

Emperor Vs. Kedar Nath

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Court : Allahabad

Decided On : Jun-13-1918

Reported in : (1918)ILR40All661

Judge : Tudball, J.

Appellant : Emperor

Respondent : Kedar Nath

Judgement :

Tujdball, J.

1. The applicant has been convicted under Section 4 of Act VI of 1912, which is a Local Act of the United Provinces Legislative Council. He has been sentenced to a fine of Rs. 80. The facts of the case are not in dispute. The applicant is a commission agent, and as such he exposed for sale what purported to be ghi. The ghi no doubt belonged to those persons who, had sent it to him for sale; but it was he who exposed it for sale, and he exposed it as being 'good and genuine ghi'. The Chief Sanitary Inspector of the Agra Municipal Board went to his warehouse, where he saw certain canisters of ghi open and exposed for sale. There were a large number of other canisters unopened. With the consent of Kedar Nath he took several samples of ghi, gave, one to Kedar Nath, kept one himself, and sent one to the public analyst. The certificates of the latter person show clearly that the ghi had been adulterated. The complaint in the present prosecution was signed by the

Executive Officer of the Municipal Board on the 8th of October, 1917. This officer, on the 20th of September, 1917, was authorized by the Municipal Board to institute prosecutions under the Act. The samples obtained from the applicant were obtained on the 12th of September. Three points have been taken before me, one is that the prosecution is illegal in the present instance as it has not been made with the order or consent in writing of the proper person and also, that on the 12th of September, the Executive Officer had no power to institute the prosecution. The second point is that Section 6 applies to the case and exonerates the applicant. The third point is that the applicant has acted in good faith. He sold what he had received from others and a smaller fine would be sufficient to meet the ends of justice. As regards the first point there is no force in it. On the date on which the complaint was made the Executive Officer had full power and the court was therefore fully justified in acting upon the complaint. As regards Section 6, it clearly does not apply to the present applicant. Admittedly Clause (a) of that section could not possibly apply to him as he is only a commission agent and had never purchased the ghi in, question. Moreover, in the present case he has made no sale at all but had only exposed for sale. The Act may be defective, but that is not the fault of anybody else but the Legislative body. Section 6 clearly does not apply to the present case. So far as the sentence is concerned, there can be very little doubt that the applicant as well as everybody else concerned knew that the ghi was adulterated. The Act was passed for the public welfare and it is only by a thorough working of it that the public will benefit from it. These persons who sell ghi are generally well aware of the fact that it is adulterated. I therefore see no reason to interfere with the sentence. The application is accordingly dismissed.