

**Jageshwar Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/471961](http://sooperkanoon.com/471961)

**Court :** Allahabad

**Decided On :** Feb-17-1972

**Reported in :** 1973CriLJ501

**Judge :** B.D. Gupta, J.

**Appellant :** Jageshwar

**Respondent :** State

**Judgement :**

**B.D. Gupta, J.**

1. Appellant Jageshwar has been convicted for the offence punishable under Section 333 I.P.C. the sentence awarded being rigorous imprisonment for two years. After hearing learned Counsel for the parties. I am of opinion that the conviction of the appellant cannot be sustained.

2. The prosecution case was as follows: On the 9th of October 1966 at about 2.30 p.m. the appellant was noticed on a cycle. with a 'zhola' hanging by its handle, having passed the toll barrier without having octroi duty on goods contained in the aforesaid 'Jhola' consisting of 50 packets of 'surf powder. The appellant was asked to stop but as he did not do so he was apprehended and whilst the appellant was being taken, with his cycle in his hand, to the office of the municipal board for legal action, the appellant scuffled with the peons of the municipal board in order to

release himself and in the course thereof, used force against the left hand of peon Numan Ali which resulted in a contusion over and slight dislocation of the thumb joint of the right hand of Numan Ali. Numan Ali was at that time holding the cycle of the appellant by his right hand. The appellant pleaded not guilty and the substance of the defence put forward on behalf of the appellant was that after he had paid dues to the municipal board and obtained a receipt (exhibit kha 1) whilst he was proceeding away from the toll barrier. Numan Ali ran after him, slipped his foot and fell down and that the injury received by Numan Ali was the result of the aforesaid fall. The appellant made a long statement alleging certain enmities with some municipal employees as the cause of his false implication but it is not necessary to set forward the same for the purposes of this judgment.

3. In support of its case, the Prosecution examined a number of witnesses who supported the prosecution version which was accepted by the Court below with the result that the appellant was convicted and sentenced as above.

4. At the hearing of this appeal, the contention raised on behalf of the appellant was that in using such force as the appellant did for the purpose of getting himself released, the appellant was protected by law because neither Numan Ali nor any other Peon of the municipal board had, the authority of law to forcibly take the appellant to the Municipal Board premises for any legal action. Learned Counsel for the appellant, whilst conceding that the municipal peons had the authority of law to seize the goods on which the person carrying them had not paid octroi duty contended that they had no authority to arrest the appellant and that, in the circumstances, the appellant cannot be found to have committed the offence punishable under Section 333. I.P.C. if all that he did was to use force sufficient to secure his release notwithstanding the fact the use of that force may have resulted in a contusion with slight dislocation of the right thumb joint. This contention appears to be well-founded.

5. Learned Counsel appearing for the State did not contend that the peons of the municipal board had authority of law to arrest the appellant. He urged that the appellant had not been actually arrested by the Peons of the municipal board but was being merely taken by them to the office of the municipal board so that he

may pay the octroi duty the payment of which he attempted to evade. The question therefore, is whether at the relevant time, the appellant was being forced to proceed to the municipal office as a person who had been apprehended during the course of an attempt to evade payment of octroi duty, or the appellant was voluntarily proceeding to the municipal office but suddenly took it in his mind to use force against Numan Ali.

6. A perusal of the examination of the appellant under Section 342, Cr.P.C. makes out that the prosecution case itself was to the effect that the appellant had been physically apprehended and was, at the relevant time, being taken to the office of the municipal board to make him pay the octroi duty. The same appears to be the substance of the evidence led on behalf of the prosecution. Question No. 5 put to the appellant, in the course of his examination under Section 342, Cr.P.C. may be translated as follows:

The prosecution case is that after physically apprehending you and catching hold of handle of your cycle, whilst Numan Ali, alone with certain other peons were taking you to make you pay the octroi dues, you started a scuffle and twisted the thumb of Numan Ali as a result of which dislocation thereof, consisting of grievous injury took place whereafter you ran away from the place with your cycle and the goods in question.

7. In my opinion, it is fairly implied in the aforesaid question that, at the relevant time, the appellant was being taken by municipal peons in their custody for enforcing payment of the octroi dues. The statement of Numan Ali (P.W. 1) was that at the relevant time, he (Numan Ali) was holding the handle of the appellant's cycle and was taking the appellant towards the municipal officer Rafiq Ahmad (P.W.-2), who was the Chungi Moharrir at the octroi Post concerned, stated in cross-examination that the procedure was that if any person was caught crossing the octroi barrier without paying octroi dues, that person is not taken to the octroi Post but to the municipal board office where action is taken. In my opinion keeping in view the statements referred to above, and Particularly the prosecution case set forward in question No. 5 there can be no manner of doubt that at the relevant time the appellant was being treated as in custody and was being forced to

proceed to the municipal office. I have no doubt that if Numan Ali or any or more of the other peons of the municipal board had attempted to seize the packets of surf powder which the appellant was carrying and the appellant had caused the inquiry found on the person of Numan Ali by using force for preventing seizure, the appellant would have rendered himself liable for the offence punishable under Section 333. I.P.C. but that was not the prosecution case and in the absence of any Division authorising arrest of the appellant for attempting to evade Payment of octroi duty, the appellant was within his rights in using the little force he did for wresting himself and his cycle free from the clutches of the municipal peons who were forcing him to accompany them to the municipal office. Whatever other offence, if any the appellant may have committed by attempting to evade payment of octroi duty. I have no doubt that the appellant did not commit the offence punishable under Section 333.I.P.C.

8. The result is that this appeal is allowed, the conviction of the appellant and the sentence awarded to him are set aside and the appellant is acquitted of the charge on which he was tried. The appellant is on ball. He need not surrender. His bails bonds are discharged.