

Jethmal Vs. Heeralal

Jethmal Vs. Heeralal

SooperKanoon Citation : sooperkanoon.com/751150

Court : Rajasthan

Decided On : May-24-1957

Reported in : AIR1958Raj48; 1958CriLJ219

Judge : Bapna, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 432; Rajasthan Motor Vehicles Taxation Act, 1951 - Sections 2 and 21; [Code of Civil Procedure \(CPC\) , 1908](#); Limitation Act, 1908; Rajasthan Town Municipalities Act, 1951 - Sections 59 and 81

Appeal No. : Criminal Ref. No. 47 of 1956

Appellant : Jethmal

Respondent : Heeralal

Advocate for Def. : Mag Raj and; Dashratmal, Advs. for Non-Petitioners

Advocate for Pet/Ap. : Chandmal, Adv. for Complainant (Municipal Board)

Judgement :

Bapna, J.

1. This is a reference under Section 432 Cr. P. C. The allegations on behalf of the Municipal Board Ladnun, acting through its chairman Shri Jethmal Sharma are

that Shri Heeralal Sravagi imported a motor car No. RJQ 2304 near about 10-4-1956, but did not pay the octroi duty imposed on the import of the car under the rules and bye-laws of the Municipal Board. It was said that he was asked more than once to pay the tax, but as he failed to do so, a complaint was lodged under Section 84 of the Rajasthan Town Municipalities Act, 1951 (Act No. XXIII of 1951). On behalf of Shri Heeralal, an objection was raised that the imposition of octroi duty for import of the car was not authorised by law.

2. Under Section 59 of the Rajasthan Town Municipalities Act, 1951 (Act No. XXIII of 1951), a municipal board is authorised under Sub-section (b) (ii) to impose a tax on all or any vehicles or animals, used for riding, draught or burden, kept within the said municipality for use, and under Clause (iv) a tax called 'Octroi' on animals or goods or both brought within the octroi limits for consumption or use therein. The Municipal Board of Ladnun had, prior to the alleged import, imposed a tax under Section 59 (b) (iv) under item 295 of the Schedule as follows: '295. Aeroplane, motor car, lorry, bus, etc.Rs. 1/9/- per cent.' The tax amounted according to the Schedule, to Rs. 233/-

3. On the other hand, on behalf of the accused, reliance was placed on Section 21 of the Rajasthan Motor Vehicles Taxation Act, 1951 (Act No. XI of 1951) which said,

'Notwithstanding anything to the contrary in any law for the time being in force in any part of Rajasthan, it shall not be lawful for any local authority to levy any tax or toll in respect of any motor vehicle.'

The learned Second Class Magistrate, Ladnun, before whom the case was argued, was of opinion that there was apparent conflict between Section 21 and the rule or bye-law framed by the Municipal Board under Section 59 of the Town Municipalities. Act. He accordingly made this reference by order of 25-6-1956.

4. Counsel for the Municipal Board of Ladnun raised a preliminary objection that the reference does not come within Section 432 of the Cr. P. C. There is certainly one defect in the reference inasmuch as the Magistrate has not given his own opinion. That defect should have been noticed by the office as soon as the

reference was made and it is too late now to send the case back for recording his opinion. Another objection raised was that there was no apparent conflict between Section 21 of the Motor Vehicles Taxation Act and the rule which purported to impose a tax on the import of a motor vehicle. It was urged that while the tax referred to in the Motor Vehicles Taxation Act was for use of the vehicle, the tax imposed under Section 59 (b) (iv) was for import of the vehicle and there being no conflict between the two rules, there was no occasion for making this reference.

This objection takes us to the real controversy in issue, namely whether the bar imposed on a local authority to impose any tax in respect of a motor vehicle operates so as to prevent a Municipal Board from imposing an octroi tax in respect of a motor car brought within the octroi limits of that Municipal Board for use therein. If the bar exists, the rule made by the Municipal Board is inconsistent with the provisions of the Motor Vehicles Taxation Act, but if that bar does not apply, then there is no conflict.

5. It appears from a perusal of the judgment of the learned Magistrate that the Municipal Board at one stage relied on the power conferred upon it under Section 59 (b) (ii) for the imposition of the tax. Learned counsel for the Municipal Board has, however, rightly conceded that if a tax were to be imposed under Section 59 (b) (ii) on any motor vehicle for use within the municipality, the prohibition laid down in section 21 of the Motor Vehicles Taxation Act would apply; but his contention is that the tax which has been imposed, was done under Section 59 (b) (iv) and that there was some mistake in the lower court to rely on Section 59 (b) (ii) of the Act, The point for consideration, therefore, is whether the power given to a municipal board under Section 59 (b) (vi) is exercisable so as to levy a duty in respect of a car which has been brought within the octroi limits for use therein. As stated earlier, the duty which has been imposed is by a rule framed under Section 59 (b) (iv) and that is the rule which has to be scrutinised for its validity.

6. It is argued by learned counsel for the Board that the bar to the imposition of tax imposed by Section 21 is to the tax which is imposed under that Act (Act No. XI of 1951). It was contended that 'Tax' has been defined under Section 2 to mean a tax which is imposed under the Act', and section 4 describes the tax which is imposed

under that Act, and that kind of tax cannot under Section 21 be levied by any Board. It was urged that the tax levied by the Board being not the tax of that kind, it is not invalid.

7. The definition of tax as given in Section 2 of the Rajasthan Motor Vehicles Taxation Act, 1951 (Act No. XI of 1951) is _ subject to the opening words in that section 'unless there is anything repugnant in the subject or context'. Section 21 reads as under:

'Notwithstanding anything to the contrary in any law for the time being in force in any part of Rajasthan, it shall not be lawful for any local authority to levy any tax or toll in respect of any motor vehicle.

8. If the interpretation is to be made according to learned counsel for the Board, the section will have to be read 'Notwithstanding anything to the contrary in any law for the time being in force in any part of Rajasthan, it shall not be lawful for any local authority to levy any tax (imposed by this Act) in respect of any motor vehicle.' Now, the tax imposed by the Act can not obviously be leviable by any local authority, for, if that local authority levied any tax, it will not be by authority of the Motor Vehicles Taxation Act, but by authority of some law which may permit the local authority to do so. The Motor Vehicles Taxation Act does not authorise any local authority to impose any tax and, therefore, the word 'tax' used in Section 21 has to be read in a wider sense and not in a narrow sense in which it has been defined in Section 2 of the Act.

The reason for this is obvious. Section 4 imposes a tax for use of a motor vehicle in Rajasthan or kept for use in Rajasthan. It is not a tax for use in any local area, but the tax is for use throughout Rajasthan, so that a tax when paid at one place, the vehicle can be used in any part of Rajasthan. If we look to the provisions of Town Municipalities Act with reference to a motor car, it would read as follows:-- Any municipal board may impose a tax of the nature of octroi on a motor vehicle brought within the octroi limits for use therein.

9. Although the Motor Vehicles Taxation Act charges tax for the use of the car throughout Rajasthan, the imposition of tax is permissible under the Town

Municipalities Act would require such tax to be paid if a car is brought for use within any particular municipality. In a concrete case, if a person takes a car from Jodhpur to say Jaipur, it would pass through several municipalities. If a person wishes to stay overnight within the boundary of any municipality where this tax is charged and uses his car to meet his friends or to drive in it for pleasure, he would become liable to pay the duty because the car is brought within the octroi limits and it is being used there.

There will, therefore, be no end to the imposition of octroi tax during a journey from Jodhpur to Jaipur. This was probably exactly the mischief which was sought to be prevented by enacting Section 21 of the Motor Vehicles Taxation Act.

10. If we look further into the language of Section 59(b)(iv), it is a tax on car brought within octroi limits for use therein. The imposition of tax under Section 4 of the Motor Vehicles Taxation Act is also for use in Rajasthan. The tax under Section 4 is to be paid for a car even when not in use if it is kept for use. That contingency is also covered by Section 59(b)(ii) where a tax can be imposed on a vehicle kept within the municipality for use. As stated earlier, learned counsel for the Board conceded frankly that if a tax were to be imposed on motor vehicle under Section 59(b)(ii), it would cover the same ground as Section 4 of the Motor Vehicles Taxation Act.

Section 21 was intended not only to make any existing imposition to be invalid, but it is applicable notwithstanding anything to the contrary in any law for the time being in force, i.e. this section is directed to be applicable even with respect to laws which may be enacted in future. There is no direct law enacted for imposing a tax on motor vehicles. The present tax was imposed indirectly by the imposition made under Section 59 and Section 81 of the Town Municipalities Act. The language of Section 21 of the Motor Vehicles Taxation Act (Act No. XI of 1951) is very wide.

It says that it shall not be lawful for any local authority to levy any tax in respect of any motor vehicle. It does not say that the bar is only in respect of a tax for use of any motor vehicle. According to that section, the tax is not leviable in respect of any motor vehicle by any local authority. The octroi duty sought to be levied on

import of car is certainly a tax in respect of a motor vehicle.

11. It was argued by learned counsel for the Board that the Rajasthan Town Municipalities Act (Act No. XXIII of 1951) was enacted subsequent to the Rajasthan Motor Vehicles Taxation Act (No. XI of 1951) and in case of conflict, the later should prevail. The principle contended for that a latter Act overrules the former may be right, but the latter act in the present case does not specifically impose a tax on the motor vehicle. It is general in its nature and authorise taxation on animals or goods or both brought within the octroi limits.

The Motor Vehicles Taxation Act is a special act which applies to motor cars only, and according to the well-known principle of interpretation of laws, if there is a special Act and a general Act, dealing with the same matter, the special overrides the general Act. In my opinion, the rule framed by the Ladnun Municipal Board with reference to Sections 46, 81 and 59(b)(iv) imposing a tax on import of a motor vehicle is inconsistent with Section 21 of the Rajasthan Motor Vehicles Taxation Act and the latter providing for a special case overrides the rule framed by the Board. The order of this Court shall be sent to the Magistrate who has made the reference who shall dispose of the case in conformity with this order. No order as to costs.