

1932

EMPEROR  
v.  
FATTU

observe to the letter the law as laid down in the Code. In the present case we consider that the warrant was defective in itself, and its issue was illegal. Consequently we have no hesitation in finding that the persons who released this judgment-debtor from custody were not rescuing a person who was under a lawful arrest, and therefore, they committed no offence under section 225B of the Indian Penal Code. We accordingly accept this application in revision, set aside the judgments of the courts below and quash the conviction and sentences.

Before Mr. Justice Pullan and Mr. Justice Thom

EMPEROR v. KAUL AHIR\*

1932

August, 30

*Arms Act (XI of 1878), section 19(f)—“Possession”—Two loaded cartridges found in a corn bin—Whether the head of the family can be convicted thereupon.*

A house was searched and two loaded cartridges were found in a corn bin among ghee, butter and other articles. The Magistrate convicted the head of the family on the ground that as such he should be held responsible for the ammunition recovered from his house. It was held that in such a case it could not be said that the head of the house or any individual male member of the family was aware of the presence of these cartridges, and that in all such cases it was necessary to prove not only the presence of the article in the house but the possession of some particular person over that article in order to justify a conviction.

*Emperor v. Sikhdar*, I. L. R., 54 All., 411, dissented from.

This case was referred to a Bench of two Judges on the following referring order :—

IQBAL AHMAD, J. :—I find it difficult to reconcile the decision of this Court in *Emperor v. Ram Autar* (1), with the decision of this Court reported as *Emperor v. Sikhdar* (2). The question that arises for consideration in the present reference is of sufficient importance to merit a discussion before two Judges. Accordingly I refer this case to a Bench of two Judges.

\*Criminal Reference No. 266 of 1932.

(25) I.L.R., 47 All., 511.

(2) (1931) I.L.R., 54 All., 411.

Mr. L. M. Roy, for the applicant.

1932

The Assistant Government Advocate (Dr. M. Wali-ullah), for the Crown.

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PROSECUTOR  
V.  
KAUL AHIR

PULLAN and THOM, JJ. :—The learned Sessions Judge of Azamgarh has referred to this Court the case of one Kaul Ahir who has been convicted of an offence under the Arms Act. In the course of a house search two loaded cartridges were found in a corn bin in the house of this man Kaul among ghee, butter and other articles. Kaul and his son were prosecuted for an offence under the Arms Act. The son Lagan was acquitted, and the Magistrate has convicted Kaul on the ground that he was the head of the family and should, therefore, be held responsible for the arms recovered from his house. There are many cases of this Court in which it has been laid down that it is improper to convict each and every member of a Hindu joint family because some illicit article has been recovered from the house, and the principle that the head of the family is responsible where there are other adult male members who had equal facilities of access to the article in question has never been affirmed as far as we are aware by any High Court in India. We have been referred to a decision of a single Judge of this Court in the case of *Emperor v. Sikhdar* (1). In that case the learned Judge held that all the adult male members of a Hindu joint family could be presumed to be in possession of an unlicensed gun found in their house, and it was open to the police to prosecute one or all of them for the offence. This is a view we are not prepared to accept. We believe that in all such cases it is necessary to prove not only the presence of the article in the house, but the possession of some particular person over that article in order to justify a conviction. In a case such as the present it cannot be said that the head of the house or any individual male member of his family was aware of the presence of these cartridges. For all we know they might have been dropped by some

1932  
 EMPEROR  
 v.  
 KAUL AHIR

sportsman, picked up by a child and handed over to the child's mother. It is the women of the house and not the men who look after the grain bin and the ghee and the butter and other articles, and the possession of these cartridges may have been entirely innocent. We cannot accept the view that the head of the family is responsible for the presence of the articles, and we do not consider that the conviction for an offence under the Arms Act is legal. We accordingly accept this reference, set aside the conviction and sentence and direct that if the fine has been paid it shall be returned.

*Before Mr. Justice Pullan and Mr. Justice Thom*

BADRI PRASAD v. JHAMMAN\*

1932  
 September, 1

*Criminal Procedure Code, section 539A—Affidavit by accused person in support of an application for transfer—Affidavit containing false allegations against conduct of public servant—No immunity from prosecution for perjury—Indian Penal Code, sections 193, 199.*

Section 539A of the Code of Criminal Procedure applies to any person who chooses to make allegations respecting a public servant and in support of those allegations swears an affidavit. There is nothing to show that the section does not apply to an accused person, and if he swears a false affidavit he is liable to be prosecuted for perjury.

*Emperor v. Matan*, I. L. R., 33 All., 163, declared obsolete.

This case was referred to a Bench of two Judges on the following referring order :

KING, J. :—This is an application in revision against an order passed by the learned Sessions Judge of Budaun rejecting an application for revision of an order of acquittal under sections 193 and 199 of the Indian Penal Code.

It appears that one Jhamman was being tried before a Tahsildar Magistrate for an offence under section 323 of the Indian Penal Code, and while the trial was pending Jhamman made an application to the District Magistrate asking that the case should be transferred from the court of the Tahsildar

\*Criminal Revision No. 327 of 1932, from an order of Radha Kishen, Session Judge of Budaun, dated the 2nd of April, 1932.