
(1965) 04 AHC CK 0008
In the Allahabad High Court
Case No : Second Appeal No. 2610 of 1960

State of Uttar Pradesh

APPELLANT

Vs

Chhotey Lal and Others

RESPONDENT

Date of Decision : 23-04-1965

Acts Referred:

Constitution of India, 1950 — Article 300

Citation : AIR 1967 All 327

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : Shambhu Prasad, for the Appellant; V.K.S. Chaudhary, S.B.L. Gaur and V.B. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Dhavan, J.—This is an appeal by the State of Uttar Pradesh from the concurrent decisions of the Courts below decreeing the plaintiff-respondent's suit for recovery of Rs. 1000 as compensation for 16 bags of sugar (shakkar) which were seized by a police official in the employ of the appellant State and never returned to the plaintiff. The facts as alleged by the plaintiff are these. On 17-1-1947 the plaintiff Chhotey Lal was transporting 67 bags of shakkar and two of bhur from Shikarpur to Raghupura in a motor truck. When the truck reached the police station Kakore it was stopped by the police. They arrested the plaintiff and seized all the bags on the alleged ground that 16 of them contained khandsari sugar of which the movement was banned under the U. P. Control of Supplies (Temporary power) Ordinance, II of 1946. The plaintiff, protested and said that the 16 bags contained not khandsari but shakkar the movement of which was not banned. The plaintiff's version is that all 67 bags were seized by the police and given in the custody of various persons, the 16 bags in dispute being entrusted to one Ram Chandra who is the third defendant in the suit and the third respondent in this appeal. The plaintiff was prosecuted u/s 7 of the Essential Supplies (Temporary Powers) Act, but acquitted. He then made several applications for

the return of his goods but to no effect. He then filed the present suit for the return of the 16 bags, or in the alternative, for Rs. 1000 at the rate of Rs. 25 per bag. The plaintiff contended that his bags of sugar were illegally seized by the station officer of Kakore who was a servant of the State of Uttar Pradesh and this wrongful act, according to him, was done in the course of his service and within the scope of his duties. He also contended that the loss suffered by him was the natural consequence of the action of the Station officer for which the State and the Officer were both liable. The plaintiff also impleaded as co-defendant Ram Chandra who, according to him, was given the custody of the bags in dispute. All the three defendants resisted the suit. The Station Officer alleged in his written statement that he had acted bona fide in the discharge of his duties and that his arrest of the plaintiff and the detention of the goods was justified because the plaintiff was caught in the act of transporting 16 bags of Khandsari sugar in contravention of the U. P. Government's order mentioned above. He further pleaded that he had examined the 1ft bags of sugar at the time and ground that they contained Khandsari and not shakkar. He further alleged that he took samples from each bag and had then sent to the chemical examiner under a sealed cover and the latter's report was that the samples were of Khandsari sugar. He also alleged that he did not keep the goods in his custody but entrusted them to various superdars. Lastly, he alleged that he was transferred from Kakore during the pendency of the Criminal proceedings against the plaintiff and was not responsible for the non-return of the goods to the plaintiff after his acquittal. The State of Uttar Pradesh adopted the version of facts given by the Station Officer and denied that the detention of the goods was illegal. In addition they pleaded that they were not liable for any act or omission on the part of the Station Officer who had acted in the exercise of his statutory powers. The third defendant Ram Chandra denied the Station Officer's allegation that the goods had been entrusted to his custody, and alleged that his signature was taken on a blank paper but no goods were entrusted to him. This defendant filed a written statement denying his liability but did not appear at the trial and took no further part in the proceedings.

2. It may be noted at this stage that the plaintiff's suit is in respect of 16 bags of sugar, though his case is that not a single bag was returned to him. Learned counsel for the plaintiff respondent stated, on a question from me, that the plaintiff may have brought another action in respect of the remaining bags, but counsel was not aware of such proceedings. The present suit is confined to the recovery of compensation in respect of 16 bags only.

3. The trial Court disbelieved the version of the defendants and held that the bags in dispute contained sugar and not khandsari. It completely rejected the story of the Station Officer that he examined the bags at the time and found them to contain khandsari of which he took samples and sent them to the Chemical Examiner. It regarded his entire story as a fabrication and commented somewhat severely on his lack of veracity and even hinted that he had manufactured it. It rejected the plea of the State that it was not liable for the

wrongful acts of the Station Officer and held that as employer it was vicariously liable for any tortious act of its servants. It believed the plaintiff's version that 16 bags contained sugar which was seized from him but never returned. On these findings it decreed the suit against the State. The suit against the Station Officer was dismissed on the technical ground that the plaintiff had omitted to serve the usual notice u/s 80, C. P. C. on this defendant. It also dismissed the suit against the supurdar Ram Chandra on the ground that it was not established that 16 bags of sugar were entrusted to Ram Chandra as alleged by the police.

4. The State appealed from this decision. The learned Civil Judge confirmed all the findings of the trial Court and dismissed the appeal. The State has now come to this Court in second appeal.

5. Since the decision of the lower appellate Court in this case, the Supreme Court delivered two judgments both of which have been cited in this appeal. The first is *The State of Rajasthan Vs. Mst. Vidhyawati and Another*, which was decided on 2-2-1962. In this case the Supreme Court held that the State of Rajasthan was liable in damages for the negligent driving of one of its drivers who at the time of the accident was driving rashly and negligently, a jeep car, owned and maintained by the State for the official use of the Collector of the district. The driver at the time of accident was bringing it back from a workshop after repairs, and on the way knocked down a pedestrian who was fatally injured. The Court rejected the plea of the Rajasthan Government that it was not liable for any wrongful act of a State official committed in the exercise of the sovereign powers of the State. This case is relied on by learned counsel for the plaintiff-respondent.

6. The second is the case of *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh*, Civil Appeal No. 106 of 1963 decided by the Supreme Court on 20-9-1964: (reported in AIR 1966 SC 1039). It has not yet been published in any law report, but my attention was drawn to it during the hearing of the appeal when a summary of the judgment of the Supreme Court appeared in a Delhi newspaper, and I adjourned the case to enable the counsel for the State to obtain a certified copy. In this case the Court held that in considering the vicarious liability of the State for the negligent acts of its servants a distinction must be drawn between an act committed "in the course of an undertaking or employment which is referable to the exercise of sovereign power or to the exercise of delegated sovereign power" and an act "which is not connected in any manner with the sovereign power of the State at all". The Court laid down the following rule of law.

"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 the 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 act 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."

The case before the Supreme Court arose out of a suit for damages by a firm on the ground that the police of Meerut had illegally seized a large quantity of gold and silver from one of the partners of the firm. The partner himself was arrested but later released on bail. The silver was returned to him but not the gold. It appears that the gold was entrusted to the custody of a head constable, one Mohammad Amir, who misappropriated it and escaped to Pakistan on 17-10-1947. The plaintiff claimed that the State was liable for the misconduct of its official while the latter denied all liability on the ground that the wrongful act was done by the head constable in the discharge of his statutory powers. The suit was decreed by the trial court but this decision was reversed on appeal by this Court. The plaintiff appealed to the Supreme Court which upheld this Court's decision and enunciated the principle of law quoted above. Their previous decision was cited before the Court and discussed in this judgment.

7. The question before me is whether the present case is covered by the principle enunciated in the Rajasthan case or in Kasturi Lal Ralia Ram Jain's case civil Appeal No. 106 of 1963 D/- 20-9-1964 (reported in K.S. Venkataraman and Co. Vs. State of Madras, . Learned counsel emphasized the similarity between the facts of the present case and those of Kasturi Lal Ralia Ram Jain's case, civil Appeal No. 106 of 1963 D/. 20-9-1964 :(reported in Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh, and pointed out that in the former the plaintiff's gold was seized by the police and not returned after his release, and in the present case the plaintiffs' bags of shakkar were seized by the police and not returned. The only difference between the two cases, learned counsel argued, was that in Kasturi Lal Ralia Ram Jain's case a police official misappropriated the gold whereas in the present case the police could not account for the bags of sugar which had disappeared while in their custody. But this difference was immaterial because in each case the State claims immunity from vicarious liability on the ground that the wrongful act of the State Official or officials was committed in the discharge of their statutory function and in course of a duty ""which is referable to the exercise of sovereign power or to the exercise of delegated sovereign power" If the State was not liable for the misconduct of a police official who had misappropriated a quantity of gold in his custody, it was also not liable for the negligence of the police officer in not taking care of the goods seized by him in the discharge of his statutory duties.

8. On the other hand, learned counsel for the plaintiff-respondents submitted that the present case is covered by principle of liability of the State enunciated in the Rajasthan case. He relied on the following observations of the Supreme Court in the judgment in that case:

"Now that we have, by our Constitution, established a Republican form of Government and one of the objectives is to establish a Socialistic State with its

varied industrial and other activities, employing a large army of servants, there is no justification, in principle, or in public interest, that the State should not be held liable vicariously for the tortious act of its servant. This Court has deliberately departed from the Common Law rule that a civil servant cannot maintain a suit against the Crown. In the case of *The State of Bihar Vs. Abdul Majid*, , this court has recognised the right of a government servant to sue the Government for recovery of arrears of salary. When the rule of immunity in favour of the Crown, based on Common Law in the United Kingdom, has disappeared from the land of its birth, there is no legal warrant for holding that it has any validity in this country, particularly after the Constitution."

Learned counsel argued that the principle of vicarious liability has been enunciated in the widest possible terms in this passage and no exceptions have been made.

9. In my opinion, the present one is covered by the principle laid down by the Supreme Court in *Kasturi Lal Ralia Ram Jain's case*--Civil Appeal No. 105 of 1963, D/- 20-9-1964: (reported in *Kasturilal Ralia Ram Jain Vs. State of Uttar Pradesh*, . It is true that the principle of vicarious liability in the earlier Rajasthan case was laid down in very wide terms, but this case was considered in *Kasturi Lal Ralia Ram Jain's case*. Civil Appeal No. 105 of 1963, D/. 20-9-1964: (reported in AIR 1964 SC 1039) and its scope explained.

The Station Officer who seized the plaintiff-respondents' goods acted in the discharge of statutory duties or, to use the words of the Supreme Court ""in the exercise of delegated sovereign power." Therefore, the State is not vicariously liable for any loss to the plaintiffs resulting from the Station Officer's misconduct or negligence or misconduct of any other State official or officials.

10. Learned, counsel then argued that the later decision is not binding on me because the principle enunciated in it is inconsistent with that in earlier one. He contended that the later judgment of the Supreme Court restores the decision in the *Peninsular and Oriental Steam Navigation Co. v. Secretary of State for India* (1861) 5 Bom H. C. R. App. 1 (and the subsequent ones based on it) to its former pedestal of authority from which it had been dethroned by the Court's earlier decision in *The State of Rajasthan Vs. Mst. Vidhyawati and Another*, . But the flaw in this argument is that the *State of Rajasthan's case* was considered and distinguished by the Supreme Court before enunciating the principle of law in the later decision. That decision is binding on this court and if there is any inconsistency, it is for the Supreme Court to remove it.

11. Learned counsel for the plaintiff-respondents then argued that on the findings of the Courts below the Station Officer cannot be said to have acted in the discharge of his statutory duties. He pointed out that the power of police officers to seize property is regulated by Section 550 of the Code of Criminal Procedure, which provides.

"any police official may seize any property which is alleged or suspected to have

been stolen or which may be found under certain circumstances which create suspicion of the commission of any offence"

Therefore, counsel submitted, the power of seizure is subject to a condition precedent, namely, that the property seized is alleged or suspected to have been stolen, or found under suspicious circumstances, suggesting the commission of any offence; but in the present case, both the courts have found that the station officer who seized goods had manufactured a case against the plaintiff. Therefore, learned counsel argued, the condition precedent for the valid exercise of this power was absent and the act of seizure was not referable to any exercise of delegated sovereign power and was not better than the act of a common thief or robber. This argument is self-defeating as regards the vicarious liability of the State. But I do not agree that the Station Officer's act is not referable to the exercise of his statutory powers. He had the power to seize the goods if he suspected that the plaintiff was removing concealable goods from one place to any other. But the argument is that the Station Officer grossly abused this power. Learned counsel relied on the well-known principle of law that abuse of power will not protect the official concerned from an action in damages. I agree that the abuse of power resulting in any injury to any person is actionable. But abuse of power does not mean absence of power. It simply results in the withdrawal of any immunity conferred by law from the person guilty of such abuse. The plaintiff was entitled to claim damages from the police official but his suit against him was dismissed on the technical ground that he had not served proper notice on that official before filing it, and the plaintiff filed no appeal from this decision. Therefore, the question before me is not the liability of the Station Officer but the vicarious liability of the State. The later decision of the Supreme Court exempts the State from such liability in a case like the present one.

12. For these reasons, I allow this appeal and dismiss the plaintiff-respondent's suit. But in the circumstances, I direct the parties to bear their costs of this appeal.