

Budhsen Vs. Emperor

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Court : Allahabad

Decided On : Dec-07-1933

Reported in : 148Ind.Cas.384

Judge : Niamatullah, J.

Appellant : Budhsen

Respondent : Emperor

Judgement :

Niamatullah, J.

1. This is an application for revision by Budh Sen, a dealer in wheat flour carrying on business at Aligarh who has been convicted of an offence under Section 4, U.P. Prevention of Adulteration Act (No. VI of 1912) A Sanitary Inspector of the Municipal Board asked for a pice worth of 'pure wheat flour' The accused supplied it without mentioning the fact that it, might have a negligible precentage of barley flour. The Sanitary Inspector sent a quantity, of the flour supplied to him for chemical examination. It was found by the Chemical Examiner that 'it was not pure but contained a small proportion of barley flour,' The report does not mention the proportion. It merely proves that it was not pure, wheat flour, as impliedly represented by the accused. At the same time it is possible that it contained no more than 1 per cent, of barley flour.

2. The learned Counsel for the applicant has contended before me that, according to the evidence in the case and the rules framed by the Local Chamber of Commerce, a certain percentage of mixture of barley flour with wheat flour is common and even unavoidable. This may or may not be correct. The fact remains that Section 4 of the Act does not exempt from punishment a person who sells as pure wheat flour a flour which is not pure but contains some mixture of barley, however, slight. The fact that the amount of adulteration is negligible or is universally tolerated may affect the sentence but cannot affect the conviction. The evidence produced by the applicant established no more than the fact that a certain amount of barley is always mixed with wheat and is ground with it, As already stated this fact will not make the act of the accused any time less an offence under Section 4. I hold that the applicant was rightly convicted of an offence under Section 4 of the Prevention of Adulteration Act.

3. As regards the sentence, I am clearly of opinion that it is out of all proportion to the offence proved by the evidence in the case. The Magistrate has fined the applicant Rs. 75 besides ordering him to pay Rs. 15, Chemical Examiner's fee, Rs. 24-12 as costs of the prosecution. As already stated, the only evidence of adulteration consists of the Chemical Examiner's report, which merely shows that barley flour was detected in the wheat flour sold by the applicant. In these circumstances I think that the offence cannot be considered to be otherwise than technical. I reduce the fine to Rs. 10 maintaining the order of the Magistrate as regards payment of the Chemical Examiner's fee and the costs of the prosecution.