

REVISIONAL CRIMINAL

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice King*

EMPEROR *v.* SHEIKH AJMERI*

1933
September, 4

Municipalities Act (Local Act II of 1916), sections 2(9), 3(1) (a), 128(1) (viii), 155—Detached and non-contiguous areas can be included within one municipality—Importation of animals from one part of a municipality, across non-municipal land, into another detached part of the same municipality—Octroi charges whether leviable—Municipalities Act (Local Act II of 1916), sections 7(1) (d); 298, head J(d); 299—Slaughter house fee—Whether leviable where meat is intended for export trade—Bye-laws—Whether ultra vires.

By a notification of the Local Government a piece of land, about one square mile in area, was added to the Agra municipality; this area did not adjoin the original municipal limits and was a detached area, separated by a distance of three miles from the old municipal limits of Agra. Some butchers had their private slaughter houses on this area. One of them was prosecuted under section 155 of the Municipalities Act for refusal to pay octroi charges in respect of certain cattle imported by him into this area, and under section 299 of the Act for refusal to pay the slaughter house fee imposed by municipal bye-laws. It appeared that the cattle in question were taken into this area from inside the old municipal limits, and across the intervening three miles; and it was not alleged that no octroi duty had been paid on them when they had been imported into the old limits. *Held—*

The use of the singular number in the words "any local area" in section 2(9) and 3(1) (a) of the Municipalities Act can not be regarded as meaning that there is anything in the Act which prohibits the combination of detached areas to form one municipality or which makes it compulsory that the entire area within the municipal limits must be a compact area consisting of contiguous parts. The notification including the detached area within the municipal limits was, therefore, not *ultra vires*.

Cattle imported within municipal limits for the purpose of making dry meat for export are cattle imported for "use" within the meaning of section 128(1) (viii) of the Municipalities Act, and octroi duty is leviable on them.

*Criminal Revision No. 741 of 1932, from an order of L. V. Ardagh, Sessions Judge of Agra, dated the 5th of July, 1932.

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The words "introducing within octroi limits" in section 155, and the similar words "brought within the municipality" in section 128(1) (viii), imply that goods or animals are imported from some place entirely outside the municipal limits and brought inside such limits. They are not meant to cover a case of transit where goods are transferred from one part of the municipality to another part within its limits. This interpretation equally applies even if it so happens that owing to irregular boundaries of the municipality, or owing to the fact that a part of it is a detached area, the goods have to cross non-municipal lands in transit. So, the accused was not liable to pay any octroi duty on the cattle if they were taken from the city of Agra into the detached area in question, both being within the limits of the same municipality.

Under section 7(1) (d) of the Municipalities Act the Municipal Board is empowered to make reasonable provision within the municipality for regulating offensive, dangerous or obnoxious trades; and the preparation of meat for human consumption, though for export and not for local consumption, came under that category. The regulation of such trade was included in the "furtherance of municipal administration" within section 298. The bye-law fixing a slaughter house fee was within the power of the Board under section 298, head J, clause (d), and unless it was shown that the prescribed fee was unreasonable, being out of all proportion to the value of the "municipal service or undertaking" mentioned in that clause, the bye-law was valid and not *ultra vires*. The conviction of the accused under section 299 was correct.

Mr. *Gopi Nath Kunzru*, for the applicant.

Dr. *N. P. Asthana*, for the opposite party.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

SULAIMAN, C. J., and KING, J.:—This is a criminal revision from an order of the Sessions Judge upholding the conviction of the accused under section 155 and section 299 of the U. P. Municipalities Act.

It appears that the applicant Sheikh Ajmeri is a butcher residing in the city of Agra. Up to 1923, in addition to public slaughter houses situated within the city of Agra, there were private slaughter houses outside the municipal limits, across the Jumna river, some seven miles off. The site was acquired by the Municipal

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Board and then leased out to butchers who had their private slaughter houses on the land. In 1923, by a notification in the Gazette, a small area of less than one square mile known as Jharnanala was added to the Agra municipality. This area does not actually adjoin the original municipal limits and is a detached area quite separate from the old municipal limits of Agra and there is a distance of about three miles in between. After the area became a part of the municipality of Agra certain bye-laws were framed for the regulation of the slaughter of cattle in the slaughter houses and for levying octroi duties.

On the 29th of October, 1931, the accused's servants brought twenty-two heads of cattle to Jharnanala and on the 30th of October, 1931, they brought ninety heads of cattle. As regards the twenty-two heads of cattle brought on the first day, and nineteen out of ninety heads of cattle brought on the second day, no octroi receipts were forthcoming which would show that these were imported into the city of Agra from outside and octroi duty had been paid thereon. There were receipts for the remaining heads of cattle, although they were more than three days old. According to instructions issued by the Municipal Executive Officer, these receipts were not to be accepted if they were more than three days old. The accused's servants, and afterwards the accused himself, refused to pay the octroi duty on these cattle and also the slaughter house fees which are fixed under the bye-laws.

It will be convenient to consider the convictions of the accused under the two sections separately. The first point raised by Mr. *Kunzru* on behalf of the accused is that the notification of Government including the detached area within the municipal limits of Agra was itself illegal. His contention is based on the use of the singular number in the words "any local area" in section 2(g) and in section 3(1)(a) of the Act. Although it is probable that it was never contemplated that detached areas should form part of one municipality, we are

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unable to hold that there is anything in the Act which prohibits the combination of detached areas and which makes it compulsory that the entire area within the municipal limits must be a compact area consisting of contiguous parts. Indeed section 3(1)(d) expressly provides that the Local Government may include or exclude any area in or from any municipality, and it does not mention a contiguous area. It is therefore impossible to hold that the notification was in any way illegal, although there is also no doubt that much of the trouble has arisen because of including a detached area within the municipal limits of Agra.

The provisions for levying octroi duties are to be found in the Municipalities Act, in the Municipal Account Code as well as the bye-laws framed by the Agra Municipality. Under section 128(1) (viii) of the Act a Board is authorised to impose taxes including "an octroi on goods or animals brought within the municipality for consumption or use therein." Section 155 provides that "A person introducing or attempting to introduce within octroi limits, or abetting the introduction within octroi limits, of any goods or animals liable to the payment of octroi for which the octroi due on introduction has neither been paid nor tendered, shall be punished with a fine which may extend either to ten times the value of such octroi or to fifty rupees, whichever is greater and which shall not be less than twice the value of such octroi."

The first contention urged on behalf of the applicant is that these sections would not apply to the trade in Jharnanala, because cattle are taken there for the purpose of making dry meat for export to Burma and other places outside the municipal limits of Agra. It is contended that as cattle are not brought within the municipality for the purpose of use or consumption, no octroi duty is leviable. We are unable to accept this contention. In the first place, it is not clear that the whole of the meat produced is exported outside the municipal limits and none of it is consumed within

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such limits. In any case, the slaughter of cattle for the purpose of producing meat would be using them. The position is similar to that of importing raw material and converting it into finished articles. It must therefore be held that cattle imported in this way, for the purpose of being slaughtered in order that dry meat may be prepared, are cattle imported for use.

This also disposes of the argument that the rules framed for assessment and collection of octroi on animals imported for consumption or use in the Agra municipality would not be applicable. These rules in reality contemplate the case of a compact area into which goods are brought from outside or through which they are transmitted. Admittedly there are no special rules which are made applicable to this detached area of Jharnanala. It is the general bye-laws framed for the municipality as a whole that are sought to be applied.

Section 155 is a penal enactment and has to be construed strictly against the prosecution. The words "introducing within octroi limits" in section 155, and the similar words "brought within the municipality" in section 128(1)(viii), imply that goods or animals are imported from some place entirely outside the municipal limits and brought inside such limits. They are not meant to cover a case of transit where goods are transferred from one part of the municipality to another part within its limits. We think that this interpretation should be adhered to even if it so happens that owing to irregular boundaries of the municipality, or owing to the fact that a part of it is a detached area, the goods have to cross non-municipal lands in transit. When goods or animals are removed from one muhalla of the municipality to another, it is very difficult to say that they are being introduced within the octroi limits or that they are being brought within the municipality from outside. They are really not being imported at all but are transmitted from one part to another. The mere fact that for a short interval of

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time such goods or animals while in transit would be crossing the municipal boundary and re-entering it would not, for the purposes of section 155, alter the situation. No doubt, in a strictly technical sense, the goods can be said to pass out of the boundary limits and then re-enter. But in our opinion the significance of the words "introducing" and "brought in" is that they must be imported from outside the municipal limits altogether.

At the same time it is quite clear that if animals are introduced into or brought within Jharnanala, the burden of showing that they have come from the city of Agra would be on the accused and not on the municipality. The Municipal Board would not know wherefrom the animals are being imported and they are entitled to demand octroi duty as soon as they enter the municipal limits of Jharnanala. But if the accused were to establish that these animals were within the municipal limits of Agra and the identical animals have been brought from there into the limits of Jharnanala, then no octroi duty would be leviable, because in our opinion this would not be a case of importing goods or animals from outside the municipal limits.

According to the findings of the courts below, the practice so far has been that cattle were allowed to enter the limits of Jharnanala and pass the octroi barrier without any demand of octroi duty. But the Veterinary Assistant charges octroi duty per head of cattle at the slaughter house the next day. The initial entry of the cattle is not prohibited, but octroi is demanded in case the person bringing the cattle is not able to produce a receipt that octroi duty had been paid within three days.

Dr. *Asthana*, advocate for the Municipal Board, urged before us that the proper procedure should be that when cattle are brought into the city of Agra, octroi should be paid in the first instance and then when they are taken out, a refund should be applied for and then again when they are taken inside Jharnanala a fresh octroi duty should be paid. This, on the face of it, is

a cumbersome procedure. There are rules for refund of octroi in the Municipal Account Code, chapter X (page 61) of the Municipal Manual, but apparently they refer to a case where goods are being taken out of the municipal limits for purposes of export. They do not contemplate the refund of octroi duty for transit of goods from one part of the municipality to another part. In this connection we may also point out that under paragraph 179 it is provided that the fact that goods are in the municipality, and that octroi would be leviable on them if they were being imported, shall be accepted as sufficient proof that a refund is admissible. It is not the case for the Municipal Board that no octroi duty had been paid on these heads of cattle when imported into the city of Agra. It has also been assumed by the courts below that these heads were taken from inside the limits of the municipality of Agra into Jharnanala. The accused has been prosecuted for refusing to pay a fresh octroi duty when the cattle arrived inside Jharnanala. That these rules were not intended for levying duties in the case of detached areas is also clear from paragraph 134 at page 47 of the same Municipal Account Code, under which there are four ways prescribed according to which goods imported into the municipality should be dealt with. They are that the goods may be assessed at the barriers, or taken to the head octroi office and assessed there, or assessed under the rules laid down for goods imported by railway, or the octroi may be compounded for. None of these methods would have been applicable to the case before us. We have already noted that although there is an octroi barrier, no octroi duty is demanded by the octroi clerk but it is the Veterinary Assistant who charges duty next day at the slaughter house. In view of all these circumstances, we are of opinion that the accused was not bound to pay any octroi duty on these heads of cattle on the assumption that they were taken from inside the city of Agra into Jharnanala, both being within the municipal limits.

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The second point is whether the accused has been rightly convicted for refusing to pay the slaughter house fee. It is not disputed before us that if such a fee is legally leviable, then refusal to pay the fee would be a criminal offence.

The learned advocate for the accused has contended before us that the bye-law prescribing the slaughter house fee is *ultra vires* and that accordingly no offence has been committed on account of its breach. So far as the bye-laws go, they are very explicit. It is provided in bye-law No. 16 that for every animal slaughtered at Jharnanala private slaughter houses specified fees shall be leviable, and then bye-law No. 20 provides that no animal shall be admitted into the private slaughter houses unless it is covered by a pass or unless the fee prescribed in bye-law No. 16 has been paid. It follows therefore that the slaughter of these cattle without previous payment of the fees prescribed amounted to a breach of the bye-law.

Now section 299 empowers a Board to make a bye-law making a breach of its bye-laws punishable with fine. The only question therefore is whether the bye-law framed by the Board is *ultra vires*.

It is contended on behalf of the accused that the power of the Board to frame bye-laws is restricted under section 298 to "the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipality and for the furtherance of municipal administration under this Act." It is therefore urged that inasmuch as cattle were taken inside Jharnanala for the purpose of making dry meat for export to Burma, and the inhabitants of the municipality of Agra were not concerned with it, the Board had no authority to make any bye-laws regulating such trade. It is also contended that the furtherance of municipal administration would not include the regulation of a trade which is conducted principally for the purpose of export. But under section 7(1)(d) of the Act a Board is empowered to make reasonable provision within the

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municipality for "regulating offensive, dangerous or obnoxious trades, callings or practices". We are therefore unable to hold that it is no part of the duty of the Municipal Board to see that the preparation of meat within the municipal limits for the purposes of human consumption, though only for export, should not be conducted in an offensive or obnoxious manner. But as the section itself provides, the Board can make only reasonable provision in respect thereof.

The bye-laws in question were framed under sections 237, 245 and 298, heads F(d), G, and J(d), of the Municipalities Act. The other sections do not directly apply to this particular bye-law, but section 298, head J(d) empowers a Board to fix any charges or fees to be paid for house scavenging or the cleansing of latrines and privies or for any other municipal service or undertaking. Obviously this provision is not intended to enable a Board to raise revenue by taxing trade, but merely to enable it to realise fees so as to cover the expenses incurred in rendering such service or giving such undertaking.

In the courts below the accused did not put forward the case that the slaughter house fee prescribed was unreasonable inasmuch as it was out of all proportion to the value of municipal service rendered or undertaking given. There is nothing on the record to show what the expenses of the Board in this connection are and whether the amount of the fees charged is exorbitant and so excessive as to make the bye-law itself unreasonable. If such a case were established, then a bye-law may be declared to be unlawful, as was held in *Emperor v. Bal Kishan* (1) and *Bhairon Nath v. Municipal Board of Benares* (2). But no materials were placed in the Magistrate's court to show that the fee was in any way excessive and unreasonable. This is a mixed question of fact and law, and we are therefore not prepared to allow it to be raised at this stage. We may, however, point out that the view of the courts

(1) (1902) I.L.R., 24 All., 439.

(2) Weekly Notes 1901, p. 56.

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below that unless and until a municipal bye-law has by Government notification been declared to be unlawful a criminal court must accept it to be valid and binding, is not correct. The accused person is entitled to say that he has committed no offence if he has been prosecuted for having committed a breach of a bye-law which is *ultra vires*. In this particular instance, when the point was not taken in the courts below and no evidence was produced, we are unable to hold that the bye-law was illegal.

We accordingly allow this revision in part and set aside the conviction of the accused under section 155 of the Municipalities Act and acquit him of that charge and direct that the fine, if paid, be refunded. We uphold the conviction and also sentence under section 299 of the Act.

Before Mr. Justice Bajpai

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Indian Penal Code, section 411—Evidence Act (I of 1872), section 114, illustration (a)—“Account for his possession”, meaning of—Accused found in possession of stolen goods soon after the theft is not bound to prove affirmatively that he came by the goods innocently—Criminal trials—Burden of proof—Whether it can shift on to accused.

In a criminal case the onus is on the prosecution to prove beyond reasonable doubt the guilt of the accused. That onus never shifts from the prosecution to the accused.

Illustration (a) to section 114 of the Evidence Act means that where the accused person has been found in possession of stolen goods soon after the theft, the court may draw a presumption and may act on it if the accused cannot account for his possession, but this illustration does not mean that the burden of proof is shifted on the accused, so that he must prove affirmatively that he came by the goods innocently. It is sufficient if he can give an explanation which may raise doubt in the mind of the court as to the guilt of the accused, —which in the opinion of the court may possibly be true. So, where a conviction under section 411 of the Indian Penal Code

*Criminal Revision No. 488 of 1933, from an order of I. M. Kidwai, Sessions Judge of Cawnpore, dated the 11th of July, 1933.