

Emperor Vs. Shamlal Jamnadas

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Court : Mumbai

Decided On : Sep-03-1940

Reported in : AIR1941Bom19; (1940)42BOMLR1028

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

Appeal No. : Criminal Appeal No. 254 of 1940

Appellant : Emperor

Respondent : Shamlal Jamnadas

Disposition : Appeal dismissed

Judgement :

John Beaumont, Kt., C.J.

1. This is an appeal by Government against the acquittal of the accused by the Honorary First Class Magistrate of Surat.

2. The prosecution case was that the Food Inspector, that is the complainant, purchased ghee from two tins in the shop of the accused which had no labels upon them, and that the accused actually effected the sale. The accused gave to the complainant two receipts, which were exhibits 2/B and 2/A, stating that he had sold one-fourth Bengal seer of ghee, in one receipt stating ' for eating purposes ' and in the other ' of eatable ghee '. We have not got any record of the evidence,

because this was a summons case. But from the finding of the learned Magistrate and the receipts, I think, we must take it that the complainant asked for ghee and was sold this stuff as eatable ghee, and on analysis it was found to be heavily adulterated. The learned Magistrate dismissed the summons on the ground that the accused himself was not responsible for what was done.

3. The accused's case is that the business is really controlled by his brother, and, though at the time of the alleged offence he was joint with his brother, the accused had no knowledge about the business, and was merely attending to it in the absence of the regular mehta. I am not satisfied that that is a good defence, but I think that the real answer to the charge is that no proper summons had been served upon the accused. Under Section 13 of the Bombay Prevention of Adulteration Act, 1925, every summons shall specify the particulars of the offence charged, the name of the complainant and the date and place fixed for the hearing of the case. The summons in this case is addressed to the accused, and it says:

Whereas it is necessary for you to present yourself for answering the charge for an offence under the Bombay Prevention of Adulteration Act Section 4(1) B.C, you are hereby ordered to be present personally (or by a pleader) before the Honorary Magistrate of Surat on the date the 30th of November 1939.

The learned Magistrate was of opinion that that summons was sufficient, and that in any case the accused had not been prejudiced by any defect in the summons. With all respect to the learned Magistrate, I think, the summons was hopelessly inadequate. It does not state the name of the complainant, although it has got at the top the initials 'M.D.F.I.' which, it is suggested, referred to M.D. Desai, Food Inspector; it does not mention the date or place of the offence, or what the offence consisted of. It merely says that an offence is charged under Section 4(1)(b)(c). I think it would be better to set out the title of the Act and not merely an abbreviation, with which a particular accused may or may not be familiar. But in any case it is not enough merely to say that the offence has been charged under a particular Section. The accused must be told what he is said to have done which he ought not to have done, in this case, that he sold or offered or exposed for sale as eatable ghee a substance which was not eatable ghee. He must be told what

the offence charged is, and that is particularly necessary under this Act, because under Sub-Section (3) of Section 4 the seller may rely on a statutory defence, but he must give notice of that defence within three days of the service of the summons. If he does not know the particulars of the offence, it may be quite impossible for him to determine whether or not he can rely on the statutory defence. I am certainly not prepared to assume that the summons, in giving no particulars at all, has caused no prejudice to the accused. I think on that ground the appeal must be dismissed.

Wassoodew, J.

4. I agree.

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