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Babu Lal Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/469349

Court : Allahabad

Decided On : Feb-05-1912

Reported in : 14Ind.Cas.666

Judge : Karamat Husain and ;Tudball, JJ.

Appellant : Babu Lal

Respondent : Emperor

Judgement :

1. This is a reference by the learned Sessions Judge of Agra. The facts of the case are briefly as follows: One Babu Lal was a licensed vendor of opium. One of the general conditions under which he was licensed to sell was that sales should not be made to children below the age of fourteen years. In his absence, his salesman sold opium to a person under the age of 14. Both the salesman and the licensed vendor have been convicted. The learned Sessions Judge is of opinion that the licensed vendor, Babu Lal, is not liable under the circumstances of the present case for the act of his servant. He has been convicted under Section 9 of the Opium Act in that he has sold opium in contravention of the rules made and notified under Section 5. Rules made and notified under this section set out the general condition which we have mentioned above. The question is whether the master, in the circumstances of the present case, is liable for the act of his servant committed by the latter in the course of his employment but without the master's knowledge. In Criminal Reference No. 69 of 1890, a Judge of this Court held in

similar circumstances in case under the Excise Act of 1881 that the licensee was responsible for breaches of the conditions of his license though not committed with his knowledge and permission. In the case of Queen-Empress v. Tyab Ali 24 B. 423 a similar class of offence was also under consideration. That was an offence under Section 22 of the Indian Arms Act XI of 1873. A licensed vendor of arms and ammunition had employed a manager to conduct his business. In the absence of the licensed vendor and without his knowledge, the manager delivered certain military stores to a person without previously ascertaining that such person was legally authorized to possess the same. It was held in that case that the master was liable. The Court ruled as follows: We fail to see how it can be contended that under these circumstances a delivery of goods by the man in charge would not be a delivery by the owner of the shop. It is not a question of intention, of mens rea, or of knowledge. It is the delivery which the act makes penal, and the delivery by the manager is clearly in this case a delivery by the licensee. The authorities are concurrent upon this point. In The Attorney General v. Siddon 1 Cr. and J. 220 : 1 Tyr. 41 : 9 L.J (O.S.) Ex. 7 the rule is thus stated: 'Whatever a servant does in the course of his employment with which he is entrusted and as a part of it, is the master's act. This rule which is of general application, so far as civil liability goes, is applicable to certain criminal proceedings also.' The Court then noted the instances of Mullins v. Collins 9 Q.B. 292 : 43 L.J.M.C. 67 : 29 L.T. 838 : 22 W.R. 297; Coppen v. Moore (1898) 2 Q.B. 306 : 62 J.P. 453 : 67 L.J. Q.B. 689 : 78 L.T. 520 : 46 W.R. 620 : 19 Cox. C.C. 45, the former of which was a case in which a salesman of a licensed victualler supplied liquor to a constable on duty and without the authority of his superior officer, and in which it was held that the licensed victualler himself was liable to be convicted. In our opinion, the offence in the present case is similar to the offences considered in the above-mentioned cases. It is not a question of intention, mens rea, or of knowledge. The licensee holds his shop on certain conditions. One of those conditions has been broken by his servant; and the mere fact of selling opium in contravention of the conditions of his license consitutes the offence. It is one of those cases in which the act of a servant is the act of the master. In our opinion, the conviction of the master is legal. We, therefore, direct that the record be returned.

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