

**Dasarath Singh Vs. State**

**Dasarath Singh Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/861734](http://sooperkanoon.com/861734)

**Court :** Kolkata

**Decided On :** Jan-11-1956

**Reported in :** AIR1956Cal260,1956CriLJ738; AIR 1956 Cal 260

**Judge :** Debabrata Mookerjee, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 235, 244, 259, 286, 367, 408 and 436; ;Indian Penal Code - Sections 420 and 486; ;[Evidence Act, 1872](#) - Sections 101, 103 and 105

**Appeal No. :** Criminal Appeal No. 370 of 1955

**Appellant :** Dasarath Singh

**Respondent :** State

**Advocate for Def. :** Nirmal Chandra Sen, Adv.

**Advocate for Pet/Ap. :** Durgesh Prosad Das, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Debabrata Mookerjee, J.**

1. The appellant was tried by a Presidency Magistrate of Calcutta upon two charges under Sections 420 and 486, Penal Code. He was acquitted of the charge

of cheating under Section 420, but was convicted under Section 486 and sentenced to pay a fine of Rs. 250/-, in default, to suffer rigorous imprisonment for one month.

2. The facts briefly stated are that on 6-7-1954 the appellant's shop at Raja Katra styled Sinha Bros. was searched in the presence of witnesses. Two cartons of Sunlight Soap marked Exts. II and III containing the cakes in waxed paper bearing label 'Sunlight Soap -- Lever Bros. (India) Ltd.' were recovered.

At the time of the search there was an Expert from Lever Bros. to help test whether the cakes were genuine or not. It appears the cakes were later sent for chemical examination and report was received in due course which revealed that they were not genuine Sunlight cakes it having been considered that they were inferior stuff and attempted to be passed off as genuine Sunlight Soap of Lever Bros. Ltd.

3. The appellant pleaded not guilty to the charges and the defence was that there was no intention to cheat; furthermore on the evidence in the case the elements of an offence under Section 486 had not been established. No defence witnesses were examined.

4. The learned Magistrate, however, believed the evidence produced by the prosecution and while acquitting the appellant of the charge of cheating convicted him of an offence under Section 486, Penal Code.

5. On behalf of the appellant it has been contended in the first place that his conviction under Section 486 of the Code is not sustainable in law. Attention was drawn to an order made by a Presidency Magistrate, Calcutta on 7-2-1955 to which that learned Magistrate discharged the appellant under Section 420, Penal Code, on account of absence of the complainant; and as respects the charge under Section 486, the learned Magistrate thought that although the police challan showed commission of an offence under Section 486, it did not appear at that stage that the aggrieved party, that is to say, Lever Bros. were interested in the prosecution.

In this view of the matter he considered the challan under Section 486 to be a 'nullity'. Thereafter, it appears that a fresh challan was submitted to the Chief Presidency Magistrate on 13-5-1955 under Sections 420/486 of the Code and it was on this challan that the present trial was founded.

It has been argued that since a Presidency Magistrate on a former occasion had discharged the appellant under Section 259, Criminal P. C. in respect of the charge of offence under Section 420, Penal Code, and since it was thought that the person really interested in the prosecution, namely, Lever Bros. Ltd., had not taken 'interest' in the prosecution and as such the charge of offence under Section 486 was a 'nullity' the subsequent trial and conviction of the appellant are not maintainable.

I cannot quite appreciate the force of this argument. Whatever the former Magistrate might have thought on an earlier occasion, there was nothing to prevent a fresh challan being submitted upon collection of new materials. It is quite clear from the order made by the Chief Presidency Magistrate on 13-5-1955 that the order of discharge previously made was present to his mind and yet the Chief Presidency Magistrate thought that there should be a trial of the appellant.

Surely the order of discharge cannot possibly affect the validity of a new trial upon fresh materials; and as respects the expression of opinion by a former Magistrate that the prosecution under Section 486, Penal Code, was not maintainable and appeared to be a 'nullity' all that need be said is that that opinion remains merely as an expression of the Magistrate's own view that a party interested was not actively prosecuting the case and cannot possibly have the effect of prejudicing a later trial held upon proper materials. There is, therefore, no substance in this contention raised by the appellant.

6. The next ground of complaint is that the charge of offence under Section 420, Penal Code, related to an occurrence dated 2-7-1954 whereas the offence which forms the subject matter of the charge under Section 486, I. P. C. took place on. 6-7-1954. It is said that these are entirely two distinct offences and the charges relating to them cannot possibly be rolled up in one trial.

It is argued that the trial was in consequence vitiated by the two charges being tried at one and the same trial. It is true that the charge of cheating related to what happened on 2nd of July while the cartons containing spurious soaps were found on 6-7-1954.

There was thus proximity of time as between the two incidents and it is not stretching the point beyond legitimate limits to think that these two offences were parts of the same transaction. The person concerned is the same. The dates are as I have said, intervened by a space of only four days and the object is obviously to pass off spurious cakes of soap upon the unwary members of the public.

There is thus a continuity of purpose and continuity of time & I think in the circumstances of the case Section 235, Criminal P. C. is a complete answer to the objection.

The offences under Sections 420 and 486 of the Code are indeed distinct offences, but if they are shown to have been committed in the course of the same transaction there can be no bar to the trial of these two charges at one trial. Section 235, Criminal P. C. sanctions it.

7. The third point raised relates to the contention that the facts and circumstances of the case do not establish the elements of the charge under Section 486, Penal Code.

Section 486 provides that the person who sells or exposes or has in his possession for sale or any purpose of trade or manufacture, any goods or thing with a counterfeit trade-mark affixed to or impressed upon them shall be liable to be punished unless he proves that he took precautions against committing an offence against this section and that at the time of commission of the alleged offence he had no reason to suspect the genuineness of the mark and that on demand made on behalf of the prosecutor, he gave all possible information in his power with respect to the persons from whom he obtained such goods.

It is, therefore, clear that Section 486 casts an onus upon the person charged which has to be discharged in compliance with the provisions of the section itself.

Once the prosecution has laid the foundation of a charge by proving generally the circumstances which would lead to a reasonable inference that an offence under Section 486 of the Code has been committed, it becomes the duty of the person charged to prove the circumstances set out in the section in order that he might reasonably claim an acquittal.

I agree that generally speaking the onus never shifts on to the accused; but where a charge is laid under Section 486, the person charged has to discharge his statutory responsibility of proving that he had taken all reasonable precautions against committing the offence, that he had at the time of the alleged offence no reason to suspect the genuineness of the goods and that he had given all information in his power to the prosecutor with respect to the persons from whom he had obtained such goods.

The legislature thought it right not to leave the question of onus in a case of this kind to the general law. It was considered expedient that there should be specific provision made defining the responsibility of the accused persons called upon to meet a charge under Section 486 and, therefore, it is the duty of the person charged to prove to the satisfaction of the Court that he had discharged the onus.

In my view, Section 486 is a section of a special type the true import of which will, I fear, be missed if the features to which I have just drawn attention are lost sight of. Ordinarily speaking, the onus lies on the prosecution, but in a case of this kind where a specific provision in the Code punishing the offence lays a burden on the person charged, he has to discharge the onus that has been laid upon him.

In this sense, therefore, Section 486 is indeed different from the other sections of the Code, the proof of which will depend entirely upon the evidence which the prosecution provides irrespective of what the accused person does or says at the trial.

8. The question, therefore, arises whether in the present case the general onus has in the first instance been discharged by the prosecution. It is only then that the question of onus on the person charged, becomes relevant. It is to be observed that evidence was called to show that the accused persons were storing for sale

cartons containing cakes which upon examination turned out to be spurious and were imitations of a well-known brand of soap called Sunlight Soap.

The search took place in the presence of witnesses when recovery was made. There can, therefore, be no question that the accused person was possessing the cartons containing spurious cakes. The other elements which the prosecution has succeeded in proving is that on occasions prior to the actual seizure of the cakes, the appellant was apprised of the inferior quality of the soap cakes he had been selling, and that he had agreed to inform the persons responsible for the sale of such cakes to him.

The further circumstance relied upon by the prosecution is that the Expert from Lever Brothers deposed that the cakes in question were spurious and that they were not the manufactured property of Lever Brothers Ltd. If the prosecution succeeded in proving these elements, I think they must be held to have discharged the primary or general onus. Question would then arise whether the, circumstances transpiring in the case would show that the appellant succeeded in discharging the burden laid upon him.

I am afraid a perusal of the evidence in the case cannot leave any doubt that no real effort was made to establish the existence of circumstances which the appellant was required to prove in order to put up an effective defence to the charge under Section 486 of the Code. The name of the person from whom he obtained the supplies was not disclosed.

There is nothing to indicate that his books and papers contained an express reference to the name of that supplier. There is, on the other hand, the evidence on the record that complaints had been received by him from previous customers about the inferior quality of the cakes which he had sold to them and no circumstance has been established generally from which it might be said that he acted innocently.

There is no evidence to indicate that reasonable precautions were taken by him against committing an offence under the section so that it might be said that at the time when he was found in possession of the cakes for the purpose of sale he had

no reason to suspect the genuineness of the cakes; and lastly the appellant has not been able to prove the fact that he disclosed any information in his power or possession with respect to the person from whom he obtained his supplies.

As respects the last item there is, on the other hand, evidence to suggest that he gave merely a vague description of a person from whom he obtained the supplies. That description could not possibly be taken as furnishing any clue which might be followed up in order to trace the source of supply. I think, therefore, in these circumstances it must be held that the onus which lay upon the accused has not been discharged.

9. Sale of spurious cokes was proved by evidence which does not appear to have been shaken in cross-examination. The technical assistant from Lever Bros. Ltd., proved how he had been tricked himself and later when he discovered the inferior quality of the soaps supplied by the appellant the witness informed the appellant who, however, assured him that he would in due course inform the police about it.

There is no indication in the evidence to suggest that the appellant informed the police. The other witnesses from Lever Bros. proved how the spurious soaps were different from the real ones in colour, weight and smell. This evidence was supported by the testimony of a witness from the Corporation of Calcutta. The evidence of another witness P. W. 6 from Lever Bros. proved the circumstances in which two cartons, Exts. II and III were recovered and the witness filed the certified copies of the relevant Registration Trade Mark of Lever Bros. Ltd.

The evidence of the Police Officer proved the circumstances in which these cakes were recovered and he deposed that he submitted a charge sheet in the case. This witness has explained in cross-examination in what circumstances the appellant had been discharged on the previous occasion. He deposed that the Magistrate's order made on 7-2-1955 discharging the appellant was made on the ground of absence of the complainant. The Investigating Officer's evidence made it clear that the cakes of soap in question were chemically examined and the results of examination duly obtained.

10. The facts and circumstances to which I have referred clearly establish the guilt of the appellant under Section 486, Penal Code. I hold that the elements of the charge of offence under that section have been established and I find, therefore, no substance in the appeal which is accordingly dismissed..

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**