

cannot be convicted under section 304. The common intention of the accused was not to cause death or such injury as was likely to cause death but only to cause grievous hurt. This case is similar to that of *Emperor v. Bhola Singh* (1), in which it was held, under circumstances which were exactly the same as those of the present case, that the accused were guilty under section 325 and not under section 304. I therefore alter the conviction to one under section 325 of the Indian Penal Code and reduce the sentence, in the case of each appellant, to one of five year's rigorous imprisonment.

Conviction altered.

REVISIONAL CRIMINAL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

EMPEROR v. MANIK CHAND.*

Act (Local) No. I of 1904 (General Clauses Act), section 24—Effect of General Clauses Act as regards rules framed under the former Municipalities Act of 1900—Municipal Account Code, rule 40—Octroi duty.

A consignment of cloth addressed to one *M* reached one of the octroi barriers of Bareilly on the 19th of February, 1917. The officer in charge demanded a larger sum than *M* considered properly leviable. The matter was referred to the Octroi Superintendent who, as he had the right to do, assessed the duty at Re. 1-0-9. Under rule 40 of the Municipal Account Code framed under Act No. I of 1900, a person in the position of *M* could appeal against the decision within sixty days, but he could only exercise the right by first paying under protest the duty demanded. *M*, however, appealed against the decision without making the payment. On the expiry of sixty days a prosecution was instituted against *M* under Act No. II of 1916, and he was fined. He applied in revision to the High Court:—*Held* that the conviction was legal; the jurisdiction of the court was saved by section 24 of the Local General Clauses Act, and the fact that the prosecution had been instituted under the Municipal Account Code framed under the repealed Municipalities Act (No. I of 1900) did not affect the question. *Held* also that the mandatory direction in rule 40 of the Municipal Account Code lays down, by inference, a period of 53 days, on the expiry of which without payment as required the offence is complete and a prosecution may be started.

* Criminal Revision No. 689 of 1917, from an order of Muhammad Muti-ullah Khan, Magistrate, First Class, of Bareilly, dated the 31st of May, 1917.

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THE facts of this case were as follows :—

On the 19th of February, 1917, a consignment of cloth addressed to one Manik Chand, reached one of the octroi barriers of the Bareilly Municipality. The officer in charge demanded a larger sum by way of duty than Manik Chand considered was properly leviable, and the question was referred to the Octroi Superintendent. He assessed the duty at Re. 1-0-9. It was open then to Manik Chand to appeal against the Superintendent's assessment but he could only exercise that right by paying, under protest, the sum demanded as octroi duty, and then appealing within 7 days of such payment. Manik Chand did not pay the duty demanded, but he presented a petition to the Chairman of the Board, which, however, could not be regarded as a valid appeal from the assessment. After the expiry of 60 days a prosecution was instituted for a breach of rule 40 of the Municipal Account Code. Manik Chand was convicted and fined Rs. 5. He thereupon applied in revision to the High Court.

Babu *Priya Nath Bunerji*, for the applicant.

The Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown.

PIGGOTT, J.—This is an application in revision against the conviction of one Manik Chand, a shop-keeper and cloth-dealer of the city of Bareilly, on a prosecution instituted against him under the orders of the Municipal Board of that place. It would appear that on the 19th of February a consignment of cloth addressed to Manik Chand reached one of the octroi barriers on the boundary of the aforesaid Municipal area. The officer in charge demanded a larger sum by way of octroi duty than Manik Chand considered was properly leviable under the rules. The matter was referred to the Octroi Superintendent, who assessed the duty at Re. 1-0-9, and it is quite clear that he had power to do this under the rules. The position then became this, that Manik Chand had a right of appeal within sixty days against the decision of the Octroi Superintendent, but that he could only exercise that right by first paying under protest the duty demanded and then appealing within seven days of the date of this payment. Practically the result is that he had 53 days within which to make up his mind whether he would pay or not, and if he desired to

pay under protest and to exercise his right of appeal, he could then do so. Manik Chand seems to have elected to fight the matter out with the Board. It seems that he presented a petition to the Chairman, but as he did this without having paid, under protest or otherwise, the extra duty demanded, it could not be treated as a valid petition of appeal. On the expiry of the sixty days a prosecution was instituted by the issue of a summons from a Magistrate's court, and Manik Chand has been sentenced to a fine of Rs. 5 for breach of rule No. 40 of the Municipal Account Code, which lays down that under the circumstances above stated a person in the position of Manik Chand should pay the duty as assessed by the Octroi Superintendent subject to the right of appeal already mentioned.

The substantial point taken in the petition before us is that Manik Chand, having left the goods in question in the possession of the Municipal authorities, should not be regarded as having committed any offence. This plea would be a valid answer if the case against Manik Chand were that he had introduced, or attempted to introduce, within octroi limits goods liable to the payment of octroi for which the octroi due had neither been paid nor tendered (*vide* section 155 of the United Provinces Municipalities Act, No. II of 1916). This, however, is not the question before us. What we have to determine is whether there has been a punishable breach of a rule validly made by the Local Government under powers lawfully exercisable by that Government. We feel some difficulty over the question as to whether the mandatory direction in rule 40 already referred to, which directs that the person thinking himself aggrieved by the assessment made by the Octroi Superintendent shall pay the sum so assessed subject to a right of appeal, could be made the basis of a prosecution, in the absence of a clear specification of the period within which such payment must be made, the expiration of which without payment could be regarded as completing the offence. We think, however, upon an examination of the rules, that the necessary period is laid down by inference and that it is a period of 53 days from the date of the Octroi Superintendent's assessment. It has been suggested before us in argument, although the point is not explicitly taken in the petition for revision, that the rules of the Municipal Account Code

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under which this conviction has been affirmed are no longer in force, by reason of the repeal of the former Municipalities Act, No. I of 1900, under which these rules were framed. We have been informed that the question of the revision of the Municipal Account Code is under consideration, and it may well be that this rule, amongst others, would be the better for revision in the direction of greater clearness and definiteness. In the meantime, however, no fresh rules have been issued under the powers exercisable by the Local Government by virtue of section 299 of the present Act. On this point it would seem that the jurisdiction of the court is saved by section 24 of the Provincial General Clauses Act, No. I of 1904. In a very similar case another Judge of this Court has treated the provisions of this Act as validating a prosecution for an offence punishable, if at all, only under the Act of 1900, *vide* the case of *Emperor v. Amir Hasan Khan* (1). There is therefore authority for the view which we take of the operation of section 24 above referred to. We are of opinion that this application fails and must be dismissed.

WALSH, J.—I agree. I have felt some doubt as to whether the old rules of 1900 have not ceased to have any operative effect, so far as they are inconsistent with section 155 of the new Act, and of course care will have to be taken when making the new rules, in dealing with this matter, which is expressly provided for by section 155 of the new Act; but I do not feel so clear about it that I ought to differ. After all it was the duty of the octroi official to collect the money, and if the payment made under protest, either with the object of presenting an appeal or where no appeal is preferred, turns out in fact to be in excess of the proper amount payable, there is an authority of this Court, that it can be recovered in a suit against the Municipality for money had and received. I agree therefore that this is not a case for interference in revision.

By THE COURT.—The application is dismissed.

Application dismissed.