

Basudev Hazra

Vs

Matiar Rahaman Mandal

Civil Appeal No. 171 of 1968

(I. D. Dua, P. Jagmohan Reddy JJ)

21.01.1971

JUDGMENT

DUA, J. -

1. The appellant, Basudev Hazra, was a lease-holder in respect of tolls of the public ferry at Sadar Ghat on the outskirts of Burdwan town for crossing the river Damodar. This lease was for a period of three years (August 14, 1963 to August 13, 1966) : Ex. 2. On November 30, 1964, Matiar Rahman Mandal filed a complaint against the appellant in the Court of the Sadar Sub-Divisional Officer (Judicial), Burdwan, alleging that the appellant used to realise illegally 20 np. per cart from the cultivators who used to drive their carts across the dry bed of the river. The matter was reported to the S.D.O. who directed an enquiry. This infuriated the appellant. On November 29, 1964, the appellant realised double the amount of toll and on protest and refusal by the complainant he was threatened with violence by the appellant.

2. The Magistrate trying the appellant for offences under Sections 23 and 24 of the Bengal Ferries Act, I of 1885, convicted him of both the offences. The appellant was sentenced to a fine of Rs. 10/- under Section 23 and to a fine of Rs. 20/- under Section 24 : in default of payment of fine in the former case he was to undergo simple imprisonment for ten days and in the latter for 20 days.

3. On the appellant challenging his conviction on revision in the Court of the Sessions Judge, the Additional Sessions Judge, Burdwan, made a reference to the High Court recommending the appellant's acquittal. It was observed by the Additional Sessions Judge in his reference that according to the appellant's defence the complainant's party were in fact using the landing stage and the path constructed and repaired by him and, therefore, they were liable to pay the usual toll tax. After reproducing Section 24 he added :

"... the complainant's case as it appears from the petition of complaint and also from the evidence of the three witnesses examined on the point, is that they do not take advantage of any of the facilities provided by the lessee and that the lessee demanded toll from them even though they were using their own path. The defence as I have already stated, was that the pathway and the landing stage belonged to the lessee and that, therefore, he was entitled to collect toll. Forgetting the defence for the moment, it seems to me that no conviction under Section 24 can be sustained on the case of the complainant as it is."

According to him the collection of money from the people using their own pathway might amount to extortion but it would not attract Section 24. We need not refer to the recommendation with

respect to the appellant's conviction under Section 23 as this was accepted by the High Court and there is no appeal against acquittal under that section.

4. The High Court accepted the recommendation with respect to the conviction under Section 23 and acquitted the appellant of that offence. In regard to the conviction under Section 24 the High Court observed that the trial Magistrate had found (i) that the appellant had been realising toll charges in excess of the scheduled rate of 20 nP. per cart and also realising such charges from persons who did not use the ferry and (ii) that though the complainant had not availed of the ferry and had taken the cart over the sandy bed of the river 40 nP. per cart were realised from him. These findings of fact were held not open to re-examination on revision. The High Court added that realisation of 40 nP. fell within the mischief of Section 24 which forbids every lessee from realising more than lawful toll even in cases in which he is entitled to demand ferry charges. Repelling the argument that the present was a case of extortion and it did not fall within the purview of Section 24 the High Court, after referring to the complainant's case, observed that it was a case of illegal realisation of toll in excess, when the appellant was not entitled to realise it at all and not a case of extortion under the Indian Penal Code. The amount had been illegally demanded as a toll and that also in excess of permissible rate. The reference with respect to Section 24 was, as observed earlier, rejected.

5. The appellant has secured special leave to appeal under Article 136 of the Constitution and his counsel Mr. D. N. Mukherjee has strenuously contended that the realisation of 40 nP. per cart from those who do not use the ferry cannot as a matter of law fall within the mischief of Section 24 of the Bengal Ferries Act. His contention in essence is that unless someone actually uses a ferry no charges realised from him for permitting him to cross the river, even if the demand is made by way of toll, can attract the provisions of Section 24. The contention though prima facie somewhat attractive does not stand scrutiny. Section 24 reads as under :

"Penalty for taking unauthorised tolls and for causing delay :

Section 24. - Every such lessee or other person as aforesaid asking or taking more than the lawful toll, or without due cause delaying any person, animal, vehicle or other thing, shall be punished with fine which may extend to one hundred rupees."

It is obvious that this section does not speak of taking toll in excess of the lawful limit only from those persons who use the ferry. This Act was enacted for regulating ferries but that does not mean that an illegal demand under the pretext of claim by way of toll under this Act when it is not legally claimable was not intended by the Legislature to be prohibited and made punishable by the language of Section 24, Shri Mukherjee drew our attention to Section 5 of the Act in which "ferry" is defined to include a bridge of boats, pontoons or rafts, a swing-bridge, a flying bridge, a temporary bridge and a landing stage. According to him, this definition suggests that it is only when a ferry is used and excessive charges realised that Section 24 would be attracted. The submission is difficult to accept. This definition which is not exhaustive does not seem to us to control or otherwise to throw helpful light in the interpretation of Section 24. This section seems to have been designed in effect to protect the persons crossing the river against harassment and abuse of the privileged position which the lessee or other person authorised to collect the tolls of public ferry occupies under the statute in the matter of control over the passage or pathway for crossing, fording or ferrying across the river. Demanding or receiving more than lawful dues and unduly delaying persons, animals, vehicles or things in crossing the river are both rendered penal and punishable. Whether the person from whom the amount is demanded or received is under no obligation to pay anything by way of

toll while crossing the river bed or is bound by law only to pay 20 nP. per cart as toll would thus be immaterial when payment is demanded or received on the pretext that it is due as toll when it is legally not so due. In either case Section 24 would seem to be attracted, this construction would serve to suppress the mischief at which this section appears to be aimed. The question whether or not the appellant's case falls within the mischief of extortion as defined under the Indian Penal Code is not strictly relevant to the point arising in the controversy because if the appellant's case is covered by Section 24 of the Act then he is liable to be punished thereunder. His liability to be prosecuted under the Indian Penal Code cannot by itself in law exclude the applicability of Section 24 to his case. The Additional Sessions Judge was, in our opinion, nor quite right in observing that the defence that the accused was entitled to claim the toll may be ignored, because defence of an accused person can legitimately be taken into consideration while assessing the value of the evidence and judging the guilt or innocence of the accused. The appellant's defence in this case would clearly tend to support the complainant's case that the amount received was demanded as toll which was an unlawful demand. To exclude cases like the present from the operation of Section 24 would unduly restrict to effectiveness and would indeed facilitate illegal recoveries prohibited by it. To that extent it would defeat the object and purpose which this section is intended to achieve. When the appellant's counsel took us through the evidence we found that the appellant had also delayed the prosecution witnesses without due cause in crossing the river in violation of Section 24. It is, however, unnecessary to pursue this aspect. Finally it may be pointed out that Article 136 of the Constitution does confer a right of appeal on a party. It only confers a discretionary power on this Court to be exercised sparingly to interfere in suitable cases where grave miscarriage of justice has resulted from illegality or from misapprehension or mistake in reading evidence or from ignoring, excluding or illegally admitting material evidence. The present case suffers from no such infirmity.

6. The appeal accordingly fails and is dismissed.

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