
(1980) 03 MP CK 0006

In the Madhya Pradesh High Court

Case No : Second Appeal No. 137 of 1969

State of Madhya Pradesh

APPELLANT

Vs

Chironji Lal

RESPONDENT

Date of Decision : 10-03-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144
Police Act, 1861 — Section 30

Citation : AIR 1981 MP 65 : (1981) JLJ 351

Hon'ble Judges : H.G. Mishra, J

Bench : Single Bench

Advocate : B.P. Singhal, for the Appellant; M.L. Gupta, for the Respondent

Final Decision : Allowed

Judgement

H.G. Mishra, J.—This is defendant's appeal against judgment and decree dated 24-12-1968 passed by the Third Additional District Judge, Morena, whereby the judgment and decree dated 20-10-1965, passed by the trial Court have been affirmed.

2. Facts material for decision of this appeal are as under:--

The plaintiff-respondent No. 1 Chironji-lal instituted the suit giving rise to this appeal for recovery of Rs. 600/- by way of damages caused by Police to loud-speaker, amplifier, mike and other accessories belonging to him, and which were given on hire to Sunderlal, defendant-respondent No. 2. Students' procession was being taken out on 27-12-1959 near Motor-stand, Morena. There was a lathi-charge by the Police. The aforesaid loud-speaker set was fitted in a rickshaw. Although at the time of the lathi-charge, it was in Jiwaji Ganj, Sikharwari Block, Morena, away from the place of lathi-charge yet the Police Constables without any reasonable cause wilfully in order to cause damage to the plaintiff damaged the aforesaid set. Accordingly, the plaintiff is entitled to recover Rs. 600/- as damages for the loss so caused by the employees of the defendant State.

3. The defendant-appellant State resisted the claim of the plaintiff and contended that the State cannot be made liable for the damage even if caused by the aforesaid acts complained of by the plaintiff.

4. The trial Court decreed the suit for Rs. 377/- and dismissed the rest of the claim of the plaintiff. Aggrieved by this judgment and decree, the defendant preferred an appeal which has been dismissed vide the impugned judgment and decree. Hence, this second appeal.

5. In this appeal, Shri B. P. Singhal, learned Additional Government Advocate for the appellant State contended that Police Act, 1861, by Section 30 regarding regulation of processions and by Section 144 of the Code of Criminal Procedure, 1898, regarding maintenance of law and order including right to quell riot, the State Government is immune from the liability complained of.

Shri Motilal Gupta, learned counsel for the plaintiff-respondent argued in support of the impugned judgment and decree and submitted that the present case is a case of exceeding authority conferred by the law. Accordingly, the State is liable in the matter. Shri Gupta, further contended that the State is liable for unlawful or legally unwarranted acts done by their employees during the course of employment and do not enjoy the immunity envisaged by the ratio of *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, .

6. Having heard the learned counsel for the parties, I have come to the conclusion that the appeal deserves to be allowed.

7. In this case, the findings given by both the Courts below concurrently are that lathi-charge was made by the Police on the procession when it became unruly. At that time, the loud-speaker set was fitted on a rickshaw and was employed for leading the procession. When there was lathi-charge, the occupant of the rickshaw took it hurriedly on the road leading to Jiwaji Ganj, Morena. The loud-speaker set was damaged on account of the lathi-charge.

8. In (1861 5 Bom HCR App 1) *Peninsular and Oriental Steam Navigation Co, v. Secretary of State*, the basic principle regarding liability of the State was stated thus :--

"There is a great and clear distinction between acts done in the exercise of what are usually termed sovereign powers and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them."

Having thus enunciated the basic principles, Peacock C. J. stated another proposition as flowing from it -

"Where an act is done, or a contract is entered into, in the exercise of powers usually called sovereign powers, by which we mean powers which cannot be lawfully exorcised except by sovereign, or private individual delegated by a sovereign to exercise them, no action will lie."

In *Secy. of State Vs. Srigobinda Chaudhuri*, , Rankin C. J. explaining the aforesaid dictum observed as under :--

"Where an act was done in the course of the exercise of powers which could not be lawfully exercised save by the sovereign power, no action in tort lay against the Secretary of State for India in Council upon the principle of *respondeat superior*."

9. The test to find out whether the State is liable in a given case or not, has been laid down as follows by their Lordships of the Supreme Court in *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, .

"Thus, it is clear that this case recognises a material distinction between acts committed by the servants employed by the State where such acts are referable to the exercise of sovereign powers delegated to public servants, and acts committed by public servants which are not referable to the delegation of any sovereign powers. If a tortious act is committed by a public servant and it gives rise to a claim for damages, the question to ask is: was the tortious act committed by a public servant in discharge of statutory functions which are referable to, and ultimately based on, the delegation of the sovereign powers of the State to such public servant? If the answer is in the affirmative, the action for damages for loss caused by such tortious acts will not lie. On the other hand, if the tortious act has been committed by a public servant in discharge of duties assigned to him not by virtue of the delegation of any sovereign power, an action for damages would lie. The act of the public servant committed by him during the course of his employment is, in this category of cases, an act of a servant who might have been employed by a private individual for the same purpose. This distinction which is clear and precise in law, is sometimes not borne in mind in discussing questions of the State's liability arising from tortious acts committed by public servants."

In *State of Madhya Pradesh Vs. Saheb Dattamal and Others*, , a Division Bench of this Court has formulated three principles to examine the liability of the State for tort committed by the acts of its servants, viz. -

"All that has to be done when it is sought to sue the State for tort committed by any of its servants is to examine, firstly, whether the servant has been acting or purporting to act in exercise of powers delegated to him. We are certain that the immunity, if any from action in a Court of law arises not only in regard to acts done while functioning within strict letter of the delegation but also while purporting to do so, this we shall explain presently. Secondly, to see whether or not these acts have been done in the exercise of sovereign power of the State. The simplest test is to consider whether these functions could be discharged by any private citizen or association. For example, when the State runs a transport service or a telephone exchange or a mining or commercial company it functions in sphere in which it is quite conceivable that a private individual or a company can function. So it is not the exercise of sovereign power.

"Where, on the other hand, it runs a defence sendee or controls a riot or investigates crimes, or levies taxes we have functions which a State alone can discharge and not any private individual or body. Sometimes Courts and text-book writers use the words "acts of State" to describe such functions. But that is loose usage; these words in their strict connotation applying to steps taken by a State when dealing with foreigners. A good deal of it came up for consideration when transactions between the erstwhile Indian States before 1947, and parties who were not at that time their citizens were examined. But in cases of the present class "Acts of State" proper do not come up for consideration. Accordingly nothing more about them need be said for our purposes.

Thirdly, if the breach or tort has been committed while purporting to exercise such functions there is no remedy in the law Courts for the aggrieved person. The question is not whether this state of affairs is desirable but it is whether this is the law of this country as things now stand or whether there is any law in force here corresponding to the Crown Proceedings Act in England. All this has been set out by the Supreme Court in its judgments and is to the effect that there can be no action."

10. Now, the function of the State to regulate processions is delegated to the Police by Section 30 of the Police Act, 1861 and the function to maintain law and order including quelling of riot is delegated to the authorities specified by Section 144 Cr. P. C. (sic) is undisputedly the Poliee. These functions cannot be performed by private individuals. They are the powers exercisable by the State or its delegates only and by their very nature, these functions are to be regarded as "sovereign functions" of the State.

11. As in the present case, in the case of State of Madhya Pradesh Vs. Saheb Dattamal and Others, liability was sought to be imposed on the State on the ground that the firing was in excess of the need. It was held that the State will not be liable for tortious acts of the servants or in respect of consequences ensuing therefrom because the immunity of State extends to such a situation.

12. So far as the ratios of (The State of Rajasthan Vs. Mst. Vidhyawati and Another, , and Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh, are concerned there is no antithesis between them. This is clear from the ratio of State of Rajasthan"s (supra), viz.

"Where the driver of a jeep, owned and maintained by the State of Rajasthan for the official use of the Collector of a districts, drove it rashly and negligently, while bringing it back from the workshop after repairs and knocked down a pedestrian and fatally injured him.

Held that the State can be made vicariously liable for the tortious act, like any other employer.

Viewed from first principles there ean be no difficulty in holding that the State should be as much liable for tort in respect of a tortious act committed by its

servant within the scope of his employment but wholly dissociated from the exercise of sovereign power, as any other employees."

13. Accordingly, if the liability sought to be enforced arises from non-governmental or non-sovereign functions, the State may be liable, but if the liability complained of flows from tortious acts done or functions discharged in exercise of sovereign powers, the immunity attaches. The ratio of *Roop Lal v. Union of India* (AIR 1972 J & K 22), is to the same effect, although State was held liable due to nature of the acts complained of in that case.

14. The ratio of *State of Madhya Pradesh Vs. Premabai and Others*, is applicable only to those cases, which belong to the category to which *State of Rajasthan Vs. Mst. Vidhyawati and Another*, applies. As such, reliance thereon is not available in this case.

15. It was further contended by Shri Motilal Gupta that the State will be liable where acts done or purported to be done under the Municipal law may be termed as unlawful and/or legally unwarranted. In this respect reliance was placed on ((1857-59) 7 Moo Ind App 476) *Secretary of State of India in Council v. Kamachee Rave Sahaba* (AIR) 1931 PC 248) ; AIR 1937 31 (Privy Council) ; *Venkata Rao v. Secy, of State*; and on paras 19-25 and 19-26 of Seervai's *Constitutional Law of India*, Vol. II, 1968 reprint. The attempt of Shri Motilal Gupta in reality is to persuade this Court to carve out an exception to the rule laid down by the Supreme Court in *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, . No exception can be carved out by this Court affecting generality of the dictum laid down in *Kasturilal's* case (supra). That apart, there appears to be no antithesis or inconsistency between the ratio of the *State of Rajasthan's* case (supra), the fields in which they operate being different.

16. In view of the above discussion, this case is within the dictum of *Kasturilal's* case (supra). The learned Judges of the Courts below have acted illegally in deciding it on the basis of the ratio of *State of Rajasthan's* case (supra). Accordingly, even on the facts found by the Courts below, the State is immune from the liability sought to be enforced by the plaintiff.

17. In the result, the appeal succeeds and is hereby allowed. The impugned judgment and decree are set aside. However, in the facts and circumstances of the case, I direct the parties to bear their own costs throughout.