

Emperor Vs. Har Datt

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Court : Allahabad

Decided On : Jul-23-1936

Reported in : AIR1936All743; 165Ind.Cas.465

Appellant : Emperor

Respondent : Har Datt

Judgement :

1. This is an appeal by the Local Government against the order of acquittal passed by Mr. Kailash Chandra Trivedi, Magistrate, 1st Class, Almora. Hardatt, driver of Bus No. 467, was prosecuted by the Municipal Board of Almora for the non-payment of toll tax in respect of the lorry brought by him within the Municipal limits on 15th November 1934 through the toll barrier situated at Shialidhar at a distance of 3 miles from the town of Almora and breach of bye-laws Nos. 1, 3 and 4. The learned Magistrate acquitted Hardatt on the ground that no breach was committed by him as the toll tax had all along been realized from passengers travelling in a lorry or a car and had never been realized so far from the drivers. It appears from his judgment that he is under the impression that the tax is leviable on the passengers. Bye-laws Nos. 1 and 3 are:

(1) No person shall bring within the limits of the Almora Municipality any laden vehicle or laden animal or riding ponies or mules or jhampans, dandies or other conveyances in respect of which a toll is leviable, until the toll due in respect thereof has been paid to such persons and at such barriers as the Board may from

time to time appoint.

(3) When any laden coolie or any person in charge of a laden vehicle or laden animal or riding ponies, riding mules or dandies or other means of conveyance wishes to pass a barrier, such coolie or person shall pay the toll to the moharrir at the barrier. The moharrir shall make out a receipt in triplicate; he shall tender two copies to the person paying the toll and shall retain the third as a counterfoil in the receipt book.

2. The toll leviable on a motor car or a motor lorry as given in the schedule of toll rates under the bye-laws is: -(a) Motor car, each Rs. 2, in addition per passenger Re. 1. Motor lorry, each Rs. 3 and in addition per passenger, eight annas.' It will appear from these bye-laws that the toll is leviable not on passengers but on a laden vehicle. The amount of toll would vary according to the number of passengers in a laden vehicle. This fact cannot and does not make the toll tax leviable on passengers. In spite of the fact that the amount of toll tax has to be calculated according to the number of passengers in a vehicle; the tax remains leviable on the vehicle. Under bye-law No. 3 it is the person in charge of a laden vehicle who is liable for the payment of the toll due on the laden vehicle in his charge. The mere fact that for the sake of convenience the toll tax has so far been collected by the toll moharrirs or employees of the Municipal Board from drivers as well as from passengers would not change the nature of the tax or the liability for it, nor would it make the passengers liable for it. As the soon as the person in charge of a laden vehicle passes into the Municipal limits he becomes liable for the toll tax, and if he does not pay it he becomes liable for the penalty provided in the bye-laws for their breach. The penalty provided for the breach of the provisions of bye-laws Nos. 1, 2 and 4 is a fine which may extend to Rs. 50. It was argued by the learned Counsel for the respondent that the toll tax in question was. ultra vires as it was against the provisions of Section 128, Municipalities Act. Section 128 lays down:

Subject to any general rules or special orders of the Local Government in this behalf, the taxes which a Board may enforce in the whole or any part of a Municipality are Clause (7)-a toll on vehicles and other conveyances, animals and

laden coolies entering the Municipality.

3. The learned Counsel's argument is that the tax in question is not a tax leviable on a vehicle but is a tax leviable on passengers as the burden of the tax ultimately would fall on the passengers. As has already been pointed out the bye-laws framed in this connexion are very clear and they clearly lay down that the tax is leviable on a laden vehicle and not on passengers. The tax imposed by the Municipal Board therefore is not against the provisions of Section 128, Municipalities Act. The question whether the tax is in accordance with the provisions of the Municipalities Act or not is concluded by the fact that the imposition of the tax has been notified in the Gazette by the Government. After the notification it is not open to anybody to question says

A notification of the imposition of a tax under Sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act.

4. The learned Counsel has relied on the case in *Nek Mohammad v. Emperor* 1936 All 83 and has argued that the word 'bring' in Rule 1 has an element of 'pause' or 'repose.' With all respect to the learned Judge we do not agree with his interpretation of the word 'pause' or 'repose.' As soon as a vehicle enters the Municipal limits the act of bringing is complete and it comes within the provisions of Rule 1 and becomes liable for the tax irrespective of the fact whether the vehicle stays within the limits of the Municipality or not. In this case there is nothing to show that the lorry of Hardatt did not stay after entering the Municipal limits. The respondent was therefore liable for the toll tax which was demanded from him. He has committed a breach of Rule 1 by refusing to pay the toll tax which was due from him in respect of his lorry. We therefore allow the appeal, set aside the order of acquittal and convict him for breach of the provisions of Rule 1 and fine him Rs. 2 out of which Rs. 1-8-0 will be paid to the Municipal Board.