

ALLAHABAD HIGH COURT

Nek Mohammad

Vs

Emperor

(Bajpai, J.)

28.08.1935

ORDER

Bajpai, J.

1. The applicants were convicted by a Special Magistrate of the 1st class under Section 299, Municipalities Act (Local Act 2 of 1916) and sentenced to pay a fine of Rs. 25 each. The conviction and sentence were upheld in revision by the learned Sessions Judge. In the present application before me it is contended that the conviction is illegal. It appears that the four applicants were taking four carts loaded with dried ginger from a place called Kalpi and they passed through the Municipal limits of Saharanpur on their way to Tapri, a railway station, for the purpose of sending the goods to Delhi. It is said that they did not pay the toll tax and as such they were guilty of a breach of rule framed by the Local Government for the Saharanpur Municipality. Section 299, Municipalities Act, provides that in making a rule the Local Government...may direct that a breach of it shall be punishable with fine which may extend to Rs. 500. The power to make rules is given to the Local Government by Section 296 of the Act and Section 128 of the same Act says that: Subject to any general rules or special orders of the Local Government in this behalf the taxes which a Board may impose in the whole or in part of the Municipality are:

and then a list of the various taxes is given by Government Notification No. 850/11-D. T. 3, dated 1st May 1919, the existing rules regarding the assessment and collection of the terminal toll in the Saharanpur Municipality were superseded and fresh rules laid down. Under these rules the expression "terminal toll" means the tax imposed under Sections 128(1)(7), United Provinces Municipalities Act. Rule 2 says, No person shall bring within the toll limits of the Saharanpur Municipality (which shall be the same as the octroi limits published with Notification No. 2024/1,1-374-E., dated 11th July 1916), any head load, bahngi load, laden vehicle or any laden pack animal, on or in respect of which terminal toll is leviable, until the toll due has been paid to such persons and at such places as the Municipal Board may from time to time appoint.

2. A penalty was then provided and it was said that in exercise of the power conferred by Section

299(1) of the Act the Local Government hereby directs that a breach of Rule 2 shall be punished with fine which may extend to Rs. 50. By a Government Notification dated 27th October 1919 it was notified that under Sub-section (2), Section 135, United Provinces Municipalities Act, 1916, the Municipal Board of Saharanpur in exercise of the powers conferred by Section 128(1)(vii) of the said Act had imposed certain taxes in the Municipality of Saharanpur with effect from 1st December 1919. Then we have the heading "Terminal Toll" and the amount of the toll is fixed on head loads, bahngi loads loaded pack animals, loaded carts, loaded hand carts and motor lorries under sub-heading (I) and a proviso is added that on animals or carts laden with lime, bricks, tiles, stones, reh, surkhi, etc., etc., the, tax will be on a certain basis. We then get sub-headings (II) and (III.) It is not necessary for the purpose of this case to mention what those sub-headings contain. On 13th November 1922 there was another Notification and it was notified that under Sub-section 2, Section 135, United Provinces Municipalities Act, the Municipal Board of Saharanpur in exercise of the powers conferred by Section 128(1)(vii) of the said Act had made the following amendments under Section 136 of the Act in the terminal toll schedule of the Municipality published with Notification dated 27th October 1919 with effect from 1st December 1922:Amendments.-Add the following to the description of the terminal toll as II and alter the present Nos. II and III to III and IV: On carts, pack animals, head loads and bahngis entering the limits of the Municipality and loaded with articles contained in items 32 to 52 of the terminal tax schedule...the toll shall be levied at the rates of the terminal-tax in force in the Municipality. In November 1932 there was a further Notification which says that it is hereby notified that under Sub-section 2, Section 135 read with Section 136, United Provinces Municipalities Act, 1916, the Municipal Board of Saharanpur in exercise of the powers conferred by Section 128(1)(vii) of the said Act had made the following amendments in the terminal toll schedule of the Saharanpur Municipality, published with Notification of 1919 and subsequently amended with effect from 1st December 1932:Amendments.-Substitute the following for the description of the terminal toll No. 2 added by Notification of November 1922 No. 2. The following articles shall be charged toll at the rates of terminal-tax in force in the Municipality when imported by road through all the toll barriers and then the description of the articles as given in the terminal-tax schedule is set forth.

3. It would thus appear that although the original intention of Rule 2 as notified in May 1919 was to impose a tax known as terminal toll On head loads, "bahngi loads,, laden vehicles and laden pack animals and although the said intention was maintained in the notifications of October 1919 and even in November 1922 when carts, pack animals, head loads and bahngis laden with particular articles were subjected to a toll at the rate of terminal-tax, yet in the year 1932 the amendment in the shape of a substitution did away with head loads, bahngi loads, laden vehicles and laden pack animals and said that certain articles will be charged toll at the rates of terminal tax when imported by road through all the toll, barriers. It is not necessary for the purpose of the present case to say how far the present amendment of 1932 is consistent with the spirit of Rule 2 mentioned above, but even assuming that the way in which the tax is now being imposed is consistent with Rule 2, in the sense that the two read together might mean that head loads, bahngi

loads, laden vehicles and laden pack animals containing the articles specified in the amendment of November 1932 will be liable to toll at the rate of terminal-tax, the question still remains whether in the circumstances mentioned at the beginning of my judgment the accused brought within the toll limits' of the Saharanpur Municipality or imported by road through the toll barriers of the Saharanpur Municipality, the carts containing dried ginger which article would be included in No. 48 of the Notification of November 1932. The carts were coming from Kalsi and were going to Tapri and in the way they passed through the Saharanpur Municipality and they evaded the toll barriers. The goods were intended to be railed at Tapri for Delhi. I am not impressed by the argument of learned Counsel for the applicants that the carts did not pass through the toll barriers and therefore there was no breach, because the Notification of November 1932 mentions "through all the barriers". The meaning is that the carts passing through the Saharanpur Municipality will be within the ambit of the toll barriers and if a person happens to take his cart through a kachcha road and thus evades the barrier he will nonetheless be said to be passing through the toll barriers.

4. What however has been strongly argued is that the accused did not bring the carts within the toll limits within the meaning of Rule 2 contained in the Notification of the 1st. of May 1919 nor did they import the articles by road through the toll barriers within the meaning of the Notification of November 1932. It is contended that the toll is leviable only when the articles remain within the toll limits of the Saharanpur Municipality for some time and if the carts simply pass through the Saharanpur Municipality for the purpose of the articles being conveyed to some other destination (in the present case on the findings of the Courts below it is known that the goods were intended for Delhi) the toll would not be leviable. It is said that the articles were in the course of transit and at no stage of time could they be said to have been brought within or imported by road through the toll limits of the Saharanpur Municipality. I feel inclined to agree with this contention. The word import" is defined in Webster's dictionary as meaning, To bring in from a foreign or external source, to introduce from without, specially to bring wares or merchandise into a place or country from a foreign country in the transactions of commerce.

5. The word "bring" is defined as meaning:To convey to the place where the speaker is or is to be, to bear from a more distant to a nearer place.

6. To my mind in both these words there is an element of pause or repose, and in the present case the carts only passed through the Saharanpur Municipality and did not rest there at all. I am further of the opinion that it was not the intention of the framers of the rule to levy a toll by way of terminal tax under circumstances of the present case and it is obvious that it would not be equitable to do. A rule like this should be interpreted liberally and in favor of the subject and in any event if the intention was to impose a tax under circumstances such as arise in the present case the rule ought to have been more clearly expressed.

7. For the reasons given above, I allow this application, set aside the conviction and sentence and

direct that the fines if paid, be refunded.

