

REVISIONAL CRIMINAL

*Before P. D. Sharma, J.*STATE,—*Applicant**versus*CHUNI LAL VOHRA AND ANOTHER,—*Respondents*

Criminal Revision No. 86-R of 1967.

October 27, 1967

Railways Act (IX of 1890)—S. 106—Powers of the magistrate under—Amount of freight, wharfage or other charges—Whether can be determined by magistrate—Order for the payment of such charges—Whether can be made by magistrate while sentencing the accused—Order for return of goods to accused—Form in which to be passed indicated.

Held, that under section 106 of the Indian Railway Act, 1890 the Magistrate can sentence the accused to fine only and not in addition order them to pay the amount due from them to the railways as freight or any other charges. The words, "and the fine shall be in addition to any rate or other charges" mean that the accused, on payment of fine, are not absolved from their responsibility to pay the charges to the railways and no more. The charges are to be realised by the railways in due course of law and not through the agency of the criminal courts as fine. The Magistrate cannot decide the amount due from the accused to the railways as freight or wharfage charges. This has to be done under the provisions of the Indian Railways Act by the authorities named therein. The proper order for return of the goods is that the goods be handed over to the accused, subject to any charge of the railway department under the law on the same. If the railway department under the law is entitled to detain the goods till the amount due from the accused has been paid, they may so detain them.

Case reported by Shri S. S. Raiḱhy, Sessions Judge, Patiala, for acceptance of revision against the order of Shri G. S. Chahal, Judicial Magistrate, 1st Class, Patiala, dated 11th April, 1967, ordering that the goods be returned to the accused, who were convicted, under section 106 of the Indian Railways Act.

NARINDER SINGH, ADVOCATE, for the Petitioner.

BHAGIRATH DASS, ADVOCATE, for the Respondents.

JUDGMENT

SHARMA, J.—The Special Magistrate, 1st Class, Punjab at Patiala by his order dated 11th April, 1967; convicted Chuni Lal Vohra and

Brij Kumar of Amritsar under section 106 of the Indian Railways Act and sentenced each of them to pay a fine of Rs. 700. He further directed that the goods in regard to which the offence is said to have been committed should be returned to them. Thereafter the State of Punjab filed the present revision petition in the Court of Session, which came up for hearing before the Additional Sessions Judge, Patiala, for modification of the above order to the extent that the goods should not have been ordered to be returned to Chuni Lal Vohra and Brij Kumar without payment of the sum of Rs. 2,644.80 Paise as due from them on account of freight and wharfage charges. The respondents in response to the notices issued to them appeared in Court and contested the revision petition. The learned Additional Sessions Judge has disallowed the claim of Rs. 469 which the State of Punjab demanded as freight charges for bringing the goods from Guhati to Ambala Cantonment. He has recommended to this Court that the order of delivery of goods to the accused-respondents without requiring them to pay the charges of the railway to which the goods might be liable, be quashed and the case be remanded back to the learned Magistrate for an enquiry as to the charges of the railway to which the goods were liable and for making an order of delivery of the goods to the accused on payment of charges so found due.

The learned counsel for the respondents referred me to section 106 of the Indian Railways Act which runs as under:—

“If a person requested under section 58 to give an account with respect to any goods gives an account which is materially false, he and, if he is not the owner of the goods, the owner also shall be punished with fine which may extend to fifty rupees for every maund or part of a maund of the goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable.”

He submits that the Magistrate could sentence the accused-respondents to fine only and not in addition order them to pay the amount due from them to the railways as freight or any other charges. The words “and the fine shall be in addition to any rate or other charge” meant that the respondents on payment of fine could not be said to have been absolved from their responsibility to pay the charges to the railways and no more. The charges were to be realised by the

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railways in due course of law and not through the agency of the criminal courts as fine. I am in agreement with the learned counsel. The Magistrate should not have decided the amount due from the respondents to the railways as freight or wharfage charges. This has to be done under the provisions of the Indian Railways Act by the authorities named therein. The proper order for return of the goods would have been that these should be handed over to the respondents subject to any charge of the railway department under the law on the same. The learned counsel for the respondents vehemently urged that the respondents should not be made to pay the sum of Rs. 1,653 as wharfage charges because the goods were detained by the railways in their own interest and not on account of any neglect on the part of the respondents. This matter will be gone into by the railway department under the law while determining the liability of the respondents for payment of freight or any other charges due from them.

For the above reasons, the revision preferred by the State of Punjab is allowed in part; the direction of the learned Magistrate in regard to the return of goods to the respondents is modified and the goods are ordered to be returned to them subject to the charge of the railway department on the same. If the railway department under the law is entitled to detain the goods till the amount due from the respondents has been paid, they may so detain the goods.

The railway department should try to settle the dispute within a short period in any case not later than 30th of December, 1967.

R.N.M.

REVISIONAL CIVIL

Before Mehar Singh, C.J.

DEVKI NANDAN NAGPAL,—Petitioner.

versus

M/S SILVER SCREEN ENTERPRISES,—Respondent

Civil Revision No. 189 of 1966.

October 31, 1967.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 46—Appeal filed by landlord before appellate authority against the order of Rent Controller dismissing application for ejection of his tenant—Compromise effected between landlord and