
(1958) 02 CAL CK 0031
In the Calcutta High Court
Case No : A.F.A.D. No. 275 of 1954

The State of West Bengal

APPELLANT

Vs

Chandi Charan Das

RESPONDENT

Date of Decision : 25-02-1958

Acts Referred:

Limitation Act, 1908 — Article 48, 49

Citation : AIR 1958 Cal 433 : (1959) 1 ILR (Cal) 489

Hon'ble Judges : Renupada Mukherjee, J;B.N. Banerjee, J

Bench : Division Bench

Advocate : Jajneswar Majumdar and Somendra Chandra Bose, for the Appellant; Bholanath Roy and Sachindra Kumar Palit, for the Respondent

Final Decision : Dismissed

Judgement

Renupada Mukherjee, J.—The appellant before us is the State of West Bengal, and the appeal was pressed only on the ground of limitation.

2. In order to appreciate how the Question of limitation has arisen in the present case, it is necessary to state the following facts about which there is practically no controversy in this Court. Respondent Chandicharan Das of this appeal was a dealer in rice, and he had purchased 230 maunds of rice at Mathurapur, and while this quantity of rice was in the course of transport, it was seized by one Amar Choudhury who was Inspector of Civil Supplies under the Government of Bengal on 29th March, 1946, on the ostensible plea that the rice was being smuggled out of the cordoned area. The said quantity of rice was thereafter deposited with Messrs. Shaw Wallace and Ispahani Co. which was a firm and the chief procurement agent of the Province of Bengal, as it then was. The respondent thereafter brought a criminal case against the said Amar Choudhury on the allegation that he had illegally seized the rice of the plaintiff respondent because of the latter's refusal to pay some illegal gratification to him. On the footing of that allegation Amar Choudhury was prosecuted for an offence u/s 161 of the Indian Penal Code in the Court of the Sub-divisional Officer at Diamond

Harbour. This case resulted in the acquittal of Amar Choudhury on 28-2-1948. During the pendency of the criminal case, the respondent made several attempts before the Sub-divisional Officer of Diamond Harbour for getting back the rice which was seized from him, but to no purpose. Under the orders of the said officer the rice was kept in deposit in the godown of Shaw Wallace & Co. at Mathurapur. No action was taken against the respondent at any time for his alleged attempt to smuggle the rice out of the cordoned, area. After the final disposal of the criminal case against Amar Choudhury, the plaintiff respondent again moved the Sub-divisional Officer of Diamond Harbour for getting back the rice or its equivalent price, but that officer passed an order on 5th December, 1949, refusing either to deliver back the rice or to pay its price to the plaintiff. The plaintiff, therefore, instituted the suit for recovery of a sum of Rs. 2932/8as. as being the price of the rice.

3. Various defences were taken on behalf of the State contesting the claim of the plaintiff. In this appeal we are not concerned with any of those defences, except the defence of limitation. We may just mention here that the suit of the plaintiff respondent was dismissed by the trial Court on the ground that the plaintiff had failed to prove that the defendant had utilised the rice in question in any way, and was thereby benefited. An appeal was preferred by the plaintiff from the decree of dismissal passed by the trial Court and the appeal succeeded. The Lower Appellate Court which was the final Court of facts has found that at all material times the quantity of rice which was seized by Amar Choudhury was kept in the godown of the firm of Shaw Wallace and Company which was the chief procurement agent of the Government of Bengal, as it then was. The Lower Appellate Court has further found that this rice was not returned to the plaintiff respondent in spite of his repeated prayers and it was utilised for the benefit of the State of West Bengal. In this view of the matter, the Lower Appellate Court reversed the decree of the trial Court and decreed the suit of the plaintiff. The question of limitation does not appear to have been raised or canvassed before the Lower Appellate Court.

4. Mr. Mazumdar appearing on behalf of the State of West Bengal submitted before us that upon the facts of this case, the Courts below should have held that the claim of the plaintiff was barred by limitation. He submitted that the substance of the allegation of the plaintiff respondent, so far as the State of West Bengal was concerned, was that his rice was illegally seized and converted by the Government of West Bengal to its own use, and he was, therefore, entitled to recover the price of the quantity of rice seized from his custody. Mr. Mazumdar contended that Article 48 of the First Schedule of the Indian Limitation Act was the proper article which should be applied to the facts of the present case, and as the plaintiff respondent all along knew that the rice had been illegally detained by the Government from the date of seizure, viz., 29th March, 1946, limitation would run from that date.

5. In our opinion, this contention of Mr. Mazumdar cannot be accepted. If we

were to accept this contention, then we would have to give a complete go-by to the defence of the appellant. The defence of the appellant was that the initial seizure of the rice which was made by Amar Choudhury was made at the sole risk and responsibility of Amar Choudhury, The seizure was illegal and the State was not bound by the illegal action of Amar Choudhury. This was the defence of the appellant State in its written Statement, and on a consideration of the facts and circumstances of this case, we are of opinion that this part of the defence is quite true. The Inspector of Civil Supplies, viz., Amar Choudhury was entirely responsible for the seizure of the rice which in this particular case was illegal and unauthorised. The commission of this illegality cannot be vested upon the State of West Bengal. After the seizure of the rice, it was kept in the custody of the chief procurement agent of the Government, viz., Shaw Wallace & Co. When the firm took the rice into its custody, the custody was not illegal or wrongful. Shortly after the seizure of the rice a criminal prosecution was started against Amar Choudhury u/s 161 of the Indian Penal Code. During the pendency of that criminal case the plaintiff respondent made various attempts to get back the rice, but without any success. The rice was detained in the custody of Shaw Wallace & Co. by the order of the Magistrate during the pendency of the criminal proceedings against Amar Choudhury. That case finally ended with the acquittal of Amar Choudhury on 28th February, 1948. Up till that date no question of the possession of the State being illegal or wrongful arises, because the rice remained in the custody of the chief procurement agent of the State under the orders of a Magistrate.

6. Mr. Bose who argued this appeal on the second day on behalf of the Government drew our attention to a case reported in L.P.E. Pugh v. Ashutosh Sen 56 Ind App. 93: AIR 1929 PC 89 and contended that the quantity of rice having been initially seized in an illegal manner, it should be held that there was conversion of the rice by the State from the date of the seizure, and as the plaintiff respondent all along knew that his rice had been seized on 29th March, 1946, limitation should run from that date. We have already pointed out that there was no conversion of the rice by the State of West Bengal from the time of Seizure. It is, no doubt, true that Article 48 of the First Schedule of the Indian Limitation Act includes all conversions, whether dishonest or not. Mr. Bose contended on the strength of the Privy Council case that conversion by the State of West Bengal having taken place, as a matter of fact, from 29th March, 1946, limitation should run from that date, although there was no dishonesty on the part of Government.

7. We are not inclined to accept this argument, because there was no conversion of any sort on the part of the Government from 29th, March, 1946, and the Government, or rather the chief procurement agent of the Government, was merely an innocent custodian of the rice from 29-3-46 upto the date of the termination of the criminal proceedings against Amar Choudhury, which was 28th February, 1948. In our judgment Article 48 of the First Schedule of the Indian Limitation Act does not properly apply to the facts of the present case and the

more appropriate article of the First Schedule of the Limitation Act which would be applicable to the facts of the present case would be Article 49. That article provides a period of three years as the period of limitation from the date when the possession of a detainer of some specific movable property becomes unlawful. In the present case, as we have already seen, the possession of Government, or rather of its agent, was innocent and lawful not only at the inception, but also for some succeeding period, viz., the period, during which the criminal case against Amar Choudhury remained pending. Limitation under Article 49 could not, therefore, arise so long as the possession of Government was not wrongful. In our opinion, such possession became unlawful or wrongful from the date when there was a refusal on the part of Government to deliver back the paddy to the plaintiff respondent. This date was given in the plaint as 5th December, 1949. That allegation was not controverted in the written statement of the appellant State. It goes without saying that the State has no right to detain the goods of its subject illegally or wrongfully, and if it does so, it is bound under the law to pay the price of the goods to the subject.

8. The broad and simple facts of the present case are that a quantity of rice of the plaintiff respondent was illegally seized by an officer of the State. Of course, the State was not a party to the seizure, but the goods were taken charge of by the State. That being so, the State Was bound to return the goods to the owner or to pay the equivalent price of the goods. No question of limitation arises in such a case until there is an improper or illegal refusal on the part of the State to deliver back the goods. In this case that date was 5th December, 1949. Limitation under Article 49 of the First Schedule of the Indian Limitation Act could not arise before the last mentioned date. The suit was instituted within three years of that date, and it is not, therefore, barred by limitation.

9. The only contention urged on behalf of the appellant State having failed this appeal is dismissed with costs to the respondent.

B.N. Banerjee, J.

10. I agree.