being filed against him the case was tried by a Magistrate second class, who could impose a maximum fine of Rs. 500/- only. Section 155 of the U.P. Municipalities Act, however, provides that whenever octroi dues are evaded the fine imposed by way of punishment shall be not less than four times the value of such octroi. A fine of Rs. 2,400/- should, therefore, have been imposed on Sumat Kumar Jain u/s 155 of the U.P. Municipalities Act. However, that was not possible because the Tahsildar-Magistrate had powers to impose fine upto a limit of Rs. 500/- only. The Tahsildar Magistrate, without giving any reason, imposed a fine of Rs. 200/- only for evasion of octroi u/s 155 of the U.P. Municipalities Act.

4. The contention of the Municipal Board, Firozabad (Agra) is that the fine imposed on Sumat Kumar Jain u/s 155 of the Municipalities Act should be enhanced to Rs. 2,400/-.

5. There can be no doubt that the fine imposed on Sumat Kumar Jain is inadequate. The question, however, is to what extent it can be enhanced by this Court.

6. Sub-section (3) of Section 439 Code of Criminal Procedure provides as follows:

Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than u/s 34 the Court shall not inflict a greater punishment for the offence which in the opinion of such Court the accused has committed than might have been inflicted for such offence by a Presidency Magistrate or Magistrate of the first class.

7. It is true that the case against Sumat Kumar Jain was not tried by a Magistrate of the first class. However, the fact remains that it was tried by a Magistrate though he happened to be a Magistrate of the second class only. Sub-section (3) of Section 439 Code of Criminal Procedure does not make it incumbent that the trial should have been by a Magistrate first class before this Court can enhance the sentence to the limit which could be inflicted for such offence by a Magistrate of the first class. However, in view of the limitation contained Under Sub-section (3) of Section 439 Code of Criminal Procedure the Court cannot enhance the sentence of fine beyond Rs. 2,000/-.

8. The powers of the High Court for enhancing the sentence u/s 439 Code of Criminal Procedure were considered in the cases of Emperor v. Ram Nath 1935 AWR 1236 and Sarjug Rai and Others Vs. The State of Bihar, and it was held that where the trial was held by an Asstt. Sessions Judge the High Court u/s 439 could enhance the sentence to the limit of the maximum provided for the offence.

9. Again, the provisions of Sub-section (3) of Section 439 Code of Criminal Procedure came up for consideration in the cases of In Re: Sanga Rosi Reddy,

and State Vs. Drupati Sahijisingh Bhawnani, and it was held that the High Court could enhance the sentence to that limit which might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

10. The powers of a Presidency Magistrate and a Magistrate of the first class u/s 32(1)(a) Code of Criminal Procedure are for imposing fine not exceeding Rs. 2,000/-. It, therefore, follows that this Court, while exercising its revisional jurisdiction u/s 439 Code of Criminal Procedure cannot enhance the amount of fine imposed u/s 155 of the U.P. Municipalities Act to any sum beyond Rs. 2,000/-.

11. In our opinion it was a fit case in which a fine of Rs. 2,400/- (the minimum fine provided u/s 155 of the Municipalities Act) should have been imposed. However, in view of the restrictions contained in Sub-section (3) of Section 439 Code of Criminal Procedure we enhance the sentence of fine imposed u/s 155 of the U.P. Municipalities Act to Rs. 2,000/- only, or in default of such payment to simple imprisonment for six months.

12. The reference is partly accepted.