

Emperor Vs. Ram Gopal

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Court : Allahabad

Decided On : Aug-25-1936

Reported in : AIR1936All865; 166Ind.Cas.763

Appellant : Emperor

Respondent : Ram Gopal

Judgement :

ORDER

Bennet, J.

1. This is a reference by the Sessions Judge of Fatehpur under the following circumstances: Two persons, Darshan Singh and Ramgopal, were tried under Section 4, U.P. Prevention of Adulteration Act 6 of 1912, by a Magistrate. The accused Ram Gopal is a commission agent who has a shop and he stated:

On 4th October 19S5 Darshan came to my shop and was sitting there and in the meantime Sanitary Inspector came there and purchased samples. He kept it in three bottles and duly sealed them. I did not expose that ghee for sale and I do not know if that ghee was pure or impure.

2. On the evidence the Magistrate found that the ghee was impure in accordance with a sample analysed by the Public Analyst as it had a small proportion of fat or oil foreign to pure ghee. He convicted both the accused and the present reference

is in regard to the conviction of Ram Gopal. The Magistrate held that Ram Gopal was a commission agent for some ghee and people bring ghee to his shop and sell through him and Ram Gopal charges commission from them; that it was proved that Darshan Singh brought the ghee in question and was sitting at the shop of Ram Gopal and that Darshan Singh actually sold the ghee to the sanitary inspector:

For the purpose of Section 4(1), U.P. Prevention of Adulteration Act, the ghee was certainly exposed for sale by Ram Gopal Bania when he allowed Darshan Singh to sit on his shop and to sell it to the Sanitary Inspector. It is immaterial whether Ram Gopal took any commission or not and himself did not take any active part in selling ghee in question to the Sanitary Inspector. Darshan Singh admits that the ghee belonged to him and he sold it to the Sanitary Inspector. He has not been able to prove that the ghee was pure.

3. The learned Sessions Judge considered that it was Darshan Singh from whom the sanitary inspector purchased the sample of ghee and that Ram Gopal should not be convicted because Darshan Singh did the selling and was present. Now it is difficult to adopt the view of the learned Judge for several reasons. In the first place Section 4(1), U.P. Prevention of Adulteration Act penalises the selling or offering or exposing for sale, etc. Although the actual selling may have been done by Darshan Singh it appears to me that the exposing for sale was done by Ram Gopal because the shop belonged to Ram Gopal and goods could not have been exposed for sale in that shop without his consent. Darshan Singh is apparently a villager and he has no connexion with the shop of Ram Gopal and it was Ram Gopal who allowed the ghee to be exposed for sale at his shop and who allowed it to be sold at his shop. The next point is that Section 40, I. P. G., in para. 2, provides that the word 'offence' in Section 109 denotes a thing punishable under any special or local law as well as a thing punishable under the Indian Penal Code. The law of abetment therefore will apply to Section 4, Prevention of Adulteration Act. As there is no express provision for the abetment of this offence the penalty therefore is the same as the penalty for the offence. Thirdly, in Section 107, I.P.C., 'abetment' is constituted by intentional aiding of any act or illegal omission to do a thing.

4. It is clear that in the* present case it would have been impossible for Darshan Singh to have exposed the ghee for sale or to have sold it if Ram Gopal had not agreed to his doing so at the shop of Ram Gopal. Therefore it appears to me that Ram Gopal abetted the offence of Section 4, Prevention of Adulteration Act. Further, as regards the meaning of 'sale' in the Indian Sale of Goods Act 3 of 1930, Section 4, it is provided that a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. Now the price in question included the commission which was taken or was to be taken by Ram Gopal. He therefore was interested to that extent in the sale of the goods and as the sale was made in his presence and he was to receive part of the purchase price I do not think that it can be said that he did not take part in the sale. The mere arranging of the sale by Darshan Singh will not show that Ram Gopal did not take part in the sale.

5. This question of the liability of a commission agent had been before this Court in a ruling reported in *Emperor v. Kedar Nath* 1918 40 All 661. In that case Kedar Nath, a commission agent, doing business in Agra, had a quantity of canisters of ghee sent to him for sale and this ghee was exposed for sale and the Chief Sanitary Inspector took some samples and found that the ghee was adulterated and Kedar Nath was convicted. Tudball, J. held that he would come under Section 4, Act 6 of 1912. The learned Sessions Judge who made this reference and learned Counsel in this Court have attempted to differentiate this ruling on the ground that the owner of the ghee was not present at the shop of Kedar Nath. I do not think that there is anything in the ruling to support the view that Tudball, J. considered that Kedar Nath, commission agent, was liable merely because the owner of the ghee was not present. It will be difficult to hold that a commission agent was liable when the owner was absent, and when the owner happened to be present the liability ceased, and presumably if the owner went away again the liability would again arise. Such a doctrine of law would be very inconsistent. For these reasons I consider that the argument put forward in support of this reference and adopted by the learned Sessions Judge is unsound. I consider that the reasoning of the Magistrate was correct and accordingly I refuse to accept this reference.

