

## APPELLATE CIVIL.

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*Before Nasim Ali and Mukherjea JJ.*

SEWAL RAM AGARWALA

v.

ABDUL MAJID.\*

1937

Aug. 17.

*Judicial Officers—Protection against damage suits for orders passed by such officers—Protection to persons bound to execute such orders—“Jurisdiction”, Meaning of—Judicial Officers’ Protection Act (XVIII of 1850), s. 1.*

Under the Judicial Officers’ Protection Act of 1850 a judicial officer is protected against any liability to be sued in a civil Court for passing any orders, whether or not within the limits of his jurisdiction, if he made such orders in good faith believing to have jurisdiction to pass the same.

The protection given to judicial officers under the Act extends to persons bound to execute such orders as are made within the jurisdiction of such judicial officers.

The word “jurisdiction” in the Act is taken in the sense of authority or power to do an act and not in the sense of authority or power to do an act in a particular manner.

*Teyen v. Ram Lal* (1) followed.

APPEAL FROM APPELLATE DECREE by the plaintiff.

The material facts of the case and the arguments in the appeal appear sufficiently in the judgment.

*Santosh Kumar Basu, Parimal Mukherji and Ajay Kumar Basu* for the appellants.

*Sarat Chandra Basak and Ramaprasad Mookerjee* for the respondents.

The judgment of the Court was as follows :—

This is a Second Appeal by the plaintiffs from the decision of the Additional Subordinate Judge,

\*Appeal from Appellate Decree, No. 1887 of 1936, against the decree of Jnanendra Nath Ghosh, Additional Subordinate Judge of Rangpur, dated Aug. 28, 1936, affirming the decree of Ashu Tosh Das, Second Munsif of Rangpur, dated April 9, 1936.

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Rangpur, dated August 28, 1936, affirming a decision of the Munsif, Second Court of that place, dated April 9, 1936.

The facts of the case are these :—

Defendant No. 1 was the Sub-Divisional Officer of Gaibanda in the year 1933. Defendant No. 2 was the Assistant Sub-Inspector of Police posted at Gaibanda police station in the same year. Defendant No. 1 received complaints from certain persons about noxious and adulterated mustard oil and *ghee* being sold and being exposed to sale by several traders in the Gaibanda town. He also received an anonymous petition to the same effect. The plaintiffs' firm was named in the petition as one of those dealing in these offensive articles. Defendant No. 1 thereupon made an order for a search and seizure of these articles at the premises of the plaintiffs' firm. He made this order in writing on the body of the anonymous petition. No search warrant, however, was issued in Form 8 of Sch. V of the Criminal Procedure Code. The order of defendant No. 1 to search and seize was sent to the officer in charge of the Gaibanda police station who directed defendant No. 2 to execute it. The latter, thereupon, seized 457 tins of mustard oil lying in the plaintiffs' shop on May 7, 1933, and left them in the custody of the plaintiffs' *gomastâ* on his giving a *jimbâ-nâmâ*. On May 24, 1933, one Ashu Tosh, the Sanitary Inspector of the district, who was authorised by the Commissioners of Gaibandha Municipality, made a complaint before defendant No. 1 against plaintiff No. 1 and his *gomastâ* Hari Prasad, under s. 6 of the Bengal Food Adulteration Act. On the basis of this complaint, proceedings under the Food Adulteration Act were started before defendant No. 1 against the accused. The complainant then applied before defendant No. 1 for a direction upon the police to make over the seized articles to him in order to enable him to produce them in Court. This prayer was allowed on July 11, 1933, and the

police made over the custody of the articles to the complainant on July 13, 1933. While this case was pending, the plaintiffs applied to defendant No. 1 for release of the articles under seizure, stating that their indefinite detention was causing enormous pecuniary loss to them. Defendant No. 1, thereupon, on September 18, 1933, made an order to the effect that the matter would be considered after the disposal of the food adulteration case against them. On July 5, 1934, the plaintiffs instituted the present suit, out of which this appeal arises, to recover Rs. 3,000 as damage from defendants Nos. 1 and 2 and the Secretary of State for India in Council for wrongful seizure and detention of their articles. The plaintiff No. 1 and his *gomastâ* were ultimately acquitted by this Court on August 30, 1934, and the articles were released to the plaintiff on September 25, 1934. On these facts, the Courts below have dismissed the suit against defendants Nos. 1 and 2. They have held that they are protected by the Judicial Officers' Protection Act (XVIII of 1850) for the following reasons :—

(i) that the defendant No. 1 made the order for search and seizure under s. 96 of the Criminal Procedure Code in the *bona fide* discharge of his duty as a Magistrate, as he intended to hold an enquiry into an alleged offence under s. 272 of the Indian Penal Code, of which he took cognisance under s. 190C of the Criminal Procedure Code;

(ii) that the omission by defendant No. 1 to issue a warrant for the search and seizure of the goods amounted to an illegality, but it did not take away the jurisdiction of the Magistrate to order for a search under s. 96 of the Code of Criminal Procedure;

(iii) that defendant No. 1 refused to return the tins of oil to the plaintiffs in the *bona fide* belief that he had powers under s. 516, Criminal Procedure Code, to detain the goods until the disposal of the food adulteration case;

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(iv) that defendant No. 2 executed the order of the defendant No. 1 to search and seize as he took the order to be legal and was bound to execute it.

The suit against defendant No. 3 was dismissed by the trial Court on the ground that defendant No. 3 did not ratify the tort alleged to have been committed by his servants, *viz.*, defendants Nos. 1 and 2, either directly or indirectly and that he did not derive any benefit from the acts of defendants Nos. 1 and 2. This finding of the trial Judge was not assailed by the plaintiffs before the lower appellate Court. The appeal against defendant No. 3 in this Court was not pressed.

The contention of the learned advocate for the appellants is that on the findings of the Courts below the suit ought to have been decreed against defendants Nos. 1 and 2.

It has been already pointed out that the Courts below have found that the order of defendant No. 1 to search and seize the goods and his subsequent order refusing to return the goods seized were made by defendant No. 1 in good faith in the discharge of his duties as a Magistrate. The question is whether on this finding defendant No. 1 is protected under the Judicial Officers' Protection Act (XVIII of 1850). The preamble of this Act shows that this Act was passed for the greater protection of the Magistrates and others acting judicially. The Act contains only one section and it is in these terms:—

No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any civil Court, for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: provided that he, at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of: and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

By this section a judicial officer is protected if he made the order in the discharge of his judicial duties, whether or not within the limits of his jurisdiction,

provided that he, at the time, in good faith, believed, himself to have jurisdiction to pass the order. The word "jurisdiction" in the section is to be taken in the sense of authority or power to act in the matter and not in the sense of authority or power to do an act in a particular manner. Even if the order of a judicial officer is not within the limits of his jurisdiction, he would still be protected, if at the time of making the order he believed in good faith that he had jurisdiction to make the order: *Teyen v. Ram Lal* (1).

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Defendant No. 1 had power to issue an order for search and seizure of the tins of oil from the shop of the plaintiffs, under s. 96 of the Criminal Procedure Code. He, however, did not exercise this power in the particular manner in which it ought to have been exercised, namely, by the issue of a search warrant. But this irregular or illegal exercise of power does not imply that the order itself was without jurisdiction. Further, in this case, defendant No. 1, at the time when he made the order, in good faith believed that he could exercise his power under s. 96, by making an order only for the search and seizure. The Courts below were, therefore, right in dismissing the suit against defendant No. 1.

As regards the claim against defendant No. 2, the contention of the appellants is that he is not protected by the Judicial Officers' Protection Act, as he was not bound to carry out the order of defendant No. 1 to search and seize the goods until and unless a search warrant was issued by defendant No. 1 in the prescribed form. The concluding portion of s. 1 of the Judicial Officers' Protection Act (XVIII of 1850), however, says that a person, bound to execute lawful orders of any Magistrate, shall not be liable to be sued in any civil Court for execution of an order which he would be bound to execute, if within the jurisdiction of the person issuing the same. Defendant No. 2 was bound to execute lawful orders of defendant No. 1. The order in question was within the

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jurisdiction of defendant No. 1 in the sense that he had power and authority to pass it, though he did not exercise that power in the manner indicated by the Criminal Procedure Code. Defendant No. 2 was, therefore, bound to carry out this order. In the case of *Teyen v. Ram Lal* (1) cited above, Edge C. J. and Tyrrell J. observed as follows:—

“ If the term ‘jurisdiction’ in that concluding paragraph” (the concluding portion of s. 1 of Act XVIII of 1850) “ were to be construed as meaning ‘ authority or power to issue the warrant in the particular matter and in ‘ the particular manner or form in which it was issued, the officer or person ‘ executing the warrant would under the section obtain no greater protection ‘ than the law, without the aid of Act XVIII of 1850, already afforded ‘ him, the protection being extended only to ‘ an officer of any Court or other ‘ person bound to execute the lawful warrant,’ etc. The protection to ‘ such officer or person afforded by the section was not against suits for ‘ executing lawful warrants or orders, but against suits for executing ‘ warrants or orders which were not lawful, provided that such warrant or ‘ order was issued by a judicial officer in a matter within his jurisdiction, ‘ and not merely in a matter in which such judicial officer had authority or ‘ power to issue the particular warrant.”

Under the circumstances, I am of opinion that defendant No. 2 is also protected by the Judicial Officers’ Protection Act.

The further difficulty in the way of the plaintiffs is that defendant No. 2 is not at all responsible for the detention of these goods and there is no material or finding on the record of the present case to indicate whether the plaintiffs have suffered any damage on account of the search and seizure of the goods by defendant No. 2. In any view of the case, the claim against defendant No. 2 also cannot succeed.’

Dr. Basak on behalf of the respondents drew our attention to s. 270, cl. (2) of the Government of India Act of 1935. The relevant portion of this clause is in these terms:—

Any civil or criminal proceedings instituted, whether before or after the coming into operation of this part of this Act, against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date shall be dismissed unless the Court is satisfied that the acts complained of were not done in good faith.

The answer of the learned advocate for the appellants is that the defendant cannot take advantage of

this statutory provision of the Government of India Act, as, before this provision can be applied, two things must be shown, namely (i) that the person did the act or purported to do it in the execution of his duty as a servant of the Crown and (ii) that the acts were done in good faith.

So far as defendant No. 1 is concerned, it is not disputed that he did pass the order in good faith. It cannot also be disputed, in view of the facts of the present case, that while making that order he acted or at least purported to act as a servant of the Crown.

As regards defendant No. 2, the contention of the learned advocate for the appellants is that in view of the order issued to him by the police officer in charge of the Gaibanda police station defendant No. 2 cannot be held to have acted in good faith when he seized 457 tins of oil, inasmuch as he was asked only to seize tins containing adulterated mustard oil and he had no materials before him at the time of seizure to satisfy himself that all these tins contained adulterated mustard oil. Clause (2) of s. 270 of the Government of India Act lays down that the action shall be dismissed unless the Court is satisfied that it was not made in good faith. The contention of the plaintiffs in this case is that they had no opportunity of showing that defendant No. 2 did not act in good faith as this section came into force only on April 1 of this year. In view of our decision that defendant No. 2 is protected under the Judicial Officers' Protection Act and that there are no materials to show that the plaintiffs had suffered any damage on account of the search and seizure of the goods by defendant No. 2, it is not necessary to pursue this point any further.

The result, therefore, is that this appeal is dismissed and the decrees of the Courts below dismissing the suit against all the defendants are affirmed. But, in view of the facts and circumstances of this case, we direct the parties to bear their own costs throughout this litigation.

*Appeal dismissed.*

A. K. D.

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