

Baladin Ram and Others

Vs

The State of U.P. and Others

Criminal Appeals Nos. 185-188 of 1968

(K. S. Hegde, A. N. Grover JJ)

06.05.1971

JUDGMENT

GROVER, J. -

1. In these appeals by special leave from a judgment of the Allahabad High Court the main question is whether the conviction of the appellant Baladin Ram under Section 466 of the U.P. Nagar Mahapalika Adhiniyam and under Section 467 of the Adhiniyam read with Rule 159 of the Municipal Account Code for which sentences of fine were imposed on him was legally sustainable. The other appellant Ram Nath who is his employee has also been convicted and sentenced.

2. The appellant Baladin Ram is the proprietor of Kashi Iron Foundry. That foundry was located in the neighbourhood of the railway goods shed of Varanasi Cantonment Station. It was within the limits of the Nagar Mahapalika but it was outside the octroi barrier. The goods taken from the railway shed to the premises of the foundry did not have to cross the barrier. On various dates in 1964 the foundry imported pig iron etc. under railway receipts. These were taken by Ram Nath who is an employee of the appellant from the shed and transported to the premises of the foundry without payment of the octroi dues. The procedure which should have been necessarily followed was that the railway receipt should have been taken to the octroi barrier and octroi paid according to the assessment made by the octroi authorities. Thereafter the railway receipt had to be taken to the railway goods shed and delivery obtained of the goods. This admittedly was not done and the defense which was put up on behalf of the appellant Baladin was that for the last thirty years he had, by arrangement with the concerned authorities, transported the goods directly from the railway shed. Thereafter whatever articles which were manufactured at the foundry out of the raw material were taken inside the city of Varanasi, octroi was paid on them and no octroi was paid on articles which were sent out to other places and which never entered the jurisdiction of the municipal authorities. It was maintained that in the year 1960, an attempt was made on the part of the municipal authorities to depart from this practice. Baladin filed a suit in the Civil Court claiming a perpetual injunction restraining the Municipal Board which was the predecessor of the Nagar Mahapalika, Varanasi, from compelling payment of the octroi in a manner other than the one which had been followed for so many years. A compromise took place between the parties in that suit.

3. In the agreement which was entered into it was stated that the foundry had approached the Board for the grant of bonded warehouse facilities as contemplated by Rules 204 to 222 of the Municipal Account Code and the Administrator of the Board had approved of the terms and conditions set out in the agreement. The following conditions in that agreement deserve to be noticed :

"1. That the foundry shall provide proper accommodation at the Foundry gate for the

establishment of an Octroi barrier in accordance with Octroi Rule No. 208 of the Municipal Account Code for control of all entries into and exits from the foundry, for the purpose of assessment, levy and realisation of octroi in accordance with the Rules Nos. 208 to 222.

2. That the foundry shall pay in advance to the Board a sum of Rs. 3,000/- annually towards the cost of establishment and maintenance of the octroi barrier at the gate of the Foundry, along with such increment and allowance to the said barrier staff as required by the rules on the subject applicable from time to time.

X X X

6. That the raw materials used in the manufacture of the products of the foundry shall pass into the foundry premises and out of the octroi limits from the foundry on free transit pass as prescribed under the Octroi Rules relating to the bonded warehouse. Likewise the goods that may be manufactured in the foundry premises out of the raw materials shall pass out of octroi limits from the foundry on free transit pass as applicable in the case of raw materials.

X X X

12. That in case of default of any of the foregoing terms or conditions of this Agreement by the Foundry or at any time at the will of the Board the concession and facility granted or enjoyed hereunder by the foundry shall be withdrawn by the Board and the stock found in the foundry at the time of the withdrawal of the facility will be charged with octroi."

Although a sum of Rs. 3,000/- was paid in the beginning but it appears that subsequently Baladin did not carry out the terms of this agreement. It has been held by the courts below that Baladin never carried out the essential terms of the agreement. Neither the sum of Rs. 3,000/- was paid every year as was stipulated nor were the other conditions which have been mentioned fulfilled. We have ourselves looked at the correspondence which passed between the parties and felt satisfied that the view which has been expressed by the courts below is fully justified. Indeed by a notice, dated January 4, 1964, the Up-Nagar Adhikari of the Municipal Board wrote to Baladin in categorical terms that he had failed to fulfill the conditions of the agreement and make the necessary constructions as provided therein. This is what was finally stated in that letter :

"You are therefore required to take notice that you must complete all the formalities aforesaid and make necessary constructions for the establishment of the octroi barrier according to the terms of the said agreement and rules for the time being in force within 7 days of the receipt hereof and let me know of it in writing failing which the agreement aforesaid shall stand cancelled and you will be liable to pay octroi duty on the goods imported or exported and all other consequences."

4. It has not been shown that Baladin sent any reply to this notice or even took any steps to carry out the essential terms of the agreement. It is not, therefore, possible to accede to the contention raised before us by Mr. Chari for the appellants that there

was no intention of defrauding the Mahapalika within the meaning of Section 466 of the Adhiniyam. That section is in the following terms :

"Where any vehicle, animal or goods imported into the limits of the city are liable to the payment of toll or octroi any person who, with the intention of defrauding the Mahapalika, causes or abets the introduction of or himself introduces or attempts to introduce within the limits of the city any such vehicle, animals or goods, upon which payments of the toll or octroi due on such introduction has neither been made nor tendered, shall, on conviction, be punished with fine which may extend to ten times the amount of such toll or octroi or to two hundred and fifty rupees, whichever may be greater."

Section 467 makes provision for levy of general penalty which would include the contravention of any rule. On the facts which have been found there can be no escape from the conclusion that the appellants were guilty of the offences with which they were charged. In fact it is clear from a receipt Ex. Ka-8, dated August 10, 1965, that octroi was paid on pig iron in respect of deliveries on three dates in the month of May 1963. This seems to have been done because the Mahanagarपालिका had either taken some steps or actually filed a complaint before the date of payment made in August 1965.

5. It seems to us that the appellant Baladin had to rightly bear the consequences of not availing himself of the arrangement which he had made of obtaining the bonded warehouse facilities. That was clearly indicative of his intention of evading the payment of the octroi duty. We find no merit in these appeals and they are dismissed.

</html