

Emperor Vs. Shri Kishan

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Court : Allahabad

Decided On : Dec-12-1945

Reported in : AIR1946All371

Appellant : Emperor

Respondent : Shri Kishan

Judgement :

ORDER

Mulla, J.

1. This is a reference by the learned Sessions Judge at Bareilly recommending that the conviction and sentence of one Sri Kishan for an offence under Section 81(4), Defence of India Rules, for the breach of a condition prescribed in a licence granted under the U.P. Standard Cloth Control Order of 1943 should be quashed and set aside. It is an admitted fact that Sri Kishan in whose favour this reference has been made was the representative of one Sheo Narain who was the owner of a firm dealing in cloth situated at Baheri. This firm was that of retail dealers. Sheo Narain also owned a bigger firm situated at Bareilly which was a firm of wholesale dealers. The fact that Sheo Narain was alone the licensee of the two firms is admitted. Sheo Narain and a servant of his named Sita Ram were prosecuted along with Sri Kishan for having contravened the conditions of the licence granted to Sheo Narain. Curiously enough the trying Magistrate acquitted both Sheo

Narain and Sita Ram and convicted Sri Kishan alone. The conviction was based on what was supposed to be an admission by him. The prosecution case was that two false cash memos had been prepared and more than 50 yards of standard cloth had been sold to one customer in contravention of the terms of the licence. The learned Sessions Judge has made an elaborate reference in this case, but I need refer only to the main ground upon which he has based his recommendation. He has pointed out that Section 7, U.P. Standard Cloth Control Order, 1913 provides that:

the holder of a licence granted under this Order shall comply with any directions that may be issued to him in regard to purchase and sale.

2. He has also pointed out that the licence itself imposes a number of duties upon the licensee. In these circumstances it is evident that no person other than the licensee can be prosecuted for committing a breach of the terms of the licence. I, therefore, accept, this reference and quash the conviction and sentence of Sri Kishan under Rule 81(4), Defence of India Rules. The fine, if any, paid by him shall be refunded.

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