

Kunwar Sen Vs. Emperor

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Court : Allahabad

Decided On : Apr-04-1935

Reported in : AIR1935All620; 157Ind.Cas.119

Appellant : Kunwar Sen

Respondent : Emperor

Judgement :

ORDER

Kendall, J.

1. The present applicant was convicted by a Magistrate of an offence under Sub-section (2), Section 126, District Boards Act, and fined Rs. 55. When lie appealed to the Sessions Judge it was held that Section 126 of the Act did not strictly apply, but that the applicant had committed an offence under Section 179, Penal Code. The circumstances are given sufficiently fully in the order of the learned Sessions Judge. It has been argued in. appeal that Section 179, Penal Code, does not apply because the applicant was not 'legally bound to state the truth.' The only legal obligation that has been suggested, to this Court is that referred to in Section 126, District Boards Act, under which:

The Board may by written communication call upon any person specified...to furnish such information as may be necessary in order to ascertain

- (a) whether such person is liable to pay taxes on his land or property;
- (b) on what amount he should be assessed;
- (c) the actual value building or land which he occupies and the name of address of the owner.

2. The learned Judge has found that the applicant was not called upon by a written communication to give information under this provision, and for this reason he held that he could not be punished under Sub-section (2). What he did find was that the applicant refused to answer 'certain questions put to him by the assessing officer orally.' The learned Judge has not explained why the applicant was 'legally bound to answer these questions truthfully.' No doubt there was a moral obligation, and the assessing officer was justified by practice in asking the questions. But this is not enough to show that the applicant was legally bound to answer the questions truthfully. It is necessary to interpret the penal clauses of the District Boards Act very strictly and not to allow any latitude to the prosecution and I find that there is a distinct gap in the case for the prosecution which has not been filled up. The conviction should not be allowed to stand. I allow the application, set aside the order of the lower appellate Court, and direct that the applicant be acquitted and that the fine, if paid, be refunded.