

Davis Hewlet and Co. Vs. Emperor

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Court : Kolkata

Decided On : Jun-07-1933

Reported in : AIR1933Cal598

Appellant : Davis Hewlet and Co.

Respondent : Emperor

Judgement :

1. This appeal arises out of a conviction under Section 406 read with Section 488, Calcutta Municipal Act. There is some question as to whether the conviction was under Section 407, read with Section 488; but it is not necessary at this moment to refer to that question because it will be dealt with later.

2. The facts giving rise to this prosecution, shortly stated, are as follows: The accused firm carry on business as Chemists and Druggists. An employee of the Corporation of Calcutta went on 2nd November 1932 to the shop of the accused firm and asked to be supplied with a certain quantity of sodium citrate. Instead of sodium citrate being supplied to the Corporation employee potassium nitrate in which there was some sodium chloride was supplied. The article sold was found on analysis to contain potassium nitrate and also a little of sodium chloride. It is common knowledge that potassium nitrate with Sodium chloride thrown is something very different from sodium citrate. Sodium citrate is an inoffensive article and is often prescribed by medical practitioners. The sale took place on 2nd November 1932, and it appears that on 1st January 1933, the approval of the

Chief Executive Officer to the institution of a case for the sale of potassium nitrate in the place of sodium citrate was asked for. The Chief Executive Officer having sanctioned the prosecution as appears from his facsimile signature on the application for summons, the necessary application for summons was made before an Honorary Magistrate in the Cossipore-Chitpore area within whose jurisdiction apparently the shop of the accused firm was situate. That the application for summons was made on 17th January 1933, has been found to be correct by us after an examination on the application for summons with the original register of summonses which has been produced before us. The numbers mentioned on the application for summons, namely, F. 1272 and L. Register No. 8381, are mentioned in the register of summonses and there cannot by any doubt whatsoever that is so. We are making a reference to the dates because an ingenious argument has been advanced before us that the prosecution was belated and was barred under S.534 Calcutta Municipal Act.

3. It was suggested that the application for summons was not made till 4th February 1933, which was beyond three months from the date of the sale of the article in question, namely, 2nd November 1932. The facts set out above and the dates referred to above constitute a Sufficient refutation of the contention that the prosecution was barred and nothing further need be said on that point. Be that as it may, it appears that an application was made for an adjournment of the hearing of the case on 4th March 1933, and it appears that the case was adjourned to 18th March 1933; but long before that the Corporation or its representatives made an application praying that the case might be treated as one under Section 406 read with Section 488 and not under Section 407 read with Section 488. The application was in writing and is on the record and it appears that the Magistrate for good and valid reasons granted the necessary permission for the correction of the number of the section under which the prosecution was to be had. At any rate, we are satisfied that the accused firm were not in any way prejudiced by reason of the correction being allowed by the Magistrate.

4. But the learned advocate who has argued this appeal on behalf of the accused firm, not content with one ingenious argument based on the question of limitation, has advanced a second ingenious argument and it is this: that the correction over

the signature of the Magistrate was not enough and that a seal was required in order that the correction itself might derive some validity in the circumstances stated. A mere mention of this argument is sufficient to induce the Court to negative it summarily and we accordingly do so. The third point that has been taken is that there was no admission before the Magistrate by anybody on behalf of the accused firm of having committed the present offence. It is said that on 18th February 1933, there was a previous offence for which the accused firm were convicted under Section 406 read with Section 488, Calcutta Municipal Act, but on 18th March there was no admission that the accused firm were guilty of having committed the present offence. In support of that contention a worthless affidavit has been put in by somebody on behalf of the accused firm; but it is significant that if as a matter of fact there was no admission of having been guilty of the present offence on 18th March 1933, the learned advocate for the accused firm has not been at all able to explain why it should have been recorded by the Magistrate that the accused had not only admitted the commission of the present offence but had also prayed for mercy. It is said that the person who was in attendance on behalf of the accused firm on 18th March 1933 before the Magistrate might have prayed for mercy. If the accused firm's representative might have prayed for mercy, as it is now represented before us, we can take it as being absolutely certain that the accused's representative did pray for mercy and offer no defence whatsoever.

5. The fourth point that has been taken is that the conviction should have been under Section 407(2) read with Section 488 and not under Section 406 read with Section 488. If however the argument that the prosecution were in order in having the case under Section 406 read with Section 488 be found to be correct, then there is absolutely no sense or substance in the last mentioned contention that the conviction should have been under Section 407(2) read with Section 488. The last argument must also be negatived in our opinion. The fifth argument that has been advanced is that the sale was not by the proprietor of the firm who was bed-ridden and ill but by a menial servant who did not understand what he was doing and what he was selling, and that therefore the amount of the fine should not have been as much as was inflicted on. 18th March 1933, namely Rs. 450, but should have been a lenient one. The offence is of a very serious nature and, in our opinion, no circumstances have been shown why a view lenient to the accused

should be taken on the present occasion.

6. A further point was taken that as it was a case of compulsory sale there was no offence committed under Section 406 read with 8. 488; and, in support of that contention, the case reported in *Akhoy Kumar v. Corporation of Calcutta* : AIR1928 Cal320 has been cited which related to the sale of a quantity of ghee. The only observation that we need make is that we do not consider ourselves bound in the circumstances of this particular case by the authority cited and that we are not prepared to follow the same. All the points taken by Mr. Banerjee for the accused firm fail. The result is that this appeal must stand dismissed. The fine, if not realized, will now forthwith be realized.

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