

(1959) 11 MP CK 0029
In the Madhya Pradesh High Court
Case No : Cr.R. No. 139 of 1958

Seantilal Subsukhlal Jain

APPELLANT

Vs

Municipal Committee, Waraseoni

RESPONDENT

Date of Decision : 12-11-1959

Acts Referred:

Citation : (1960) JLJ 614 : (1959) MPLJ 536

Hon'ble Judges : N.M. Golvalker, J

Bench : Single Bench

Advocate : A.D. Deoras, for the Appellant; R.S. Dabir, for the Respondent

Final Decision : Dismissed

Judgement

N.M. Golvalker, J.

This is a revision petition by the applicant-accused against his conviction u/s 199 of the Municipalities Act read with rules Nos. 9 and 25 of the Octroi Rules of the Municipal Committee of Waraseoni and the award of sentence of fine of Rs. 30 each under two counts. His revision petition before the Additional Sessions Judge, Balaghat, against the said conviction was rejected.

The prosecution case, briefly stated is that on 2-4-1957 the accused-Appellant received three bales of cloth by railway and took delivery of the same at the Waraseoni railway station. It was alleged that as per octroi rules he should have given a declaration on the octroi post and paid octroi duty according to the rates, even though he may have subsequently exported the goods to mouza

Kaidi. It was, therefore, alleged that he avoided to pay the octroi duty and, therefore, he was liable to be prosecuted. The plea of the accused-Appellant was that the delivery of the three bales was not taken by him but by his servant and, therefore, not being a person in charge of the goods he could not be prosecuted for not complying with the octroi rules. He further urged that as the goods were exported immediately without bringing them within the municipal area, there was

no liability to pay any octroi duty. The trying Magistrate found against the accused and convicted him accordingly. He held that though the delivery was taken by the servant, the accused would in law be the person in charge thereof and even if the servant had not taken the goods to the octroi post and did not pay the octroi duty thereon on furnishing the necessary declaration thereof, he would be in law liable to be prosecuted. He also held that as the accused-Appellant had avoided payment of octroi duty, he was also liable to pay double the sum and having omitted to comply with the demand for payment of a double octroi duty, was also liable to be punished u/s 199 of the Municipalities Act. The learned Additional Sessions Judge upheld the finding of the trying Magistrate.

The applicant-accused before me urged that as the Municipal Committee in its complaint dated II-5-1956 to the Magistrate as also in their resolution dated 24-4-1956 on that subject had itself accepted that the goods after its receipt were exported on the same day, there could be no justification for the levy of double octroi duty. In fact, he urged that since the export was accepted, there was no case even for demand of normal octroi duty. The contention raised by the applicant-accused has absolutely no force. The complaint merely recites the facts as they happened and the statement regarding subsequent export of the goods was of no consequence to the charge levelled against him. Octroi Rule 19 expressly lays down that "the goods arriving by rail shall be deemed to have entered octroi limits and shall be dealt with in the manner prescribed under these rules, provided they are not re-booked to other places". This rule was framed for obvious reasons. It definitely lays down that the goods so received have got to be dealt with according to the octroi rules. Rule 9 (a) specifically lays down that the person in charge of the goods has to take them to the nearest octroi outpost where he has to give necessary declaration whether the goods were intended for sale or consumption within the municipal limits or intended for immediate export beyond the limits of the municipality or were intended for temporary detention within the municipal limits and eventual export. He has also to declare the value, quantity, etc., therein. It is no doubt true that if the goods are immediately exported or detained temporarily for eventual export, the person in charge has to follow the procedure laid down in Rule 25. However, that only exempts goods from payment of any octroi duty under the circumstances. But the provision with regard to the giving of a declaration in any case, whether the goods are meant for sale or consumption within the municipal limits or to be exported, is mandatory and compulsory. Admittedly in this case there was given no declaration after the goods were taken delivery of at the railway station and before their export. During the course of the argument the Learned Counsel for the applicant-accused suggested that the goods had been taken direct to village Kaidi from the railway station and the road to that village does not pass through municipal limits. Therefore, there was no question of any import of the goods within the municipal limits or of the goods liable to be taken to the octroi post. This suggestion, in my opinion, has no substance in view of Rule 19 quoted above. Whether the road from the railway station leading to the village Kaidi is or

is not within the municipal limits, the goods under the said Rule 19 would be deemed to have entered the octroi limits as soon as they arrive by rail and taken delivery of I am, therefore, clear that omission to give declaration was a contravention of the octroi rules and punishable under Rule 48.

I may here point out that Rule 9 has been amended on 5th May 1959 by addition of sub rule (d) to the said rule to the following effect:

(d). In case the importer fails to give declaration as specified in Clause (e), it shall be presumed that the goods are imported in the municipal limits for use or sale or consumption therein and the octroi duty shall be payable thereon accordingly.

The aforesaid amendment would show how the presumption to be drawn under Rule 19 has been further widened. Now after 5th May 1959 not merely it will be presumed that the goods have entered octroi limits but there will be a further presumption that they were meant for consumption, sale or use within those limits. I am drawing the attention to this amendment only with a view to show the obvious purpose in making Rule 19 so that there may not be any possible attempt to avoid payment of octroi duty.

It was also urged that there was no evidence to establish that no declaration had been given. In my opinion, it was too late in the day to advance this contention when no suggestion to this effect had been made at all in the trial Court. As a matter of fact there could be no such suggestion when no octroi duty itself had been paid and liability to pay the same had been contested. There could be no payment of octroi duty without first giving a declaration. I do not see therefore any force in this contention too.

Last but not the least, the applicant-accused urged before me that as admittedly the goods were received by his servant he could not be held liable for any contravention of the octroi rules as he was not the person in charge thereof. He means to suggest that he could not be charged with the commission of an offence unless a particular intent or knowledge on his part was found to be present. If there was any omission to observe the octroi rules, the omission was by the servant and not by him. This contention too in the view that I take has no force. As a general rule, a master is not criminally liable for the acts of his servant, But there are exceptions to this rule which have been well recognised. Where the provision of a statute prohibits an act or enforces a duty in such words as to make the prohibition or the duty absolute, the master will be liable if the servant infringes those provisions. The octroi rules laying down the procedure to be followed by an importer of goods in my view create an absolute liability in the matter of their observance. Its infringement is not made penal to depend upon its being done wilfully or maliciously or knowingly or being suffered or allowed or permitted. The octroi rules are specific in the matter and perusal of the same would show mens rea is not the essence of the contravention with which we are concerned in this case. The rules lay down a certain procedure to

be adopted when handling the goods imported either by rail or road within the municipal limits and if that procedure is not observed, it is not necessary to show that there was any guilty mind in not observing them. The non-observance of the procedure itself would establish the guilty mind and render the accused guilty of the same, even though the non-observance was by his servant. How far an omission to observe the rules of Motor Spirit Rationing Order by a servant while actually supplying the petrol would render his master guilty was considered by the Supreme Court and it was held that even though the servant in charge of the petrol pump had omitted to make necessary endorsement on the coupons against which petrol was supplied, absentee master was guilty of contravening the Order. The Clause 27-A of the said Order was to the following effect:

When motor spirit is furnished against the surrender of one or more coupons, the supplier shall immediately endorse or cause to be endorsed on each coupon so surrendered the registration or other identifying mark of the vehicle to which motor spirit is furnished.

The word "supplier" in the Order was defined as meaning "a person carrying on the business of supplying motor spirit". So even if the master was absent at the pump from where the motor spirit was supplied by the servant and it was the servant who failed to make the necessary endorsements, their Lordships of the Supreme Court observed:

The object of the clause clearly is that the supplier of the petrol should set up a complete machinery to ensure that the necessary endorsements are made on the coupons against which petrol is supplied. It is conceivable(sic) that in many cases the default will be committed by the servants of the supplier who are in charge of the petrol pump, but that fact itself will not exonerate the supplier from liability.

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Thus the omission to give declaration on the octroi outpost, even though by a servant, was a contravention by the accused and he was rightly held guilty of the same. His conviction, therefore, was correct.

As regards the omission to comply with the demand for payment to double octroi duty, the accused admits to have done so. His contention was that as he was not liable to pay the normal octroi duty, there was no question of paying the double octroi duty as penalty. He contended that there was no avoidance as such to pay the octroi duty under the circumstances. In my opinion, the evidence conclusively establishes that the accused had no intention to pay the octroi duty and, therefore, it was a deliberate avoidance on his part to pay the same. He was rightly called upon to pay the double octroi duty. He was, therefore, rightly held guilty u/s 199 of the Municipalities Act.

Thus, in the view that I have taken, there is no force in this revision petition and the same is dismissed.