

Emperor Vs. Mulji Damodardas

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Court : Mumbai

Decided On : Jan-19-1910

Reported in : (1910)12BOMLR122

Judge : Batchelor and ;Knight, JJ.

Appeal No. : Criminal Appeal No. 452 of 1909

Appellant : Emperor

Respondent : Mulji Damodardas

Disposition : Appeal allowed

Judgement :

1. The respondent was charged before the Presidency magistrate, with having committed an offence under Section 390 (i) of the Bombay Municipal Act III of 1888. He was acquitted by the Magistrate, and the Government of Bombay appeals against that acquittal. Section 390 (i) lays down that-

No person shall newly establish in any premises any factory, workshop or workplace in which it is intended that steam, water or other mechanical power shall be employed, without the previous written permission of the Commissioner.

2. The accused obtained the Municipal Commissioner's permission to establish a hand-loom factory, worked by an oil engine. But by means of this oil engine the

accused has also established a Flour mill. It seems to us quite clear that he is guilty of a technical offence under Section 390. The mechanical power or force is to be distinguished from the factory. And here, although the respondent had leave to establish the hand-loom factory, he had no leave to establish the flour mill factory, which, in our opinion, is not the less another and a separate factory because it happens to be worked by the same power, which it was proposed to employ in the permitted factory. We are, therefore, of opinion that the acquittal should be set aside, and that the respondent should be convicted of the offence charged. He has undertaken, through his counsel, not to work the flour mill beyond to-day, without permission under Section 390, and, in these circumstances, we think that a nominal fine of one rupee will be sufficient.

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