Case Commentary on Kasturi Lal Ralia Ram Jain v. the State of U.P

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## Name of the Parties:

Appellant- Kasturi Lal Ralia Jain vs. Respondent- State of Uttar Pradesh.

## Sitting Judges:

Gajendra Adakar, P.B Wanchoo, K.N Hidayatullah, M. Dayal, Raghubar Mudholkar.

**Agenda:** To analyse the extent of liability and responsibility of government in case of its servant conduct.

2Kasturi Lal Ralia Ram Jain v. the State of U.P., (1965) 1 SCR 375: AIR 1965 SC 1039 : (1965) 2 Cri LJ 144 :

(1966) 2 LLJ 583.

#  FACTS OF THE CASE

Ralia Ram is one of the partners in a firm which deals with the bullions and other pricey commodities like gold and silver. The firm was established in Amritsar, and the firm was duly registered under The Indian Partnership Act, 19323. Ralia Ram reached Meerut on 20th September 1947 via Frontier Mail to sell gold, silver, and other goods in the markets of Meerut.

Ralia Ram was arrested by three constables and was taken into custody, while he was passing by Chaupala Bazaar. He was scouted to Kotwali police station after his scrutiny. 103 tolas, 6 mashas and 1 Ratti and silver weighing 2 maunds and 6½ seers, were annexed from Ralia Ram Jain. He was locked up in the police station, and his belongings were kept in custody. He was held in the lock-up, as he was suspected to be carrying stolen property.

Ram Ralia was discharged on bail on 21st September 1947, and silver, which was detained by the police officer, was returned to him. After the return of the silver, Ralia Ram demanded the return of gold, but even after his repeated assertion, he was not returned his seized property. In return to which, he had to file the present suit, claiming the value of the gold or the return of the gold from the respondent. He put forth an alternative avow, which consisted of Rs.11,075-10-0 as a price of the gold and Rs.355 as the interest

on the possession seized. The gold was seized from Ralia Ram and was taken into custody by Mohammad Amir, who was the in-charge of the police station in Malkhana, were the confiscated items were kept in custody. The appellant alleged Mohd. Amir of misappropriating the gold, as he fled to Pakistan on 17th October 1947, the gold could not be retrieved. He was also alleged to misappropriate other articles and cash before leaving India, which were kept in the locker of Malkahana police station. In response to all the loss which were caused to the petitioner, the present suit was filed under Section 409 of Indian Penal Code(1860) and Section 29 of the Police Act, 1861.

3 The Indian Partnership Act 1932, s59

# S UBSTANTIVE ISSUES RAISED

Two substantial questions which were raised in this case were:

* Whether the police officer in question is guilty of negligence while handling the ornaments which were seized from Kasturi Lal Ramia Ram Jain while kept in custody.
* Whether the respondent was liable to compensate the appellant for the loss caused to it by the negligence of the public servants employed by the respondent.

# A RGUMENTS RAISED

## Appellant Arguments:

The Appellant alleged the state to take responsibility for the loss, which was caused by the act of its servant. The Appellant argued that the servant(police officer) of the state was negligent while performing the duty delivered by the state on his shoulder. The appellant appealed in front of the court to follow the precedent order which was passed by the same court in the case of *State of Rajasthan v. Vidhyawati*4.

## Respondent Arguments:

The respondent argued that, even after so many efforts, they are unable to track Mohd. Amir, who is the primary suspect. The respondent argued on the grounds that it is a case of misappropriation of the property, not negligence. The respondent also added that even if the case of negligence on the part of the police officer is proved, then also the State shall not be held liable for the wrongdoing of the servant appointed by the State.

4 State of Rajasthan v. Vidhyawati (1962) Supp 2 SCR 989, AIR 1962 SCC 933

# J UDGEMENTS OF SUBORDINATE COURTS

The trial court announced the judgment in favor of the petitioner. The respondent challenged the ruling and appealed in Allahabad High Court to consider the decree passed by the trial courts. The state argued before Allahabad High Court that the trial court was at fault in announcing the judgment in favor of the Appellant.

Allahabad High Court considered the plea of the respondent. It held that no negligence had been caused on account of the police officers, even if negligence was proved, the state could not be held responsible and liable towards the firm. Thus no order was passed in favor of the appellant, and he has not restored his seized possession and not even its price. After the pronouncement of judgment by Allahabad High Court, Ram Ralia requested the court to issue a certificate to plead in Supreme Court. Mr. M.K. Sastri, who was arguing on behalf of the appellant, submitted that the Allahabad High Court was in error in giving judgment in favor of the respondent. Now, the Supreme Court has to decide over the question of fact, dealing if the police officer was negligent while taking care of the seized possessions and the question of law: whether the court will be liable to pay compensation for the conduct of the servant of the state.

# L EGAL PROVISIONS

**Section 409 and Section 29 of Indian Penal Code** :- Sections charged on Respondent.

The appellant has filed the present case under Section 409 of Indian Penal Code- Section 409 of the Indian Penal Code holds the respondent responsible for the criminal breach of trust. Whoever, being in any way endowed with property, or with any domain over the property in his ability of a public servant or in the method for his business as a banker, dealer, factor, representative, lawyer or operator, carries out a criminal breach of trust in regard of that property, will be rebuffed with 1[imprisonment for life], or with the detainment of either portrayal for a term which may stretch out to ten years, and will likewise be obligated to fine.

The appellant has also pursued the court with the charge of Section 29 of the Police Court Act against Mohd. Amir:

Penalties for neglect of duty- Each cop who will be blameworthy of any infringement of obligation or wilful breach or disregard of any standard or guideline or legal request made by the authorities, or who will step back from the obligations of his office without authorization, or without having given a prior notification for the time of two months, five or who will not report the reason for the absence from the duty after the expiration of leave without valid or sensible reason or who will draw in without expert in any work other than his police-obligation, or who will be liable of weakness, or who will offer any unwarrantable individual savagery to any individual in his custody, will be at risk, on conviction before a Magistrate, to a punishment not surpassing three months' compensation, or to detainment with or without hard work, for a period not surpassing three months, or to both.

**Section 54(1)(iv) of Code of Criminal Procedure, Section 550, Section 51, Section 523 of the code**:- Responsibility of the police officer in respect of the goods seized and the manner of arrest of the suspect.

**Segment 54(1)(iv) of the Code of Criminal Procedure** gives that any police officer may, without the order from a Magistrate and without a warrant, capture any suspect, who seems to be carrying any object which may as be suspected to be taken property and who may sensibly be

associated with having carried out an offense regarding such thing. It is under this arrangement that Ralia Ram was captured at midnight.

Segment 550 provides the authority of controls to police officers to hold onto property suspected to be stolen. It gives, entombs alia that any police officers may hold onto property which might be suspected to have been taken; thus, gold and silver in possession of Ralia Ram were seized in the exercise of the power presented on the police officer under **Section 550 of the Code.**

After Ralia Ram was detained and before his articles were seized, he was searched, and such an act is defended by the arrangements of **Section 51 of the Code**. It sets down, buries alia, that the seizure of any goods by any police officer taken under Section 51 will be forthwith reported to a Magistrate, who will make such order as he might seem fit regarding the removal of such property or the conveyance of such property to the individual entitled for the ownership thereof, or, if such individual can't be found out, regarding the authority and creation of such property.

Having along these lines, it is the responsibility of the police officer to take good care of the goods seized under **Section 523 of the code**, but in this case, duty was not carried by Md. Amir with diligence.

Regulation 1655 has laid down detailed procedures to manage the removal of movable property of which the police collects. It isn't important to allude to these provisions; it is sufficient to express that these provisions show that when the property is seized by the police officer, fastidious consideration is required to be taken for making appropriate care of the property seized, describing it, gauging it, and finding a way to guarantee its security.

Clause (5) of Regulation 1656 gives that when the property comprises gold, silver, adornments, or different assets, it must be sent in a sealed packet subsequent to being gauged, and its weight must be noted in the general register and on the list which accompanies the parcel. It necessitates that weights and scales ought to be kept at each police headquarters. Guideline 166 is significant for this purpose*.*

5 UP Police Regulation XIV, Regulation 165.

6UP Police Regulation XIV, clause(5) Regulation 165.

## Article 300(1)- State’s responsibility towards citizens after the commencement of the constitution.

After the commencement of the Indian Constitution under Article 300(1) of the Constitution. The state was made liable for its servants' conduct. This article reads thus:

“The Government of India may sue or be sued by the name of the Union of India 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.”

*But This instant case was slightly filed before the commencement of the constitution. Thus, the previous acts and statutes also need to be referred to once. The acts which also need to be kept in consideration are the Government of India Act, 1958, Government of India Act, 1915 and Government of India Act, 1935*

According to **Section 65 of the Government of India act, 1958** "The Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate; and all persons and bodies politic shall and may have and take the same suits, remedies, and proceedings, legal and equitable, against the Secretary of State in Council of India as they could have done against the said Company; and the property and effects hereby vested in Her Majesty for the purposes of the Government of India, or acquired for the said purposes, shall be subject and liable to the same judgments unstated executions as they would while vested in the said Company have been liable to in respect of debts and liabilities lawfully contracted and incurred by the said Company.”

# P RECEDENTS CONSIDERED IN THIS CASE.

***P. & 0 Steam Navigation Co. r Secretary of State for India-in-Council***7, is the first case which dealt with respect to the matter of the state's responsibility in case of its servant's misconduct. In this case, the secretary of state in the council was held liable for any liability of its servant's loss caused to the respondent.

After the commencement of the constitution, the case which is considered as precedent is ***the State of Rajasthan vs. Vidhyawati8***, where the court held that "the State should be as much liable for tort in respect of a tortious act committed by its servant within the scope of his employment and functioning as such, as any other employer." The respondent family member was knocked down by the jeep of the government employee due to the negligent driving of the driver employed by the government employee. The car was being taken from the repair shop to the collector's residence. The claim made by the respondent was taken into consideration by the court, and the decision was given in their favor, and the state was held liable. Supreme Court overruled the High Court's decision of not holding the state accountable for compensation.

In ***Peninsular and Oriental Steam Navigation Company* v. *Secretary of State for India9*** In this case, the government mainly laid down two factors to determine whether the state will be held responsible for paying the compensation. If a public servant commits a tortious act and it gives rise to a claim for damages, the question to ask is: was the tortious act committed by the civil servant in discharge of statutory functions which are referable to, and ultimately based on, the delegation of the sovereign powers of the State to such public servant? If the answer is in the affirmative, the action for damages for loss caused by such a tortious act will not lie. On the other hand, if the tortious act has been committed by a public servant in discharge of duties assigned to him, not by virtue of the delegation of any sovereign power, an action for damages would lie.

7 P. & 0 Steam Navigation Co. r Secretary of State for India-in-Council, (1861) 5 Born. H.C.R. App.1

8 *supra* note at 4.

9 Peninsular and Oriental Steam Navigation Company v. Secretary of State for India, 5 Bom HCR Appendix A. (p1)

In the ***Secretary of State for India in Council* v. *A. Cockcroft***10 In this case, due to the stacking of gravels on the road negligently, the plaintiff suffered injuries. The plaintiff filed a lawsuit against the Secretary of the State. The Works Department of the Government maintained this military road. The Madras High Court held that the offended party had, in law, no reason for action against the Secretary of State for India regarding acts done by the East India Company in the actions of its sovereign forces. The decision was based on the outcome that the prolongation of the road concerned is the function of the government as a part of its duty, not an operation that might have been carried on by private persons.

In some of the cases mentioned above, the state was held liable, and in some, it was not. In the instant case of Kasturi Lal Ralia Ram Jain v. State of U.P11 The police had the power to search and seize the possession of Ralia Ram based on suspicion. These are powers that can be characterized as a sovereign power. So there is subsequently no doubt concerning the authority and power given to the police officer. There is no doubt over the fact that it has not been conducted during the employment hours of the police officer. But the court held that the case is of the distinctive characteristic of sovereign power, the claim cannot be sustained.

10 State for India in Council v. A. Cockcroft, ILR 39 Mas 351.

11 *supra* at note 2.

# I NTERNATIONAL P REROGATIVE

There is no international setup with respect to the arising of the responsibility of the State when the official of the state commits the wrong. The countries all over the world have developed their system to deal with the matter of vicarious liability.

## E NGLAND

For very long In the United Kingdom, Crown was not suable for the misconduct of its servant as a result of the acknowledgment of the proverb, "the king can do no wrong.” The distressed people thought that it was impossible to recoup compensation from Government servants and from the fact that later won't be capable of paying the compensatory amount. After detailed discussion and dissent against the invulnerability of the Crown, the Crown Proceedings Act 1947 was passed, which made the Crown uninhibitedly suable in torts. The Crown Proceedings Act 1947 annulled the previous procedure and allowed suits being brought against the Crown in the customary courts to implement Tortious risk. In any case, the degree of vicarious obligation forced by the law isn't absolute due to the presence of the exemption clauses.

## U NITED STATES OF AMERICA

The United States has adopted the method which the United Kingdom pursued. The state was

immune from the responsibility of its servant's misconduct. In response to this insensitive rule, the legislatures introduced Federal Tort Claims, 1946. Under this act, the state will not be held liable for any misconduct of its official if the responsibility endowed on the official is carried on by comprehensive care and diligence.

In comparison to the United Kingdom framework, tortious liability has strict boundaries in the United States of America through the judiciary has played a critical role in widening the definition of tortious liability of the State from time to time.

## A USTRALIA

The Judiciary Act, 1963, sets some boundaries identifying the government obligation. On account of Sargood Bros. v. Commonwealth12 it was held that activity lies against the Commonwealth in tort, in the standard way, by a subject or a state. In another case of Commonwealth v. New South Wales13, it was held that a State might be sued in tort without its consent. So the concept that “the king can do no wrong” was not followed in Australia.

## F RANCE

In France, the idea of the French Revolution prompted the conviction that sovereign obligation ought to supplant the antiquated idea of “sovereign can do no wrong." Now, the regulatory, administrative courts have the power to repeal unlawful authoritative acts or grant compensation against the authority when an administrative demonstration in any way harms the citizens. This is done based on two standards that the Conseil d' Etat developed from 'legalite' and 'responsibilite'. According to the primary principle, the state must act as per the law. According to the second, the state will be mindful of reimbursing the victim whose rights are encroached through any unlawful follow up on the state’s servant. According to this hypothesis, the state has an obligation to repay anybody harmed because of the risk involved in handling public work.

12 Sargood Bros. v. Commonwealth, (1910) 18 CLR 258.

13 Commonwealth v. New South Wales, (1923) 32 CLR 200.

# C RITICAL OVERVIEW OF THE JUDGEMENT

Allahabad High Court gave the decision saying that there was no negligence conducted on the part of the police officer. Supreme Court upheld that the negligence was caused by the police officers while dealing with the goods seized by Ram Ralia Jain. Though the act of neglect and misappropriation of the property by the police officer was carried on while he was under his course of employment, then also the state did not take the responsibility of reimbursing the appellant when the police officer fled to Pakistan.

The powers which were endowed on a police officer were of the characteristic of sovereign powers, then also it was declared as an act of special nature, and the appellant was not reimbursed. This, it is submitted, is a retrograde step in the development of judicial expositions in the field of tort liability of the government.

In my view, the decision is not correctly laid down in the spirit of the constitution of India because the principle that the king can do no wrong, which was valid in Europe, is not followed there anymore. As our state is transforming the role of the state is expanding, it has become the need of the society to protect themselves from the malicious action of the government servant.

After the judgment in the present case of Kasturiala, the parliament realized that the judgment was not valid, and the Supreme Court also realized its mistake, and itself recommended legislation. Even after such recommendations, the Government (Liability in Tort) Bill, which was meant to make the state responsible and liable towards the third party, was not brought into the picture, and it could not cross the footstep of a bill. Thus the state has not been successful in laying the code of Tort in India, which accommodates Vicarious Liability.

# C ONCLUSION

In many countries across the world, prescribed statues have been laid down to make the state responsible in case where the servant has been held guilty of any misconduct. In India, many superlative statutes and laws have been laid down, but no prescribed laws have been made in this direction. The concept of vicarious liability is the part of the branch of Tort in India, and as we know, no statute has been laid to enforce the tort laws in India. If the laws are laid down to make the government responsible in the case of its servant's conduct, then there will be a certain level of sense of security among the people, which will help them to build their trust upon the government. This will also help to keep the authoritative agencies and bodies within the line of authority.

Many suggestions have been made over a period of time. Law Commission submitted a report back in 1956, Supre Court recommended some changes in this direction but unfortunately no such attempt has been made in this direction. State responsibility over some time has changed, and the name designated to it as well. The state is converted into a welfare state, and so has the chances of being authoritative. So its high time for India now to improve its legislation in making its servant responsible, but one more thing which is needed to be taken care of is that the State should extend this power to a certain which will not raise the unnecessary burden on it.

# S UGGESTIONS

Society is characterized by transformation. A 'Comprehensive Legislation' is needed after transformation is heeded in society. The proposed Bill should be in such a way that the State must be made liable for its Tortious actions, and reasonable exceptions must be given in exceptional cases. To ensure the sovereign capacities and to diminish the authoritative executive actions in growing the risk of the state. Specific arrangements which must be made are as follows:

* The state servant should be made obligated for the illegitimate or inordinate act and ought to be subject to pay. In case that the worker isn't that monetarily solid to pay the compensation, at that point, the state should assume the liability to pay the same.
* The state may find a way to stretch out the writ jurisdiction to different courts for article 300, likewise, to assist poor people and destitute people with seeking equity without any problem.
* The remuneration sum ought to be fixed on by considering both physical and mental distress so endured by the victims.
* The rules ought to be set down, containing the way of discharging duty and obligations by local officials.
* The only plea which can be ascertained by the local officials ought to be on the grounds of Act of State, legal capacities, remote undertakings, and national security and not 'sovereign immunity.'

As per my understanding, while embracing the new order based on the above proposals French model ought to be contemplated, in light of the fact that the French Legal framework has built up the essential rule that the powers of the officials have been given to them for the public need.

These measures would put a restriction on the State in matters of overstepping its authority. It takes out the differentiation between public or sovereign acts. In France, by a procedure of steady development, the Tortious obligation of the State has been moved from fault to that of risk.

This is a decent beginning in the way of establishing more democratic strides in society.

The law with respect to State obligation in Australia and Canada have no clarity in this regard. Hypothetically, the State is exposed to risk, and this risk is imposed by law; however, it is immune to the general public. In Australia and Canada, the State risk in torts is controlled by the Constitution itself. In this way, the French Model can be said as the most progressive arrangement of case law on legislative obligation. If the Lawmaking and Law upholding specialists find a way to execute the above proposals and suggestions, presumably, the State risk will be limited, and the general public will get appropriate alleviation.

#  REFERENCE

1. Kasturi Lal Ralia Ram Jain v. the State of U.P., (1965) 1 SCR 375: AIR 1965 SC 1039 : (1965) 2 Cri LJ 144 : (1966) 2 LLJ 583.
2. The state of Rajasthan v. Vidhyawati (1962) Supp 2 SCR 989, AIR 1962 SCC 933.
3. P. & 0 Steam Navigation Co. r Secretary of State for India-in-Council, (1861) 5 Born.

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1. The court in the State of Rajasthan v. Vidhyawati , (1962) Supp 2 SCR 989
2. Peninsular and Oriental Steam Navigation Company v. Secretary of State for India, 5 Bom HCR Appendix A. (p1)
3. State for India in Council v. A. Cockcroft [ILR 39 Mas 351]
4. Sargood Bros. v. Commonwealth, (1910) 18 CLR 258.
5. Commonwealth v. New South Wales (1923) 32 CLR 200.

# B IO-DATA

Saloni Jha is a 2nd year, BA.LLB(Hons) student at Amity Law School, Noida. She has worked extensively on the social-legal issues and has prepared a research paper on varied subjects. Her key areas of interest are Human Rights, Women Centric Laws, and Criminal Laws. She has a keen interest in legal research and drafting. She has experience of working in a leading firm in Delhi and under a prominent advocate in Jharkhand. She believes that hard work can cleft all the barriers in the path, and confidence in one own self can deter all the hurdles.