

(1961) 07 MAD CK 0002
In the Madras High Court

P.C. Dakshinamurthy

APPELLANT

Vs

The State (Corporation of Madras)

RESPONDENT

Date of Decision : 21-07-1961

Acts Referred:

Citation : (1962) 75 LW 765 : (1962) 2 MLJ 103

Hon'ble Judges : Ramakrishnan, J

Bench : Single Bench

Judgement

Ramakrishnan, J.—This is a revision against an order of the Sixth Presidency Magistrate, Saidapet, Madras, in M.C. No. 155 of 1960. The

Commissioner of the Corporation of Madras, represented by an assessor, prosecuted the accused for arrears of property tax due to the

Corporation for four half years commencing from the second half-year of 1957-58 to the first-half year of 1959-60. Rule 20 of the Rules under

Schedule IV of the City Municipal Act provides that before tax can be collected a notice shall be served in the prescribed form on the person who

has to pay the tax. Rule 21 provides that if the tax so demanded in the notice has not been paid within 15 days from the service of the notice, the

Commissioner can recover it by distraint under a warrant and sale of the movable properties of the defaulter. Rule 22 says that if for any reason

distraint or sufficient distraint of the defaulter's movable properties is impracticable, the Commissioner may prosecute the defaulter before a

Magistrate. On the ground that the distraint of the defaulter's properties proved impracticable, the present prosecution has been launched as

above.

2. The plea of the accused was that the tax had been reduced on appeal and

then subsequently raised to Rs. 141. But his main plea was that no one came to distraint his properties. The Court below accepted the contention of the prosecution that distraint was impracticable and therefore there was a liability on the part of the accused to prosecution. He was convicted u/s 29(b) read with Rule 21 (2) of the Rules in Schedule IV of the City Municipal Act and sentenced to pay a fine of Rs. 15 with the default sentence.

3. In this Revision Case, the same ground was urged, namely, that there was no proper evidence to show that distraint of the accused's movables

was impracticable, and that consequently the prosecution was unsustainable.

4. The petitioner's counsel referred to the following circumstances. A bailiff was entrusted with the distraint warrant. The bailiff has not been

examined in the Court. The bailiff's endorsement on the distraint warrant reads thus:

Distraint impracticable as the articles of the owner and tenants were all mixed up and the owner refuses to identify his articles.

Though the bailiff was not examined, the prosecution examined the tax collector (P.W. 2) as a witness present at the distraint by that bailiff. His

evidence was, that no articles were found in the house of the defaulter. There is a great deal of difference between saying that no articles were

found and saying that articles were found but since they belonged both to the defaulter and the tenants, proper distraint could not be effected after

separating the defaulter's movables. In view of this discrepancy, I am inclined to give the benefit of the doubt to the accused and hold that there

was no acceptable proof that before the prosecution was launched, distraint of the movables was found impracticable. The prosecution has

therefore to fail.

5. The Revision Case is allowed and the conviction is set aside. The fine amount, if paid, will be ordered to be refunded.