
(1928) 02 CAL CK 0026
In the Calcutta High Court

Akhoy Kumar Ghose

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 24-02-1928

Acts Referred:

Calcutta Municipal Act, 1923 — Section 406, 488

Citation : AIR 1928 Cal 320 : 114 Ind. Cas. 139

Hon'ble Judges : Lort-Williams, J;Chotzner, J

Bench : Division Bench

Judgement

1. The petitioner has been convicted u/s 406 read with Section 488, Calcutta Municipal Act of 1923. Section 406 says:

No person shall directly or indirectly himself or by any other person on his behalf sell, expose or hawk about for sale or manufacture or store for sale any food or drug which is adulterated or misbranded.

2. According to the judgment of the learned Magistrate, the accused was found by the Food Inspector unloading a consignment of 16 tins at the Sealdah Railway Parcel Office. One of these tins which the petitioner said contained ghee appeared to the Food Inspector to contain something else. He accordingly seized the consignment and took it to the Municipal Office. Thereafter, he purchased for a sum of four annas a sample of one of the tins for analysis and the analysis when made disclosed the fact that the ghee was grossly adulterated. Upon these facts, the petitioner was convicted as already stated and sentenced to pay a fine of Rs. 200. The question is whether he is liable for having committed an offence u/s 406. In our opinion, he is not, for the simple reason that nine of the ingredients which constitute an offence under that section has been proved against him. It has been argued by Mr. Chuckerbutty who has appeared for the prosecution that the fact of the compulsory sale of the sample for analysis constituted a sale within the meaning of Section 406. That is an argument which we cannot for one moment accept. It is plain that, if it had not been for this compulsory sale, there would have been no sale whatever and it seems to us

impossible to hold that a compulsory sale made under the provisions of Section 424 Clause (1) can make any person amenable to the punishment provided for u/s 488 of the Act. We are, therefore, of opinion that this conviction cannot be maintained. The Rule is made absolute. The conviction and sentence are set aside and the fine, if paid, will be refunded.