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Mani Vs. State of Madras

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Court : Chennai

Decided On : Apr-25-1956

Reported in : AIR1957Mad190

Judge : Krishnaswami Nayudu, J.

Acts : Madras Prohibition Act, 1937 - Sections 18 and 34; Contract Act, 1872 - Sections 196

Appeal No. : Second Appeal No. 1576 of 1953

Appellant : Mani

Respondent : State of Madras

Advocate for Def. : Govt. Pleader

Advocate for Pet/Ap. : D. Ramaswami Iyengar and ;P.R. Varadarajan, Advs.

Disposition : Appeal dismissed

Judgement :

Krishnaswami Nayudu, J.

1. The short point for determination in this appeal is whether the Government who are the defendants in the suit would be liable for the seizure of the stock of the plaintiff in pursuance of a notice issued to the effect that it was decided to revoke

the licence granted to the plain-tiff under Section 18 of the Madras Prohibition Act, 1937, The plaintiff was the proprietor of Mani Pharmacy in Cuddalore and he was granted licence for the year 1950-51 under Section 18 of the Madras Prohibition Act for sale of brandy and medicated wines and similar preparations containing alcohol.

It was renewed for the year 1950-51 by the proceedings of the Collector dated 28-3-1950 as evidenced by Ex. A-4. Condition 10 of the licence provided that the Collector may with the sanction of the Board of Revenue at his discretion revoke the licence at any time after giving the licencee 15 days' notice of such, revocation. The Collector issued the notice Ex. A-5 after obtaining the pre-' vious sanction of the Board of Revenue, the notice Ex. A-5 being dated 16-6-1950, informing the licencee that he is given 15 days' notice of the intention to revoke the licence granted to him. The notice was issued on 18-6-1950 and received by the plaintiff on 20-6-1950. The Prohibition Sub-Inspector one Samuel went to the plaintiff's place of business on 1-7-1950 and effected a seizure of the medicines containing alcoholic preparations, brandy and other medicated wines.

The plaintiff applied to the Collector and then appealed to the Board of Revenue to release the goods from seizure and to reconsider the notice Issued to him. But he was unsuccessful. In pursuance of the notice Ex. A-5 the Collector revoked the licence granted to the plaintiff by his order Ex. A-8 dated 8-7-1950. The seizure having been made, subsequently the District Prohibition Officer wrote to the Collector under Ex. B-6 dated 25-7-1930 and had the goods disposed of. It is not disputed that the sale proceeds have been remitted to the plaintiff. The plaintiff's action is that the seizure was not legal as the licence was not revoked but only a-notice of the intention to revoke the licence was issued to him and during the pendency of the notice the seizure having been made it was illegal and maliciously made with a view to disgrace the plaintiff. He claimed damages in a sum of Rs. 500.

The suit was instituted against the State of Madras, represented by the Collector of South Arcot. Neither the Prohibition Sub-Inspector Mf. Samuel who actually effected the seizure nor the District Prohibition Officer who addressed the

Collector and had the seized goods sold, was made a party to the action. The State of Madras denied liability and contended that the seizure had been made by the respective officers in the usual discharge of their duties and'that in any event the defendant would not be liable for the tortious acts of their servants. The learned District Munsif upheld the contentions of the plaintiff and granted a decree for Rs. 200. In appeal the learned District Judge of South Arcot found that the State could not be made liable in the circumstances of this case.

2. No doubt the learned District Judge rightly held that the seizure that was made on 1-7-1950 was illegal. As to the question whether the seizure was maliciously made or it was made bona fide, excepting the evidence of the plaintiff there was nothing to show as to what actuated the Prohibition Sub-Inspector in effecting the seizure, whether it was due to a wrong understanding of the notice Ex. A-5 or whether it was due to any private ill-will on the part of the Prohibition Sub-Inspector which would depend upon the relationship between the plaintiff and the said Sub-Inspector.

Since the plaintiff had not made the Prohibition Sub-Inspector a party to the suit, the State apparently thought that it was not necessary to examine their servants, as there was no case for them to meet, the only contention of the plaintiff being that the seizure was made maliciously In order to disgrace him. The contention of the defendant was that even assuming that the plaint allegations were true the State would not be liable. The learned District Judge therefore found that for the tortious acts of the Prohibition Officers of the State, the State could not be made liable, following the decision in Ross v. Secretary of State, ILR 39 Mad 781: AIR 1916 Mad 1157.

In that decision it was held that the Government cannot be made liable for illegal orders made by the Collector and District Magistrate purporting to use the powers given by the Statute law. The learned Judges referred to the decision in Rogers v. Rajendra Dutt, 8 Moo Ind App 103 (B), and observed that the civil irresponsibility of Government for tortious acts of its agents have been assumed as undoubted law and that therefore the Government could not be made liable, and that the District Magistrate or Collector who purported to use the powers given by the

Statute law cannot be treated as the agent of the Government. It is, however, urged that by reason of the Government having accepted that the seizure was proper by directing the sale of those articles, it must be held that the Government ratified the act of the Prohibition Sub-Inspector in making the seizure.

There cannot be any ground for holding that there was ratification of the act of the Prohibition Sub-Inspector by the Government though it might be that the representations made and appeals preferred by the plaintiff to the Collector and Revenue Board have been rejected. The sale by the District Prohibition Officer was in pursuance of the seizure, the legality of which was however, not apparently doubted by the respective officers, and. they acted only in pursuance of the provisions of the Prohibition Act which provided that after such seizure the article so seized will have to be sold. This action by the District prohibition Officer could not be considered the act of the Government ratifying the seizure, but an act done in the ordinary course of the discharge of their particular duties, which duties are prescribed under the Sta-tute. It may be that if the officers concerned had been impleaded as parties to this suit, a defence under Section. 56 of the Prohibition Act might have been open to them and it might have been contended that the act of seizure was done bona fide in pursuance of the provisions of the said Act.

But that question does not arise. Assumingthat the act of the Prohibition Sub-Inspector was not bona fide and he was actuated by malice br itwill, about which there is no finding, the questionis whether the Government could in the circumstances be made liable on the principle laid downin ILR 39 Mad 781:AIR 1916 Mad 1157,that there cannot be any question of theGovernment being liable for such acts. Theview taken by the learned District Judge iscorrect and this second appeal falls and is dismissed, There will be no order as to costs in thissecond appeal and in the trial Court. No leave.

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