

Gunga Prosad Gupta Vs. Emperor

Gunga Prosad Gupta Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/854560

Court : Kolkata

Decided On : Oct-25-1944

Reported in : AIR1945Cal360

Appellant : Gunga Prosad Gupta

Respondent : Emperor

Judgement :

Sharpe, J.

1. The petitioner has been convicted under Rule 81(4), Defence of India Rules, of contravention of Clause (4), Bengal Essential Food Stuffs Anti-hoarding Order of 1944, by-having in his possession 5 maunds and 20 seers of sugar and sentenced to six months' rigorous imprisonment and a fine of Rs. 100, in default, two months' further rigorous imprisonment. The prosecution case was that the complainant, who is described as a supervisor, Post Raid Information Service, saw a hand-cart on which were two bags and being suspicious, he questioned the hand-cart puller who told him that the bags contained sugar and, on being further asked as to where the sugar had been obtained, referred him to the petitioner. He then said that the petitioner being questioned admitted that the sugar was his and that he had brought it from a ration shop. It was further said that the petitioner produced a slip, Ex. 1, which had been altered to show a sale other than the sale for which it had been originally issued. The defence was a denial of possession or ownership

of the sugar or of making the statements alleged to have been made by the petitioner. In coming to his finding that the sugar in question was found in possession of the petitioner, the learned Additional Presidency Magistrate relied mainly on two pieces of evidence: (1) the statement said to have been made by the petitioner to the complainant, Supervisor, Post Raid Information Service, and (2) certain statements said to have been made by the hand-cart puller at the time of the seizure. On behalf of the petitioner, Mr. Bhattacharjee has contended that the evidence in regard to the statement of the petitioner was inadmissible by reason of the provisions of Section 24, Evidence Act, and that the statement said to have been made by the hand-cart puller was not admissible in evidence since he was not examined as a witness.

2. On behalf of the Crown, Mr. Chatterji has not seriously contended that the evidence in regard to the statement made by the hand-cart puller was admissible and we are satisfied that this evidence could not be admitted either under the provisions of Section 32 or Section 33, Evidence Act. So far as the statements of the petitioner are concerned, Mr. Chatterji has contended that these were not statements made to a person in authority within the meaning of Section 24, Evidence Act. The complainant stated in his cross-examination that he told the accused that if he told the truth he would let him go, otherwise he would take him to the police. By making this promise he undoubtedly gave the accused grounds which would lead him to suppose that he might gain some advantage by making the statement and at that time, the complainant was certainly taking such action as was sufficient to lead the accused to suppose that he had the necessary authority for that action. We have no information as to the exact authority under which the Supervisor was acting or as to the precise duties which he was called upon to perform but we think that once he had disclosed that the statement of the accused was procured by inducement it was the duty of the prosecution to show by re-examination or otherwise that the complainant was not a person in authority within the meaning of Section 24, Evidence Act. Apart from that consideration, we are in agreement with the decision in *Ashutosh Dutt v. Emperor* ('21) 8 A. I. R. 1921 Cal. 458, that in circumstances such as have been disclosed in the present case the words 'person in authority' in Section 24 included the prosecutor, In the present case, it is clear that had it not been for the action of the Supervisor no prosecution

would have been instituted against the accused petitioner at all. In this view of the matter, we think that the evidence with regard to the statements by the accused which were elicited by the inducement offered by the Supervisor was inadmissible in evidence.

3. The position is therefore that there is on record no admissible evidence upon which a finding could be reached that the sugar in question was in possession of the petitioner. Whether the slip, EX. 1, had been altered in order to support any bogus claim is a matter which is not under investigation in the present case and since the statement of the accused is held to have been inadmissible the slip by itself can form no basis for any finding with regard to possession. We do not think that any useful purpose would be served by ordering a re-trial since in the absence of the hand-cart puller there is really no evidence from which any finding as to possession can be reached. The result is therefore that this rule is made absolute. The conviction and sentence passed upon the petitioner are set aside. He will be discharged from his bail and the fine, if paid, will be refunded.

Henderson, J

4. I agree.