

Durjan Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/476442

Court : Allahabad

Decided On : Mar-14-1935

Reported in : AIR1935All655; 157Ind.Cas.1091

Appellant : Durjan

Respondent : Emperor

Judgement :

ORDER

Allsop, J.

1. This criminal revision is connected with criminal revision No. 16 of 1935. The facts are similar and the-points at issue are the same. I propose to dispose of both these revisions by this order.

2. The two applicants, Ghasi Ram and Durjan, have each been fined a sum of Rs. 30 under Section 299(1), Municipalities Act, for infringement of a bye-law of the Notified Area Committee of Mahoba. This bye-law is to the effect that no person may ply the trade of a weighman without obtaining a licence. The facts found in these two cases are that one Ram Nath sold some grain to the two applicants and that they weighed it themselves without, employing a professional weighman. In consideration of not employing a weighman they demanded and obtained from, the vendor the commission which the weighman would have received. It would be possible to raise a number of questions in connexion with these applications such

as the validity of the bye-law and so forth; but for the decision in these two matters it is sufficient to consider the facts. I have no doubt-that the real intention behind the prosecution was to establish the principle that no person buying or selling goods in Mahoba should do so without employing a weighman who had obtained a licence from the Notified Area Committee and who doubtless had paid a fee for it. It cannot be said in the present case that Ghasi Ram and Durjan were plying the trade of a weighman. A weighman is one who is introduced into a transaction between third parties to determine the weight of goods bought by one and sold by another. It may be that the Notified Area Committee have jurisdiction or have authority to make a bye-law saying that any person who acts in this capacity shall have a licence from them; but they certainly have not made any bye-law that no transaction shall take place in Mahoba without the intervention of a weighman. If they ever succeed in passing such a bye-law, the question may arise whether it was within their authority to do so or not. In the present case it is sufficient to say that the alleged action of the applicants is not one which contravenes the bye-law which has already been framed. I have no doubt that Ghasi Ram and Durjan were not proved to have been plying the trade of weighmen; and consequently whether they had licences or not is immaterial. They have been convicted for doing acts which are not offences within the law. I consequently set aside the convictions and sentences and direct that the fines, if already-paid, should be refunded.