

**Ram Sahay Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/497233](http://sooperkanoon.com/497233)

**Court :** Madhya Pradesh

**Decided On :** Sep-10-1951

**Reported in :** 1953CriLJ27

**Judge :** Dixit, J.

**Appellant :** Ram Sahay

**Respondent :** The State

**Judgement :**

**Dixit, J.**

1. This is a petition in revision to set aside the proceedings under Section 244 Kanoon Mal Gwalior Samvat 1893 pending in the Court of First Class Magistrate, Morar for the realisation of certain Government dues recoverable as arrears of land revenue under Section 31 of, the Madhya Bharat Excise Act Samvat 2006 (Act No. 29 of 1949) from the applicant. It appears from the record that on 5.4.1950, the Superintendent, Customs and Excise Department addressed a letter to the First Class Magistrate Morar stating that an amount of Rs. 52000/- was due from the petitioner and that he had failed to pay the amount inspite of a notice to that effect, and requesting the Magistrate to take proceedings under Section 236 of the Gwalior Excise Manual Samvat 1995 for the recovery of the amount as arrears of land revenue. The learned Magistrate declined to take any action on the basis of the letter. Subsequently, on 18.7.50, a proper application was filed by the

Department for the recovery of the amount. The Magistrate, then, directed that on payment of the necessary fees by the Department, a warrant of attachment against the property indicated by the Department be issued. On 26.7.50 the petitioner asked the Court to dismiss the application presented to it by the Department on the ground that the Magistrate had no jurisdiction to take any proceedings for the recovery of the amount. The learned Magistrate overruled the petitioner's objection. Thereupon, the applicant went up in revision to the Court of Sessions Gwalior. The learned Sessions Judge, Gwalior rejected the revision petition.

2. Mr. Patankar who appeared on behalf of the applicant submitted that in filing the petition before the First Class Magistrate, Morar, for the recovery of the amount, as arrears of revenue in accordance with the provisions of the Kanoon Mai, the Superintendent Customs and Excise wrongly followed Section 236 of the Customs and Excise Manual, 1995, which had been superseded by Section 10 of the Gwalior 'Sarkari Matalabon ki Vasuli ke Niyam Samvat 2001' (Rules for the realisation of Government Dues). It was said that these Rules issued in Samvat 2001 were themselves repealed on 20.4.50 by the Union Act (XXXIII of 1950), namely, The Opium and Revenue Laws (Extension of Application) Act, 1950, which extended to the State of Madhya Bharat, the Revenue Recovery Act of 1890; and that, therefore, the recovery of the amount alleged to be due from the petitioner could only be in accordance with the provisions of the Revenue Recovery Act, 1890. The argument of the learned Deputy Government Advocate is that the effect of Rules 2 and 10 of the Gwalior State 'Rules for the Realisation of the Government Dues Samvat 2001' was not to supersede Section 236 of Customs and Excise Manual Gwalior State Samvat 1995, but to continue the applicability of the provisions of the Kanoon Mai for the recovery of amounts due under the Excise Act; that, therefore, the repeal of the Gwalior State 'Rules for the Realisation of the Government Dues Samvat 2001' by the Opium and Revenue Laws, (Extension Application) Act, 1950 did not affect the operation of Section 236 of the Excise Manual. Learned Deputy Government Advocate, further, said that as to the direction in Section 236 of the Excise Manual, that any sum due to the Government under the Excise Act would be recoverable as an arrear of land revenue, was not a law corresponding to the Revenue Recovery Act, 1890, it could

not be said to have been repealed under Section 4 of the Opium and Revenue Laws (Extension Application) Act, 1950, and that on the other hand Section 7(a) of the Revenue Recovery Act, 1890 itself indicated that Section 236 of the Excise Manual was to continue in force even after the application of the Revenue Recovery Act, 1890 to the State of Madhya Bharat.

3. On an examination of the provisions of the laws referred to by the learned Counsel and on a careful consideration of their arguments, I am of the opinion that the argument of the learned Counsel for the applicant must prevail. In the Gwalior State Excise Act, there were no provisions for the recovery of any Government dues under that Act. The Gwalior State Customs and Excise Manual Samvat 1995 promulgated by the Gwalior Darbar embodied the rules under the Excise Act and the provisions to carry out generally the purposes of Gwalior Excise Act. Section 236 of the Manual provided that the recovery of any amount due under the Gwalior Excise Act would be in accordance with the provisions of Gwalior State Kanoon Mal as an arrear of land revenue. On 17.12.44, the Gwalior Darbar issued 'Rules for the Realisation of Government Dues', These rules classified the Government demands under three heads, namely, Mulki, Mujmi and Vividh. Rules 4 to 9 dealt with the procedure for the recovery of Mulki and Mujmi demands. In respect of Vividh demands, that is miscellaneous demands other than Mulki and Mujmi demands, it was provided in Rule 10 that for the recovery of other Government dues, in respect of which there was no provision in those Rules or in any other Rules or Act, or in respect of which there was a direction in any rule and enactment that they would be recoverable as arrears of land revenue, the procedure laid down in Rule 10 would apply. Rule 2 of the Gwalior State Rules for the Recovery of Government dues Samvat 2001, directed that the Rules shall not affect those demands or the method of their realisation about which there were provisions in any other enactment. In my view, the effect of reading Rule 2 of the Gwalior State Rules for the recovery of Government dues Samvat 2001, with Rule 10 of those Rules, is that if in any enactment, there was any provision for the recovery of sums due to the Government under the Act, the provisions of that Act. would continue to be operative but that, on the other hand, if the enactment did not contain any specific provision for the recovery of such amount, but only directed that any amount due under the Act would be recoverable as an arrear of land

revenue, then, the procedure specified in Rule 10 would apply. I do not think that Rules 2 and 10 can be construed in any other way. For to do so and to hold, that even after the coming into force of the Gwalior State Rules for the recovery of Government dues Samvat 2001, the procedure laid down in Kanoon Mai continued to apply for the recovery of sums declared under the various Acts as recoverable as arrears of land revenue, is to defeat the very object with which those rules were issued, namely, the object of providing a specific procedure for the realisations of sums recoverable under various Acts as arrears of land revenue. It must, therefore, be held that Rule 10 superseded the provisions of Section 236 of the Gwalior State Excise Manual. The Gwalior State Excise Act was repealed by the Madhya Bharat Excise Act Samvat 2006. Section 31 of the Madhya Bharat Excise Act also laid down that sums due to the Government under that Act should be recoverable as arrears of land revenue in accordance with the law for the time being in force. It is, therefore, clear that until at least the application of the Revenue Recovery Act 1890, to the State on 20.4.1950, the procedure for the recovery of sums due to the Government under the Madhya Bharat Excise Act, in the territory of Madhya Bharat comprising the former Gwalior State, 'was the one specified in Rule 10 of the Gwalior State Rules for the recovery of the Government dues Samvat 2001.

4. That being the view I take of the effect of Section 31 of the Madhya Bharat Excise Act and of Rules 2 and 10 of the Gwalior State Rules for the recovery of Government dues on Section 236 of the Gwalior State Excise Manual, it is now necessary to see whether the Gwalior State Rules for the Recovery of Government Dues, Samvat 2001 are, as the learned Counsel for the applicant contends, repealed by the Opium and Revenue Laws (Extension of Application) Act 1950. Section 4 of the Extension of Application Act No. 33 of 1950 says:

If immediately before the commencement of this Act, there is in force in any Part B States...any law corresponding to any of the Acts specified in Section 2, other than the Taxation on Income (Investigation Commission) Act 1947 (XXX of 1947), that law shall upon the commencement of this Act stand repealed.

The Revenue Recovery Act, 1890 is one of the Acts mentioned in Section 2 of Act No. 33 of 1950. On a plain reading of the provisions of the Gwalior State Rules for the Recovery of Government Dues Samvat 2001 and of the Revenue Recovery Act 1890, it cannot be denied that the Gwalior State Rules referred to above embody a law corresponding to the Revenue Recovery Act, 1890. In my judgment, the effect of Section 4 of Act No. 33 of 50 is to repeal the Gwalior State Rules for the Recovery of Government Dues Samvat 2001. In fact the learned Counsel for the State did not contest the position that these Rules were repealed by Section 4 of Act No. 33 of 1950. I do not think that Section 7 of the Revenue Recovery Act, 1890 can be of any assistance to the counsel for the State. This section only saves the provisions of any other enactment for the time being in force for the recovery of the land revenue or of sums recoverable as arrears of land revenue. It is plain from the language used in that section that the section preserves the continuity of the specific provisions of any enactment for the recovery of sums recoverable as arrears of land revenue. A direction in an enactment that any sum due to the Government under the Act would be recoverable as arrears of land revenue, is clearly not a specific provision for the recovery of such a sum. It may also be mentioned in passing that the provisions of an enactment would not include the provisions of any rules made thereunder. According to the definitions in the General Clauses Act, 1897, a Union Act does not include a rule under the Act. It is, no doubt, true that rules validly made under an Act have the same force as the Act itself; but I do not think that on that account it could be successfully contended that the rules were themselves an enactment.

5. For the above reasons, in my view, the learned Magistrate erred in commencing proceedings under the provisions of Kanoon Mal for the recovery of the amount alleged to be due from the applicant. The remedy of the Superintendent Customs and Excise for the recovery of the amount is to proceed by way of an application under the appropriate section of the Revenue Recovery Act, 1890.

6. In the result, this revision petition is allowed and the proceedings pending in the Court of First Class Magistrate, Morar for the recovery of the amount demanded by the Excise Department are quashed.

