

(1990) 04 GAU CK 0016
In the Gauhati High Court
Case No : First Appeal No. 3 of 1988

State of Meghalaya and Others

APPELLANT

Vs

Jyotsna Das

RESPONDENT

Date of Decision : 02-04-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 19

Citation : AIR 1991 Guw 96

Hon'ble Judges : Srivastava, J

Bench : Single Bench

Advocate : A. Sarma, Government Advocate and Meghalaya, for the Appellant;
B.K. Das, for the Respondent

Final Decision : Dismissed

Judgement

Srivastava, J.—This is defendants' appeal against the judgment and decree dt. 30-7-87 passed by the Assistant District Judge No. 2, Cachar, Silchar, whereby the plaintiff respondent's suit for recovery of Rupees 21,433.50 paise was decreed against the defendants-appellants.

2. The plaintiff had filed the suit for recovery of Rs. 21,433.50 p. from the defendants, the State of Maghalaya and its officers, on the allegations that the plaintiff was an approved dealer in "non-levy" cement and other building materials and had been carrying on business at Shillongpatty, Silchar. The plaintiff through her husband had on 30-6-85 purchased 500 bags of non-levy cement from the defendant No. 9 at Gauhati on cash payment of Rs.43,500/- which included Rs. 1500/- as lorry freight advance for despatch through the defendant No. 8. The plaintiff's husband after the transaction had left Gauhati on getting assurance from the defendants Nos. 8 and 9 that said 500 bags of cement would be delivered at the plaintiff's premises by truck to be arranged by the carrier defendant No. 8. After waiting for some time, on 6-7-85 information was received that the defendants 6 and 7 had illegally and arbitrarily detained the two trucks carrying the plaintiff's 500 bags of non-levy cement from Gauhati

to Silchar via Meghalaya State at Umkiang Police and Supply Check gate. The plaintiff stated that after some personal effort by the plaintiff's husband, on 11-7-85 Truck bearing registration No. MLK 499 arrived at Silchar with 200 bags of cement and at the time of taking delivery, it was found that 55 bags of cement had been totally clotted and had become stone. The other truck bearing registration No. NLN 3635 reached Silchar on 12-7-85 and delivered 200 bags of cement at the plaintiff's business premises, out of which four bags had become totally clotted and had become stone. The plaintiff stated that the defendants were liable for the damage and loss caused to the plaintiff's goods.

3. The defendants Nos. 1 to 7 filed a joint written statement and pleaded that the court had no jurisdiction to try the suit. The allegations in the plaint were denied. The defendants' further plea was that the State of Meghalaya the defendant No. 1 was not liable for damages. The defendants 8 and 9 also denied liability for damages.

4. The learned trial court had framed the following issues:

1. Is there any cause of action?
2. Is the suit maintainable?
3. Does this court have any jurisdiction to try the suit?
4. Is the suit bad for waiver, estoppel and acquiescence?
5. Is the plaintiff entitled to any relief?
6. To what relief, if any, is the plaintiff entitled?

5. The learned trial court held that the plaintiff had cause of action, that the suit was maintainable, that the court had jurisdiction, that the suit was not bad for waiver, estoppel and acquiescence, that the plaintiff was entitled to reliefs. The suit was accordingly decreed against the defendants Nos. 1 to 7.

6. Aggrieved, the defendants 1 to 7 have come in appeal, and Sri A. Sarma, learned counsel appearing on their behalf, has submitted that the court at Silchar had no jurisdiction, and that the State of Meghalaya was not liable for damages. On the other hand, Sri B.K. Das, learned counsel for the respondent plaintiff has supported the finding of the trial court and refuted the submissions on behalf of the appellants.

7. I have considered the submissions for the parties and the evidence on record.

8. The points which arise for consideration are firstly that whether the court at Silchar had jurisdiction to try the suit, and secondly that whether the State of Meghalaya was liable for the acts of its servants.

9. In so far as the first point is concerned, Sri A. Sarma, learned Government Advocate, Meghalaya, has argued that the cause of action for the suit had arisen at Umkiang Police and Supply Check gate within the State of Meghalaya and

accordingly the territorial jurisdiction for the suit was with the courts in Meghalaya and that the suit could not have been filed at Silchar in the State of Assam. The submission for the respondent plaintiff, on the other hand, was that the cause of action had partly arisen at Silchar where the plaintiff had found the damaged goods and therefore the court at Silchar had jurisdiction.

10. The undisputed facts are that the plaintiff carried on business in "non-levy cement" at Silchar, the plaintiff's husband had purchased 500 bags of cement from Gauhati and the same was being transported from Gauhati to Silchar by road in two trucks bearing registration Nos. MLK 499 and NLN 3635. The said road runs through the State of Meghalaya which on the way has a Police and Supply Check gate at Umkiang. The said two trucks had arrived at Umkiang Police and Supply Check gate and had been stopped by the defendants 6 and 7 who were in charge of the said Check gate. It is also not disputed that each of the said trucks carried two hundred bags of cement under one challan and fifty bags of cement each under another challan. The two trucks were stopped at the said check gate and were not allowed to proceed. The cement was unloaded or partly unloaded. It appears that due to removal of tarpaulin cover of the trucks, the cement was damaged by rain water. It is also not disputed that the plaintiff received some damaged cement and some, i.e. 100 bags was not delivered at all.

11. Section 19 of the Code of Civil Procedure, hereafter referred as the Code is the appropriate provision to determine the court where the suit could be filed. Section 19 of the Code reads:

"Suits for compensation for wrongs to person or movables.-

Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts."

The suit was for compensation for wrong done to movable property of the plaintiff and accordingly the provisions of Section 19 were clearly attracted and hence provisions of Section 20 which commences with the words "other suits to be instituted" and "subject to the limitations aforesaid" would not be attracted for determination of the forum, where the suit could be filed. The above noted words in Section 20 clearly mean that if a suit was to be regulated by the provisions of Section 19 the provisions of Section 20 would not come into operation.

12. Sri A. Sarma, learned counsel for the appellants, has argued that the wrong was done within the local limit of the jurisdiction of the Court in Meghalaya because the wrong was done at Umkiang Police and Supply Check gate and the defendants 1 to 7 also resided in the State of Meghalaya and accordingly u/s 19 of the Code, the suit should have been filed only in the State of Meghalaya and nowhere else. While the defendants 1 to 7 no doubt resided in the State of Meghalaya the question has also to be considered on the basis of the place

where wrong was done.

13. The question is whether the expression "wrong done" should be construed to mean only the act which caused the wrong or should also include and cover the effect of the act. There would be no difficulty if only the act which caused wrong has to be taken into consideration for then the place where the act was done would be the place where wrong was done, but in my opinion, it shall not be reasonable and proper to put such a restrictive meaning to the expression "wrong done", which could very well and justifiably include the effect of the act, for "wrong done" is in reality the effect of the "act". The "act" by itself if it does not have any effect or results in causing effect would hardly be actionable, it is its effect which results in harm, loss or damage, etc. which together with such effect constitutes the "wrong done". It should consequently follow that if an act is done, say at place "X" and its effect which constitutes the wrong is at place "Y", it should not be said that the wrong was not done at place "Y", i.e. that it should not be restricted to mean that the wrong was done only at place "X".

14. Sri A. Sarma, learned counsel for the appellant, has submitted that in torts, there are three main wrongs concerning the "person", viz. "assault", battery and "false impersonation" and that the "person" means the human body. The wrong done in the present case is to movable property, i.e. the cement and the question for consideration is that whether the wrong done was within the jurisdiction of the court at Silchar.

15. Sri B. K. Das, learned counsel for the respondent has cited *Gokaldas Melaram v. Baldevdas*, AIR 1961 Mysore 188, where in a suit for malicious prosecution, for damages the court of the place where the summon, whereby the prosecution was commenced was held to have jurisdiction on the view taken that the "wrong to person" had been done at the place where the summon had been served. In *The State of Maharashtra Vs. Sarvodaya Industries*, where an order prohibiting sale of a commodity was issued at one place but its effect of having caused loss to the dealer was at another place -- Akola and it was held that the court at Akola had jurisdiction to try the suit. Sri A. Sarma, learned counsel for the appellant, has argued that the above authority has no application on the facts of the present case because it did not pertain to tortious liability and that "loss" may not at all be relevant if infringement of a right was not proved. It is true that there can be case of "dammum sine injuria" that is "damage without injury" but the present case is concerned with loss to movable property of the plaintiff, which was due to injury to plaintiff's right to aforesaid movable property. In my opinion, the above authorities have relevance to the present case and the principle laid down therein is attracted.

16. In the instant case, while it is true that the trucks had been stopped at Umkiang Police and Supply Check Gate within the State of Meghalaya and the act was done in the State of Meghalaya, but the fact also remains that the plaintiff at Silchar had found some of the cement when it was delivered clotted and had become stone or useless as cement and some was not delivered at all. In my

opinion it would not be incorrect to say that the wrong was not done to the plaintiff in regard to said movable property, i.e. the cement at Silchar where the goods in that condition were delivered to her. I hold that in the instant case the wrong done to movable property, i.e. the cement of the plaintiff was also at Silchar and consequently the suit for compensation for said wrong done was within the territorial jurisdiction of the court at Silchar.

17. As regards the next question, Sri A. Sarma, learned counsel for the appellant, has submitted that the State of Meghalaya could not be liable for the act of its servants, i.e. the defendants 6 and 7 who had actually intercepted the trucks and the goods therein. Sri Sarma has placed reliance upon *Kasturi Lal Ralia Ram v. State of U.P.*, AIR 1965 SC 1039 in support of his contention. It was laid down (para 28):

"It is not difficult to realize the significance and importance of making such a distinction particularly at the present time when, in pursuit of their welfare ideal, the Government of the States as well as the Government of India naturally and legitimately enter into many commercial and other undertakings and activities which have no relation with the traditional concept of governmental activities in which the exercise of sovereign power is involved. It is necessary to limit the area of these affairs of the State in relation to the exercise of sovereign power, so that if acts are committed by Government employees in relation to other activities which may be conveniently described as non-governmental or non-sovereign, citizens who have a cause of action for damages should not be precluded from making their claim against the State. That is the basis on which the area of the State immunity against such claims must be limited; and this is exactly what has been done by this Court in its decision in the case of *The State of Rajasthan Vs. Mst. Vidhyawati and Another*,

Sri B. K. Das, learned counsel for the respondent has placed reliance on *Vidhyawati The State of Rajasthan Vs. Mst. Vidhyawati and Another*, where it was held that the State was liable for the wrong done by its servant in course of his employment, which could not be referable to or ultimately based on the delegation of sovereign or governmental powers of the State. In my opinion, the fact that the defendants 6 and 7 had the authority under the general law to search to did not make their wrongful act in the instant case referable to sovereign power or to the exercise of delegated sovereign power of the state firstly because the goods were only in transit through the state of Meghalaya from Guahati to Silchar both in the State of Assam, secondly the goods were non-levy cement being carried under proper challans, thirdly there is nothing on record to show that there was any reasonable basis for the defendants 6 and 7 after having known the said facts to detain and offload the goods and fourthly in the process retain some of it and in obviously careless manner having left the rest in uncovered or semi uncovered state so that due to rains (it was the month of July) part of the goods were so damaged as to be of no use at all clearly resulting in loss to the plaintiff.

18. The defendants 6 and 7 were no doubt officers of the State, but there was no justification at all for their said wrongful act and just because a Government servant, in colourable exercise of authority does a wrongful act, it should not be said that the act was referable to some sovereign or statutory authority and that there should really be some basis constituting the nexus between the act and wrong done, before it may be said to be referable to sovereign or statutory authority. As said earlier, in the instant case, I do not find any such basis constituting the said nexus and hence I do not consider it reasonable to accept that the wrongful act of defendants NOS. 6 and 7 could be said to be referable to any statutory power. It was sheer misuse of their office as Government servants and while their wrongful act can and should be considered as committed during the course of their employment to render the State of Meghalaya constructively liable for damages for the wrongful act of its employees, it should not be accepted that their wrongful act could be referable to any statutory power so as to provide immunity to the State appellant No. 1 from liability for their wrongful act.

19. Sri Sarma, learned counsel for the appellant has submitted that fifty bags of cement in each of the trucks were not being carried with proper papers and the defendants 6 and 7 had authority in law to check and unload the cement in respect of which some orders of court were filed to show that a case was registered against the plaintiff's husband. I have considered the said evidence which is on record and I find that the plaintiffs clear case was that initially 200 bags were loaded in each truck and later fifty each were also loaded and consequently there were two separate challan documents for each of the truck and the defendants had created difficulties in respect of the fifty bags of cement, in each truck. Whatever might have been the case, the defendants 6 and 7 had, in my opinion, no authority in law to prevent the movement of cement including the fifty bags in each truck for the simple reason that it was non-levy cement and the said defendants had no basis for any suspicion that the cement was not non-levy cement or was otherwise suspect goods. The plaintiff had produced the necessary documents that he had purchased the cement from the defendant No. 9 at Guwahati and the same was in transit in trucks of the transport carrier the defendant No. 8, to Silchar and since there was no reason for defendants 6 and 7 to think that it was not non-levy cement or that it did not otherwise belong to the plaintiff, the checking and unloading of the cement by the defendants 6 and 7 were clearly wrongful acts. The mere fact that subsequently a case was registered does not in any manner make any difference to the basic fact that they had no business after having seen the papers to retain part of the goods and detain the truck.

20. For the aforesaid reasons, I hold that the acts committed by the defendants 6 and 7 were clearly wrongful acts and the defendants appellants including the defendant State of Meghalaya was liable for damages. The suit was, therefore, rightly decreed by the learned trial court. This appeal fails and is dismissed with costs to the plaintiff respondent.