

Emperor Vs. Bholasing Amersing

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Court : Mumbai

Decided On : Jan-23-1924

Reported in : AIR1924Bom303; (1924)26BOMLR211

Judge : Norman Macleod, Kt., C.J. and ;Shah, J.

Appeal No. : Criminal Appeal No. 676 of 1922

Appellant : Emperor

Respondent : Bholasing Amersing

Disposition : Appeal dismissed

Judgement :

Norman Macleod, C.J.

1. The accused was charged with one Cassidy before Mr. Thacker, the additional Presidency Magistrate, under Section 420, read with Section 114, Indian Penal Code, with having cheated the complainant on August 9, 1923, in respect of 139 tins of saccharine valued at Rs. 1,251, and having aided and abetted each other in the commission of the said offence. According to the complainant's story Cassidy came to him on August 9, at 11-30 A.M. with a Mahomedan Pandit, bringing with him a tin of saccharine, saying that he wanted to sell that stuff and asked for orders. He again came at 1-30, when the complainant's father was present, with a sample tin which, the complainant said, was genuine, and accordingly he fixed the

rate at Rs. 9 a tin, and at 3-30 he brought 139 tins of saccharine which looked similar to the sample. The complainant paid Rs 1251 and Cassidy passed a receipt, Ex. A, signed in the name of J. Smith for P. Singh. Cassidy refused to receive a cheque for payment, the practice at the complainant's shop being to make all payments by cheques, as Cassidy said that he was at the time going to Poona and would prefer to have cash. The same day one Maneklal, a dealer in saccharine, gave the complainant some information as regards the contents of the tins of saccharine. The complainant thereupon opened one of the tins and found it contained an adulterated mixture of saccharine and bicarbonate of soda. The complainant then went in search of accused No. 2 and succeeded in finding him in the office of G. Mayadas & Co. in Frere Road. He told accused No. 2 that the stuff he supplied to the complainant was not genuine saccharine and demanded back his money. Accused No. 2 said that he had sold it for accused No. 1 for whom he acted only as a broker. The complainant's father informed the police and accused No. 2 was arrested. Search was made for accused No. 1, but he could not be found. Enquiries were made and information was received that he was at Delhi, and the Police sent requests to the authorities at Delhi to send Bholasing to Bombay where he arrived on August 30. Meanwhile the police received information that one Akbarali had some dealings with the accused No. 1 in saccharine. Akbarali was sent for, and he identified the first accused from amongst ten other persons as the purchaser from him of twentyfive tins of saccharine and one bag of soda bicarbonate on July 28.

2. After the evidence was recorded before the Magistrate, and the statements of the accused had been recorded, the Magistrate ordered that the second accused should be discharged as he did not consider the evidence against him sufficient to frame a charge. So a charge was framed only against the first accused. Cassidy was then examined under Section 256, Criminal Procedure Code, and cross-examined by the pleader for the first accused. Other witnesses deposed to the connection between the first accused and Cassidy. A person called Wiseman said that he was unemployed. He had been in Bombay for about a year and four months. In August 1923 he was sleeping and stopping in the office of G. Mayadas in Frere Road, where Cassidy also used to stop with him. The first accused was the only man who used to visit Cassidy, and used to give Cassidy tins of

saccharine of the size of the tin Ex. B in the case, and asked Cassidy to secure orders for them. Accused No. 1 also asked the witness to sell similar tins, but he declined to do so. He further deposed to the selling of tins by Cassidy at the instance of the first accused.

3. The witness Panjumlal Laxmandas said he was a clerk and lived at the office of G. Mayadas & Co. He had known Cassidy for three or four months. He had known accused No. 1 for two years. He was a merchant dealing in provisions. The witness had sometimes seen him at the office of G. Mayadas and witness introduced accused No. 1 to Cassidy, as accused No. 1 told the witness that he had some provisions to be sold, and asked the witness if Cassidy could sell them for him.

4. Jasmantlal Singh said he was a Manager of G. Mayadas & Co. He knew both accused No. 1 and Cassidy. He knew accused No. 1 as he used to come to the office of G. Mayadas as he was expecting his letters there. He did not know what were the relations between accused No. 1 and Cassidy.

5. The evidence of Akbarali Mahomedali was the most important in the case, as, if his evidence is believed, it is perfectly clear that the accused No.1 purchased from him soda bicarbonate and saccharine.

6. When we find evidence of the connection between accused No. 1 and accused No. 2, and that through that connection tins of saccharine grossly adulterated with soda bicarbonate were sold through accused No. 2, Cassidy the broker, to the complainant, the inevitable conclusion must be that the first accused entered into this transaction of adulterated saccharine in order to pass it off, if he could, to unwary purchasers. He could not sell it himself, but he could make use of some other persons to sell it for him. It seems to me, if we believe the evidence, as the Magistrate did, we must say that the accused was guilty of cheating within the meaning of Section 420 and Section 415, Indian Penal Code. In order to prove the offence of cheating it is necessary to establish--

(1) that some one was deceived

(2) fraudulently or dishonestly, or intentionally; and

(3) by means of such deceit he was induced to change his position either by parting with property or by doing something to his own injury.

7. Clearly the complainant was deceived, and whoever made the mixture of saccharine and soda bicarbonate, must be considered as having intended to deceive any purchaser fraudulently or dishonestly, and further it is quite clear that the complainant by such deceit was induced to part with his money. So that if the accused bought saccharine and soda bicarbonate with the intention of mixing them together and selling them if he could to a purchaser as saccharine, and received payment for the goods as saccharine, clearly he would be guilty of cheating. It would follow that if the purchasers are induced to deliver the price of the adulterated mixture, then the offence under Section 420 must be taken to have been committed.

8. It is suggested that Gassidy was implicated in the cheating, and that he must have known, even if he was only acting as a broker, that the goods were not what they purported to be. But I do not think that even if that was the case, and that the Magistrate was wrong in discharging Cassidy, that that would assist the first accused, once we are satisfied by independent evidence that it was the first accused who made this mixture and passed it off as saccharine through the broker. In my opinion, therefore, the appeal should be dismissed.

Shah, J.

9. I concur. I only desire to add with reference to the evidence of Cassidy that in coming to the conclusion adverse to the appellant in this case, I have considered his evidence to be the evidence of an accomplice. Having regard to the receipt which he passed to the complainant and the evidence of the complainant, which there is no reason to distrust, it is difficult to accept the view that Cassidy had not the necessary knowledge as to the real quality of the goods which he tendered to the complainant. But even if his evidence be considered on that footing, or even discarded altogether, there is sufficient evidence in the case to show that Cassidy was acting for the accused, and that the accused had placed himself in a position

to supply the adulterated goods which are said to have been supplied by Cassidy to the complainant.

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