

Emperor Vs. Dhula Jetha

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Court : Mumbai

Decided On : Sep-03-1941

Reported in : (1941)43BOMLR958

Judge : John Beaumont, Kt., C.J. and ;Sen, J.

Appeal No. : Criminal Application for Revision No. 236 of 1941

Appellant : Emperor

Respondent : Dhula Jetha

Disposition : Appeal dismissed

Judgement :

John Beaumont, C.J.

1. The accused in this case was convicted by the Presidency Magistrate, Second Additional Court, Mazagaon, under Section 3(a) of the Prevention of Cruelty to Animals Act of 1890. He was driving a victoria, which had in it six full grown men and six beddings and six bags, and the suggestion is that he was thereby overloading his gharry and causing unnecessary pain and suffering to the horse.

2. Section 3 provides that if any person treats any animal so as to subject it to unnecessary pain or suffering, he shall be guilty of an offence. Section 3-A expressly makes overloading an animal an offence, but as no rules have been

published, specifying the maximum weight that may be carried, there might be a difficulty in prosecuting under Section 3-A. Therefore, the case is brought under Section 3(a), and under that section it is to be shown that unnecessary pain or suffering was caused to the animal.

3. The principal point taken in this revision application is that the accused was not properly arrested, and, therefore, it is suggested that the conviction was bad. Whether that result would follow on improper arrest, it is unnecessary to decide, because, in my opinion, the accused was properly arrested. He was arrested by an agent of the Society for the Prevention of Cruelty to Animals, and the agent in question had been appointed in the year 1934 by the Commissioner of Police to act as an Additional Police Officer for the purposes, amongst other sections, of Section 3 of the Prevention of Cruelty to Animals Act. No time for the duration of the appointment was specified, and, in my opinion, the appointment would continue during the life of the agent, or until the appointment is revoked by competent authority. Subsequently, the power of appointing Additional Police Officers became vested in the Local Government, and in 1938 the Local Government again delegated the power to the Commissioner of Police. It is suggested that the appointment of this agent, who arrested the accused, had lapsed, because, at one period since his appointment, the Commissioner of Police ceased to have power to appoint Additional Police Officers. I do not think there is any force in that contention. If the agent was an Additional Police Officer for the purposes of this Act, as I think he was, he could arrest without warrant under Section 33(1) of the City of Bombay Police Act. In my opinion, therefore, the arrest was legal.

4. The question whether the victoria was overloaded and caused unnecessary suffering and pain to the horse is merely a question of fact, and there is no ground on which we should interfere in revision when the fact is established that there were six grown up men with all their luggage in the victoria.

5. The application, therefore, fails.