Raj NaraIn Verma Vs. Emperor

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Court : Allahabad

Decided On : Nov-28-1933

Reported in : AIR1934All318; 147Ind.Cas.1199

Appellant : Raj NaraIn Verma

Respondent : Emperor

Judgement :
ORDER

Niamatullah, J.

1. This is a reference by the learned Sessions Judge of Farrukhabad in a case in which the applicant, B. Raj Narain Varma, was convicted of an offence under Section 155, U.P. Municipalities Act and fined a sum of eight annas. The charge against him was that he had introduced certain articles within the octroi limits of the Municipality of Farrukhabad-cum-Fatehgarh without paying octroi duty on them. The difficulty arose from the fact that between the town of Farrukhabad and Fatehgarh there is an intervening space, which is not part of the Municipal area. This is what I gather from the record before me, though it is not certain.

2. The applicant purchased certain goods in the town of Farrukhabad and was importing them into Fatehgarh. The octroi muharrir at the barrier outside Fatehgarh demanded octroi duty, which the applicant refused to pay on the ground that he was merely taking dutiable articles from one part of the Municipality to

another. His refusal led to his prosecution with the result already stated. The Magistrate, who tried the case summarily regarded the applicant's contention, viz., that the taking of dutiable articles from one part of the Municipality to another cannot be an offence under 8. 155, Municipalities Act, as 'carrying some sense,' but he felt constrained by the law as he found it to be, to convict the applicant.

3. The learned Sessions Judge could not ascertain from the record as to whether the applicant's allegation that the articles had boon purchased by him in Farrukhabad and were being taken to Fatehgarh was admitted to be true. His view apparently was that if this allegation be accepted as true, the applicant should be considered to have committed no offence. Accordingly he recommends that this Court may set aside the conviction and direct an inquiry as to whether

the goods which were imported into Fatehgarh Municipality were brought in from the area of Farrukhabad Municipality.

4. After the learned Sessions Judge wrote out his order of reference, the trying Magistrate furnished an explanation in which he made it perfectly clear that it was admitted on both sides that the applicant had purchased the articles in question at Farrukhabad and was importing them into Fatehgarh when octroi duty was demanded. A notice was issued to the Municipal Board of Farrukhabad-cum-Fatehgarh by this Court, but no appearance has been made on its behalf.

5. In my opinion it is sufficiently clear that the facts alleged by the applicant were not disputed before the trying Magistrate, and I would dispose of this reference on the assumption that the applicant had purchased at Farrukhabad certain articles, on which octroi duty was payable according to the schedule, and' imported them into Fatehgarh. The only, question is whether in doing so he committed an offence under Section 155, Municipalities Act. That section runs as follows:

A person introducing or attempting to introduce within octroi limits, or abetting the introduction within octroi limits, of any goods or animals liable to the payment of octroi, for which the octroi due on introduction hag neither been paid nor tendered, shall be punished with a fine, which may extend either to ten times the value of such octroi or to Rs. 50, whichever is greater, and which shall not be less then twice the value of such octroi.

6. A certain bye-law, framed by the Municipality, provides that

no toll shall be charged on goods when entering Fatehgarh, if it has been paid at Farrukhabad, and vice versa.

7. I have mentioned that between Farrukhabad and Fatehgarh there is an intervening space, which is probably not part of the Municipal area. Even if it is part of the Municipal area, it is so situated that articles entering Fatehgarh may well be taken to have been brought not from Farrukhabad but from other places outside the Municipal limits. Unless the octroi officials are satisfied that the article is being imported from a place within the Municipal limits, difficulty is likely to arise in any case, because on the one hand it may be asserted that the goods are being moved from one part of the Municipality to another, and on the other hand, the octroi officials may maintain that the same might well have been brought from outside. In the case before me however it is permissible to start with the assumption that the articles. in question were being taken from Farrukhabad to Fatehgarh.

8. The words introducing or attempting to introduce within the octroi limits.' occurring in Section 155, Municipalities Act, obviously imply the introduction of dutiable articles from a place outside the Municipal limits into the Municipal limits. Where there is an intervening space between two parts of a Municipal area and goods are taken from one such part to anotherit cannot be said that such goods are being introduced within the octroi limits. It may be contended that, in so far as goods have to pass in transit through the intervening space, which is not part of the Municipal area, and as it is after passage through that space that the goods have to re-enter the limits of the Municipality, they should be considered to have been introduced within octroi limits as contemplated by Section 155, Municipalities Act. I do not think the section can bear such an interpretation. The whole object of the provision like the one contained in Rule 155 is to impose octroi duty on goods imported from outside Municipal limits. It could never have been contemplated that articles purchased within the Municipal limits may become dutiable within those limits.

9. It appears to have been contended on behalf of the applicant before the learned Sessions Judge that the articles which he had purchased at Farrukhabad must have bee a paid for when they had been originally imported from outside the Municipal limits. I think this contention has force. 'Section 114, Evidence Act, enables a Court to presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business in relation to the facts of the particular case. If articles, which are of foreign production, are found exhibited by vendors in Farrukhabad, it is permissible to presume that they had paid octroi duty on such goods when the same were originally imported. In this view, the applicant cannot be deemed to have committed any offence, if it be accepted that the articles in question in this case were purchased by him at Farrukhabad, assuming octroi duty is payable on them on importation.

10. For the reasons stated above, I set aside the order of the Magistrate convicting B. Raj Narain of an offence under Section 155, Municipalities Act, and direct that the fine, if paid, be refunded.