

Mohanan Vs. M.A.C.T.

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Court : Kerala

Decided On : Sep-08-2005

Reported in : 2005(4)KLT273

Judge : Kurian Joseph, J.

Acts : [Kerala Stamp Act, 1959](#) - Schedule - Article 21 - Sections 13, 14 33, 33(1), 33(2), 34, 36, 37, 37(2), 38 and 39; [Code of Criminal Procedure \(CrPC\) , 1898](#)

Appeal No. : O.P. No. 13672 of 1997

Appellant : Mohanan

Respondent : M.A.C.T.

Advocate for Def. : P.K. Shakeela, Government Pleader and; A.R. George, Adv.

Advocate for Pet/Ap. : K. Gopalakrishna Kurup, Adv.

Judgement :

Kurian Joseph, J.

1. Impounding of a document and imposition of penalty under the [Kerala Stamp Act, 1959](#) is the matter dealt with in this case. Two questions arise; (1) what is the procedure to be adopted when an insufficiently stamped document is merely produced/brought to the notice of the court/public officer. (2) What is the procedure

to be followed when an insufficiently stamped document is tendered in evidence before a court. Ext.P4 order passed by the M.A.C.T., Moovattupuzha in O.P.(MV) No. 1744/95 is under challenge. As per the said order, the Tribunal invoked Section 33 read with Section 37 of the [Kerala Stamp Act, 1959](#) and impounded a document. It is not in dispute that the document was not taken in evidence, it was only produced. It is an agreement regarding the sale of the vehicle; an agreement for sale of the vehicle according to the petitioner and an agreement of sale according to the Tribunal. Finding that it is an agreement of sale, the Tribunal took the view that the stamp duty has to be paid as provided under Article 21 of the Schedule to the Stamp Act for conveyance, for Rs. 10,500/- and he has also to pay penalty at ten times the said amount. It is the contention of the petitioner that the document was only produced along with the list of documents and was never marked as evidence and therefore, the same cannot be impounded. Reliance is placed on two decisions of this Court, one in Thoma Thomas v. Parameswaran Nair (1989 (1) KLJ 16) and the other in Uthuppan Abraham v. State of Kerala (1997 (2) KLT 475). There is also a contention that in any case, the Tribunal erred in imposing the penalty, that being a power only to the Collector.

2. In order to properly appreciate the contentions taken by the learned Counsel for the petitioner, it is necessary to refer to the statutory provisions. Chapter IV of the Act deals with instruments not duly stamped. Section 33 provides for examination and impounding of instruments. The said section reads as follows :

33. Examination and impounding of instruments

(1) Every person having by law or consent of parties authority to receive, evidence and every person in charge of a public office, except an Officer of Police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in the State when such instrument was executed or first executed.

Provided that--

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound if he does not think fit so to do, any instrument coming before him in the course of any proceedings other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

(b) in the case of a Judge of the High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the court appoints in this behalf.

(3) For the purpose of this section, in cases of doubt, the Government may determine--

(a) what offices shall be deemed to be public offices; and

(b) who shall be deemed to be persons in charge of public offices.'

Section 34 provides that instruments not duly stamped are inadmissible in evidence; and if to be admitted, the procedure on penalty is also provided. The said section to the extent relevant reads as follows:

34. Instrument not duly stamped inadmissible in evidence, etc.

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that--(a) any such instrument not being an instrument chargeable with a duty of twenty paise or less than twenty paise shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion.

Section 37 deals with the procedure of impounding and after impounding. It reads as follows :

'37. Instruments impounded how dealt with.--

(1) When the person impounding an instrument under Section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence or when he is a Registering Officer to register such instrument upon payment of a penalty as provided by Section 34 or of duty as provided by Section 36, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.'

Section 39 deals with the power of the Collector to stamp instruments impounded. It reads as follows :

Collector's power to stamp instruments impounded.-- (1) When the Collector impounds any instrument under Section 33, or receives any instrument sent to him under Sub-section (2) of Section 37, not being an instrument chargeable with duty of twenty paise or less, he shall adopt the following procedure:

(a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped or that it is not so chargeable as the case may be:

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof whether such amount exceeds or falls short of five rupees;

Provided that, when such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of Sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under Sub-section (2) of Section 38, the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.'

3. The Stamp Act consolidates the law relating to stamps in the State of Kerala. It provides for the instruments which are to be stamped, and the rate at which they are to be stamped. It also provides for the machinery to check the evasion of stamp duty. Chapter IV deals with such instruments not duly stamped and how they are to be dealt with. The first provision under Chapter IV provides that every person who has authority to receive evidence and every person in charge of a public office except police before whom any instrument chargeable with stamp duty is produced or brought to his notice for the purpose of his functions and if the same is not duly stamped, he may impound the same. The expression 'impound' only means taking possession of the document for being held in custody in accordance with law. Sub-section 2 of Section 33 provides that for the said purpose every such person shall examine every instrument so produced or coming before him, in order to ascertain whether it is stamped with proper stamp or not. It is the case of the petitioner herein that he did not rely on the document and he did not adduce the same as evidence. The document was not marked also by the court and hence the learned Tribunal erred in impounding the same, it is contended. Reference is invited to two decisions of this Court, one in *Thoma Thomas v. Parameawaran Nair* (1989(1) KLJ 16) and the other in *Uthuppan Abraham v. State of Kerala* (1997 (2) KLT 475). In the former case, K.P. Radhakrishna Menon, J. has taken the view that merely because a document is produced before a court, unless it is tendered in evidence, the same cannot be impounded even if the document is insufficiently stamped, because only if the document comes before the court in the performance of the functions, then alone

impounding is permissible. To quote,

'The words in the Section that require special mention are 'is produced or comes in the performance of his functions.' The insufficiently stamped document in order to be impounded under Section 33 therefore must be one which had been produced or had come in the performance of the functions of the persons or authorities mentioned in the sub-section. The phrase 'in the performance of his functions' in the context is meaningful. The document, in order to find that it has been produced or has come in the performance of the functions of the authority concerned, must be one, the party concerned had taken steps to tender in evidence. A mere production of the document cannot therefore be said to be a production within the meaning of that phrase, because the party who has produced the document, has every right to take the same back before steps to tender it formally in evidence are taken. To put it differently, mere production of the document in contra-distinction to tender the document in evidence is not sufficient to impound the document chargeable with duty, however insufficiently stamped. Investigation to decide the issue whether the document is liable to be impounded under Section 33 thus cannot be had until it is tendered in evidence although the document had in the meantime been produced before the authority concerned.'

In the latter case, C.S. Rajan, J. has taken the view that unless the document that is produced in court has either been proved in evidence or acted upon by any of the parties, the same cannot be impounded. To quote,

'Only the document which is either relied on by the parties for proving the case or admitted in evidence by marking as Exhibit is liable to be impounded by the Court. Merely because a document was filed in Court (and when the same was not either proved in evidence or acted upon by any of the parties) the Munsiff cannot order impounding the document or imposing any penalty for insufficiency of the stamp duty. The principle seems to be that a party to the litigation cannot escape the liability of payment of the stamp duty under the law whenever he wants to rely on the document in order to prove his case.'

4. I am afraid, the legal position is not correctly applied in the above two cases. The whole purpose of the provisions under Chapter IV as already referred to

above is to check the evasion of stamp duty. The petitioner produced certain documents before the Tribunal. True the same was not marked and not tendered in evidence. But the document forms part of the documents produced in court. On such production, the Tribunal (court) notices the insufficiency of stamp. The Act has conferred power on the authority to examine the documents produced before it or brought to its notice in the performance of its official duties and see whether those documents are properly stamped. No restriction whatsoever is discernible under Section 33 that only those documents which are proved in evidence or relied on by the parties alone can be impounded.

5. The position as explained above in fact is not *res integra*. A Division Bench of this Court in *Asokan v. Dy. Collector* (1995(2) KLT 292), dealing with court's power to impound a document even when the parties are not before the court held that 'whenever the infraction of the Act is detected primary liability of the executant of the instrument cannot be shelved for the reason that he never produced it before the Court. Court's power to impound an instrument cannot be denied on the ground that the parties to the instrument are not before the Court. From a reading of Section 33(1) it can be discerned that whenever an insufficiently stamped instrument comes to the notice of the Court, it can impound the same.' It has been further held that 'Section 33 makes the position clear that whenever a document is produced before the Court and when it appears to the Court that such an instrument is not duly stamped it can be impounded.' Thus it is not necessary that the production of the document should be followed by marking the same as part of the evidence. It is also not necessary that only a document that is relied on by the authorities that can be impounded. The moment a document is produced in any proceedings before the court and if the court notices that the same is insufficiently stamped, the Court has a duty to impound the same. Such duty is part of the power provided under Section 33 to take steps for evading the stamp duty. Therefore, the decisions in *Thoma Thomas's case* (supra) and *Uthuppan Abraham's case* (supra) are no more good law in view of the Bench decision of this Court in *Asokan's case* (supra).

6. The next question is regarding the procedure. Section 34 makes it clear that only when an insufficiently stamped document is sought to be admitted in

evidence, the Court is empowered to impose penalty for payment of a sum equal to 10 times such duty in addition to the deficient portion of the stamp. The Court while impounding an instrument shall send the original to the District Collector, as provided under Section 37(2). In other words, the documents impounded by the court on mere production of the same and when they are not relied on by the parties as part of evidence have to be forwarded to the District Collector for action under Section 39; only when an insufficiently stamped document is sought to be admitted in evidence, the court is empowered to realise the deficient portion and impose the penalty at ten times of such portion. The difference between Sections 34 and 39 in the matter of penalty is that a discretion is given to the Collector under Section 39 but not to the court under Section 34. In other words, if an insufficiently stamped instrument is to be admitted in evidence, it is permissible only if the deficiency is made up and ten times the deficient portion is paid as penalty. As far as the document that is mainly produced before the court when impounded and sent to the Collector under Section 37(2), the Collector has a discretion to realise the deficient portion together with a penalty of Rs. 5/- or if he thinks fit an amount not exceeding ten times the amount of the proper duty or deficient portion. In fact Chandrasekhara Menon, J. has considered this procedure in *Chanda Pillai v. Munsiff, Thiruvalla and Ors.* (1975 KLT 753). To quote from the judgment,

'As long as an instrument is not admitted in evidence, the Munsiff though he may have impounded the same has no jurisdiction to levy any penalty or charge any duty on the same. The question whether the Munsiff should not under Sub-section (2) of Section 37 by which every person impounding an instrument has to send it in original to the Collector, depends upon the answer to the question whether the case is one which can come within the description of every other case mentioned therein. Every other case means every case other than the cases mentioned in Sub-section (1) of Section 37. Among cases mentioned therein is the case of a person impounding an instrument under Section 33 who has by law authority to receive evidence and admits such instrument in evidence upon payment of penalty as provided by the proviso to Section 34. It is only when the case is different from the one mentioned therein that an occasion will arise for a Civil Court to act under Sub-section 2. Ordinarily, the duty or power of assessing the amount of stamp

duty or collecting stamp duty and penalties is invested by the Act in the Collector. The proviso to Section 34 invests courts with the special jurisdiction of adjudicating upon stamp duty and imposing penalty in certain cases and those are cases where a party to a litigation before the court tenders a document in evidence. In the instant case, as the documents have not been admitted in evidence no question of imposition of stamp duty by the Munsiff arises. He could have acted only under Section 37(2) by which he is to send the documents to the Collector who then can proceed to stamp the instruments concerned and collect the required duty and penalty if any from the person or persons who are liable to pay the same.'

7. In the instant case, the document is only produced before the Tribunal. The same is not tendered in evidence. The Tribunal is right in impounding the same, but wrong in realising the deficient portion and imposing the penalty. Since the instrument is not sought to be admitted in evidence, he is empowered only to impound and forward the same to the Collector under Section 37(2) and it is for the Collector to take appropriate action under Section 39. I quash Ext.P5. The matter is remitted to the Tribunal for passing fresh orders in the matter in accordance with law.

The Writ Petition is disposed of as above.

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