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Court : Allahabad

Decided On : Nov-10-1917

Reported in : AIR1918All320(2); 43Ind.Cas.446

Judge : Piggott and ;Walsh, JJ.

Appellant : Manik Chand

Respondent : Emperor

Judgement :

Piggott, J.

1. This is an application in revision against the conviction of one Manik Chand, a shopkeeper and cloth dealer of the city of Bareilly, on a prosecution instituted against him under the orders of the Municipal Board of that place. It would appear that on the 19th of February a consignment of cloth addressed to Manik Chand reached one of the octroi barriers on the boundary of the aforesaid Municipal area. The officer in charge demanded a larger sum by way of octroi duty than Manik Chand considered was properly leviable under the rules. The matter was referred to the Octroi Superintendent who assessed the duty at Rs. 1-0-9, and it is quite clear that he had power to do this under the rules. The position then became this, that Manik Chand had a right of appeal within sixty days against the decision of the Octroi Superintendent, but that he could only exercise that right by first paying under protest the duty demanded and then appealing within seven days of the date of this payment. Practically the result is that he had 53 days within which to

make up his mind whether he would pay or not and if he desired to pay under protest and to exercise his right of appeal, he could then do so. Manik Chand seems to have elected' to fight the matter out with the Board. It seems that he presented a petition to the Chairman but as he did this without having paid under protest or otherwise the extra duty demanded, it could not be treated as a valid petition of appeal. On the expiry of the sixty days a prosecution was instituted by the issue of a summons from a Magistrate's Court and Manik Chand has been sentenced to a fine of Rs. 5 for breach of Rule No. 40 of the Municipal Account Code, which lays down that under the circumstances above stated a person in the position of Manik Chand shall pay the duty as assessed by the Octroi Superintendent subject to the right of appeal already mentioned.

2. The substantial point taken in the petition before us is that Manik Chand, having left the goods in question in the possession of the Municipal authorities, should not be regarded as having committed any offence. This plea would be a valid answer if the case against Manik Chand were that he had introduced or attempted to introduce within octroi limits goods liable to the payment of octroi for which the octroi due had neither been paid nor tendered (vide Section 155 of the United Provinces Municipalities Act No. 11 of 1916). This, however, is not the question before us. What we have to determine is whether there has been a punishable breach of a rule validly made by the Local Government under powers lawfully exercisable by that Government. We felt some difficulty over the question as to whether the mandatory direction in Rule 40, already referred to, which directs that the person thinking himself aggrieved by the assessment made by the Octroi Superintendent shall pay the sum so assessed subject to a right of appeal, could be made the basis of a prosecution in the absence of a clear specification of the period within which such payment must be made and the expiration of which without payment could be regarded as completing the offence. We think, however, upon an examination of the rules, that the necessary period is laid down by inference and that it is a period of 53 days from the date of the Octroi Superintendent's assessment. It has been suggested before us in argument, although the point is not explicitly taken in the petition for revision, that the rules of the Municipal Account Code under which this conviction has been affirmed are no longer in force, by reason of the repeal of the former Municipalities Act 1 of 1900

under which these rules were framed. We have been informed that the question of the revision of the Municipal Account Code is under consideration and it may well be that this rule, amongst others, would be the better for revision in the direction of greater, clearness and definiteness. In the meantime, however, no fresh rules have been issued under the powers exercisable by the Local Government by virtue of Section 299 of the present Act. On this point it would: seem that the jurisdiction of the Court is saved by Section 24 of the Provincial General Clauses Act I of 1904. In a very similar case another Judge of this Court has treated the provisions of this Act as validating a prosecution for an offence punishable, if at all, only under the Act of 1900, vide the case of Amir Hasan Khan v. Emperor 38 Ind. Cas. 736 : 15 A.L.J. 159 : 18 Cr.L.J. 352. There is, therefore, authority for the view which we take of the operation of Section 24 above referred to. We are of opinion that this application fails and must be dismissed.

Walsh, J.

3. I agree. I have felt some doubt as to whether the old Rules of 1900 have not ceased to have any operative effect, so far as they are inconsistent with Section 155 of the new Act, and of course care will have to be taken, when making the new rules, in dealing with this matter which is expressly provided for by Section 155 of the new Act, but I do not feel so clear about it that I ought to differ.

4. The offence charged is clearly the failure to pay. The case is very like the well-known case reported in the English report's where a certain Alderman who was Chairman of the Watch Committee, and, therefore, in effect Chairman of the Tram Company was returning from a theatre in an overloaded tram and gave up his seat to a lady and in doing so dropped his ticket. When the inspector came to collect the tickets and the, Alderman was unable to produce his ticket, he was asked to pay his fare again or to leave the car. He refused to do either and was summoned for failing to pay his fare. The High Court held that it was impossible for the inspector to hold an enquiry then and there and to arrive at a decisive result as to whether fare had already been paid once or not and that the fare ought to have been paid under protest and if it had been paid twice could be recovered from the Company, and the Alderman was held technically guilty That is a reasonable result

in this case, because after all it was the duty of the Octroi official to collect the money, 'and if the payment made under' protest, either, with the object of presenting an appeal or where no appeal is preferred, turns out in fact to be in excess of the proper amount payable, there is an authority of this Court that it can be recovered in a suit against the Municipality. I agree, therefore, that this is not a case for interference in revision.

5. The application is dismissed.

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