

**Emperor Vs. Sumer Chand**

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**SooperKanoon Citation :** [sooperkanoon.com/453957](http://sooperkanoon.com/453957)

**Court :** Allahabad

**Decided On :** Mar-14-1907

**Reported in :** (1907)ILR29All375

**Judge :** Banerji, J.

**Appellant :** Emperor

**Respondent :** Sumer Chand

**Judgement :**

**Banerji, J.**

1. This is an application for the revision of an order of a Bench of Magistrates convicting the applicant under Section 41, Sub-section (3) of the Water 'Works Act, No. I of 1891, and sentencing him to a fine. The application has been made on the ground that the order is not warranted by law.

2. Section 41, Sub-section (1) of the Act provides, among other things, that 'when any house which has been vacant is reoccupied, the owner shall, within fifteen days give notice thereof in writing to the Municipal Board. And by Sub-section (3) any person failing to give the notice is punishable with fine. The applicant has been convicted of having omitted to give notice of the reoccupation of his house as required by the section. It was alleged on his behalf that he had paid the rates for the period during which the house remained unoccupied, and it is contended that

the section does not apply to such a person.

3. Having regard to the scope and object of Chapter VII of the Act, this contention is, in my opinion, well founded. Section 40 lays down the mode in which arrears of water rates are to be recovered. Section 41, Sub-section (1), requires that notice should be given of the erection of a new house or the rebuilding or enlargement of a house or of the reoccupation of a vacant house, and Sub-section (3) lays down the penalty for omission to give such notice. The object of the section is clearly to ensure payment of water rate and to provide against evasion of payment. Section 41 should, I think, be read with Section 34, under which a house which has remained unoccupied for three consecutive months is exempt from liability to payment. It is in respect of such a house that Section 41 requires that notice should be given of reoccupation so that the rate payable in respect of it may be realized. Where the rate has been paid and there has been no evasion of payment, the penalty imposed by the section cannot be held to have been incurred. The language of the section is no doubt somewhat wide, but in my judgment the section should be reasonably construed, and so construing it I am unable to hold that the conviction of the applicant is legal, if, as he alleges, he paid the rate and there was no evasion of payment. As the Court which convicted the applicant did not determine whether his allegation as to payment was true I must send back the case to the Court of first instance with directions to find, after taking evidence, whether the rate for the period of the non-occupation of the house was paid by or on behalf of the applicant, and I order accordingly. 'When the finding has been certified to this Court the case will be put up for hearing.

4. Before, however, a return could be made to this remand the applicant died. The Court accordingly passed the following order:

**Banerji, J.**

5. Sumer Chand, the applicant in this case, died before a return could be made to the order of this Court dated the 21st of December 1906. The application for revision therefore abates. It will be so recorded.

