

## CASE COMMENTARY ON KASTURILAL RALIA RAM JAIN VS STATE OF UTTAR PRADESH

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### ABSTRACT

The case of Kasturilal Ralia Ram was a watershed moment in the Indian legal framework. The appeal before the hon'ble Supreme Court prayed for compensation against the negligent acts of the state's officers, that resulted in irretrievable monetary loss to the plaintiff. The plaintiff had been wrongly detained under alleged suspicion of carrying stolen property. When released on bail, the concerned police authorities failed to return the goods seized from him. His repeated requests of recovery of his goods turned out as futile. The hon'ble Allahabad High Court, dismissed his claims, by upholding the state's immunity from liability. The hon'ble apex court, though, did not sustain the contentions of the plaintiff considering the rule of sovereign immunity, but, called for greater relaxation of such rule and a shift in the legislature's tendency in maintaining its impunity in every action of the state.

**KEYWORDS:** *Vicarious Liability, Sovereign Immunity, Tortious Negligence, Non-sovereign Functions, Government*

<b>CASE TITLE</b>	Kasturilal Ralia Ram Jain vs State of Uttar Pradesh
<b>CITATION</b>	(1965) 1 SCR 375
<b>JURISDICTION</b>	The Hon'ble Supreme Court of India
<b>CASE NUMBER</b>	Civil Appeal No. 105 of 1963
<b>DATE OF JUDGEMENT</b>	29.09.1964
<b>APPELLANT</b>	Kasturilal Ralia Ram Jain
<b>RESPONDENT</b>	State of Uttar Pradesh
<b>BENCH</b>	(Headed By) C.J., P.B Gajendragadkar; K.N. Wanchoo, M. Hidayatullah, Raghubar Dayal and J.R. Mudholkar, JJ
<b>APPELLANT COUNSEL</b>	M.S.K Sastri ; M.S Narasimhan (Advocate) And P. Keshva Pillai (Advocate)
<b>RESPONDENT COUNSEL</b>	A.V. Viswanatha Sastri (Senior Advocate) And O.P. Rana (Advocate)
<b>STATUTES INVOLVED</b>	The Law of Torts; The Constitution of India; The Code of Criminal Procedure;
<b>CRUCIAL PRINCIPLES/SECTIONS</b>	<u>Law of Torts</u> : Rule of Vicarious Liability, Sovereign Immunity; Principles of Rex non-potest peccare, Qui facit per alium facit per se, Respondeat Superior



The Constitution: Article 300

CrPC (1890): Sections 51, 54(i)(iv), 523, 550

## INTRODUCTION

As per the principles of tortious liability, a man is liable for the crooked acts committed by him owing to his negligent attitude or in case he fails/omits to fulfil a duty (imposed by the rule of law), due to which the aggrieved person (plaintiff) has suffered injury. He will have to compensate the aggrieved party, for his affirmative actions, which have ultimately resulted in damage to the plaintiff. However, this fabric of tortious remedies, has not been limited to the liability for the acts of one's own self. There are certain additional crucial aspects of this law (which were later inducted as established principles), i.e., liability may be fastened upon an individual for the twisted acts committed by other body, representing him/ acting on his behalf (with his prior consent or a ratified consent). This principle is termed as the rule of *Vicarious Liability*. As pronounced by John Salmond, "In general a person is responsible only for his own acts, but there are exceptional cases in which the law imposes on him vicarious responsibility for the acts of another, however, blameless himself." The doctrine of vicarious liability has emerged out of the universally approved notions of '*Qui facit per alium facit per se*' and '*Respondeat superior*.' The former entails the meaning, "he who acts through another, acts for himself" & was incorporated with respect to master-servant relations. A master would be liable for the tortious acts of his servant committed, owing to his negligent behaviour, during the course of employment. The latter principle relates to the meaning, that, 'let the superior/principal answer.' In such cases, not only the person who obeys, but also the one who commands, is held liable for the injury suffered by the plaintiff.

Notwithstanding, the principles aforesaid, in a scenario when the government is the

defendant, i.e., when a public servant commits a tortious act during the course of his employment & government is held answerable for the said act, the law has taken a preventive approach, such that, the government is exempted from liability in any such claims. This rule is known as the rule of *Sovereign Immunity*. The rule of sovereign immunity was codified (not literally), from the principle of '*Rex non-potest peccare*.' This principle entailed that the king can do no wrong. This rule became an exploitative weapon at the hands of the servants of the British Crown, who inflicted their lawless attitude upon the general masses, without any fear of action. Gradually, with the decision of *P&O Steam Navigation Company V. Secretary of State for India*<sup>1</sup> & the enactment of the Crown Proceedings Act (1947)<sup>2</sup>, the rule was relaxed to the extent that the government was held accountable for the tortious acts committed by its servants during their term of employment, while discharging the non-sovereign functions of the state. The same principle was upheld by in the watershed judgement of *Kasturilal's case*, in addition to, an enhance emphasis by the hon'ble judiciary to further relax this rule so as to resolve the grievances, induced due to the unanticipated negligent acts of the state, of the common man.

## FACTS / BACKGROUND

- M/s Kasturilal Ralia Ram Jain (hereinafter, appellant) was a firm (registered under Indian Partnership Act) based in Amritsar (Punjab), dealing in bullion & other goods. Ralia Ram was a partner in the firm.
- On 20.09.1947, he arrived at Meerut to sell gold, silver & other goods in the Meerut market. While passing through the infamous Chaupla Bazar, he was taken into custody by 3 police

<sup>1</sup> *Peninsular & Oriental Steam Navigation Company v. Secretary of State for India* (1861) 5 Bom HCR Appendix A.

<sup>2</sup> The Crown Proceedings Act (1947) c.44

constables, was searched & subsequently detained in Kotwali police station (on suspicion of carrying stolen property). His belongings consisting of gold & silver were seized by the policemen.

- The following day (21.09.1947), he was released on bail and was returned the possession of his silver (on 26.10.1947). His demands for recovery of the seized gold turned out futile, hence, he filed a suit against the state (hereinafter, respondent) demanding either recovery or restitution of the value of the gold (of Rs. 11075-10-0 & interest of Rs. 335).
- The state's justification in failing to return the disputed goods was that Mohammad Amir (the head constable in whose charge the gold was kept) had misappropriated the goods (kept in the Malkhana) and fled to Pakistan on 17.10.1947. The state had initiated appropriate legal action against him but he could not be apprehended.
- The trial court ruled in favour of the appellant and ordered the state to pay compensation. In a subsequent appeal filed by the state before the hon'ble Allahabad High Court, the court overturned the decree of the trial court & held that no negligence could be established against the police officials.
- This order was challenged by the appellant in the hon'ble Supreme Court, before a 5-judge bench headed by chief justice P.B Gajendragadkar.

### ISSUES / QUESTIONS RAISED

- ① Whether the police officers in question were guilty of negligence in the manner of taking care of the seized gold?
- ② Whether the respondent (State of Uttar Pradesh) is liable to compensate the appellant for the loss caused to the latter by the negligence of police officers employed by the state?
- ③ Are tortious acts committed by a public servant in discharge of his duties categorised under sovereign functions of the state & exempted from liability?

### ARGUMENTS FROM THE PLAINTIFF'S SIDE

Mr. M.S.K Sastri (appellant's advocate) contended that the order of the hon'ble Allahabad High Court was proclaimed in error, in favour of the respondents. He alleged that the police officers were negligent in not only failing to keep the seized goods in safe custody but also in their manner in dealing with them. He argued before the court that the principle of vicarious liability of state laid down by the hon'ble court in *State of Rajasthan vs Vidhyawati*<sup>3</sup> should be applied, with an interpretative approach, in the current case. He contended that the issue of negligence of the police officers, once established, would pave a clear way for the court to pass an order in favour of the plaintiff.

### ARGUMENTS FROM THE RESPONDENT'S SIDE

(Note: The judgement does not state any contention made by the state in the present case. The arguments listed, herewith, are conclusive assumption made after analysing the order)

- The state's primary contention was an exemption from any liability, with respect to the rule of sovereign immunity.
- Additionally, the state had underscored the reason for failing to return the property so alleged, since the constable in-charge of the concerned police station had fled to Pakistan & could not be apprehended.
- Moreover, the alleged loss of the plaintiff was suffered by him due to negligence of the state's officials in discharge of fundamental sovereign functions of the state.

### LAWS / LEGAL PRINCIPLES

✧ **Vicarious Liability (Law of Torts)** : one who does an act for another or on his command, it is deemed as the act of that person. Hence, any tortious act by such servant/agent would make the master liable. The maxim

<sup>3</sup> State of Rajasthan vs Vidhyawati (1962) Supp 2 SCR 989

of *respondent superior* applies for master-servant relationships.

✧ **Doctrine of Sovereign Immunity & *Rex non-potest peccare***: the common law principle of king can do no wrong, has aggravated to the current doctrine wherein the state claims the defence of sovereign immunity in any action brought against it for the tortious acts of its servants committed in discharging their official duties. Sovereign functions are those which cannot be performed by a private individual but the state.

✧ **ARTICLE 300 [The Constitution of India] : Suits and proceedings**

1) "The Governor of India may sue or be sued by the name of the Union and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

2) If at the commencement of this Constitution

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and

(b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings"<sup>4</sup>

✧ **Section 41(1)(iv) [CRPC, 1890]** : "any police officer may, without an order from a Magistrate and without a warrant, arrest any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be

suspected of having committed an offence with reference to such thing"<sup>5</sup>

✧ **Section 550 [CRPC, 1890]** : "Any police-officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police-officer, if subordinate to the officer in charge of a police-station, shall forthwith report the seizure to that office"<sup>6</sup>

✧ **Section 51 [CRPC, 1890]** : "Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and Whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail, the officer making the arrest or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him"<sup>7</sup>

✧ **Section 523(1) [CRPC, 1890]** : "The seizure by any police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property"<sup>8</sup>

## JUDGEMENT

The bench emphasised the observance of article 300 of the constitution, wherein it is

<sup>4</sup> The Constitution of India, 1950, Art.300

<sup>5</sup> The Code of Criminal Procedure, 1890, section 41(1)(iv)

<sup>6</sup> The Code of Criminal Procedure, 1890, section 550

<sup>7</sup> The Code of Criminal Procedure, 1890, section 51

<sup>8</sup> The Code of Criminal Procedure, 1890, section 523(1)

provided that in determining the legitimacy of a suit against the government, the fact that whether such a suit could've been filed against a corresponding Province (in case the constitution had not been adopted) should be considered. Then referring to Calcutta Supreme Court's judgement of 1861 in *Peninsular & Oriental Steam Navigation Company v. Secretary of State for India*<sup>9</sup>, the judges observed that the decision and distinction laid between sovereign & non-sovereign acts of the state in the aforesaid judgement has been observed & implemented by the Indian judiciary in several of its decisions. Additionally, the bench referred to the judicial decision in *Shivabhajan Durgaprasad v. Secretary of State for India*<sup>10</sup>, where the hon'ble Bombay High Court laid that if any damage is caused to a person in performance of a duty (imposed by law) by an agent, then no action can be brought by him against the employer of such agent. The bench also took instance of decisions in *Secretary of State for India in Council v. Shreegobinda Chaudhari*<sup>11</sup>; and *Secretary of State for India v. A. Cockcraft*<sup>12</sup>, where it was laid that no cause of action lies against the state in respect of its sovereign powers & neither does the tortious principle of "respondent superior" apply in such cases. Furthermore, referring to the decision in *Uma Prasad v. Secretary of State*<sup>13</sup> (where the similar facts & questions of law were decided upon by the hon'ble Lahore High Court), the bench observed that when a public servant authorised by a statute to exercise his powers, discharges such function, then it is delegation of sovereign powers.

By reverting to the judgement in *Vidhyawati*<sup>14</sup> case, the bench observed that area of employment tagged under sovereign functions must be strictly determined. The area of affairs of state must be distanced strictly by the courts

considering that government undertakes several activities (like welfare activities), that can be performed by an ordinary individual & are thus non-sovereign. In the current case, as observed by the judges, the police officers were negligent in dealing with the seized goods. Also, they were acting in due course of employment of the respondent. However, the power to arrest & search a person and seize property is a sovereign power conferred by a statute, thus they are sovereign powers, hence the claim of compensation brought up by the appellants couldn't sustain.

The bench made a remark that the doctrine of sovereign immunity had been borrowed from common law prevailing in England to exempt the state's liability in any action brought for damages against the tortious acts of its servants. Another aspect of this doctrine (as observed by the bench) was that the state cannot be sued in its own court without its consent. The principle of "King commits no wrong" has been amended by the Crown Proceedings Act (1947), thus, the legislative intent should be considerate of "whether they should not pass legislative enactments to regulate & control their claim from immunity in cases like this". Ultimately, the appeal failed but the court felt helpless in as much as it could not sustain any call for remedy by a citizen whose property was unrecovered, due to negligence committed in enforcing the due process of law.

#### COMMENT

It is opined that considering the above stated case laws, arguments & observations by the distinguished justices', the claim of the appellant for compensation fails lawfully, since the state cannot be held vicariously liable for the tortious acts of its servants committed during their course of employments in exercise of sovereign powers delegated to them. However, this notion stands irrelevant in the contemporary arena. The government's primary function is to maintain law & order and public tranquillity. In doing so, if any negligence is caused by its employees (acting under its

<sup>9</sup> *Peninsular & Oriental Steam Navigation Company v. Secretary of State for India* (1861) 5 Bom HCR Appendix A. p1

<sup>10</sup> *Shivabhajan Durgaprasad v. Secretary of State for India* ILR 28 Bom 314

<sup>11</sup> *Secretary of State for India in Council v. Shreegobinda Chaudhari* ILR 39 Mas 351

<sup>12</sup> *Secretary of State for India v. A. Cockcraft* ILR 39 Mas 351

<sup>13</sup> *Uma Prasad v. Secretary of State* 18 Lah 380

<sup>14</sup> *Supra* note 1

orders) in discharging any sovereign or non-sovereign functions, the state should be held liable for the same. Article 300 of the constitution lays that the state can be sued subject to provisions of legislations enacted by the parliament. This restriction clause has been invoked by the parliament in numerous of its enactments (to claim immunity from actions brought against it), but this tendency (to claim immunity) should be relooked upon considering that ultimately the aggrieved person is at loss when no action is sustained against state's sovereign powers. This is in line with the observation by the bench in para 29 of the current judgement. Hence, the principles of respondent superior, vicarious liability should be applied in a case against the state as against the acts of a private individual. In any scenario, the state always has more resources & an upper hand vis-à-vis an individual, thus, the doctrine of sovereign immunity should be relaxed in such claims and state's negligence should be presumed.

#### RELATED CASE LAWS

1. Peninsular & Oriental Steam Navigation Company v. Secretary of State for India (1861) 5 Bom HCR Appendix A.
2. State of Rajasthan vs Vidhyawati (1962) Supp 2 SCR 989
3. Shivabhajan Durgaprasad v. Secretary of State for India ILR 28 Bom 314
4. Secretary of State for India in Council v. Shreegobinda Chaudhari ILR 39 Mas 351
5. Secretary of State for India v. A. Cockcraft ILR 39 Mas 351
6. Uma Prasad v. Secretary of State 18 Lah 380

#### REFERENCES

- a) The Code of Criminal Procedure, 1890, section 41(1)(iv), section 51, section 523(1), section 550
- b) The Constitution of India, 1950, Art.300
- c) The Crown Proceedings Act (1947) c.44