

Before Mr. Justice Mulla

EMPEROR *v.* A. S. AGARWAL*

1939
July, 24

Boilers Act (V of 1923), section 2(b)—“Boiler”—Generating steam under pressure—Purpose to which the steam is put is immaterial.

If the definite and clear object of a contrivance is to generate steam under pressure then the contrivance is one “which is used expressly for generating steam under pressure”, within the meaning of the definition of a “boiler” in section 2(b) of the Boilers Act, and the use to which the steam is ultimately put is quite irrelevant to the definition.

Mr. C. B. Agarwala, for the applicant.

The Deputy Government Advocate (Mr. Sankar Saran), for the Crown.

MULLA, J.:—This is an application in revision by one Mr. A. S. Agarwal who has been convicted by a first class Magistrate in a summary trial of an offence under section 23 of the Indian Boilers Act, and has been fined Rs.200.

The facts of the case are very simple. The case was instituted upon the complaint of the Chief Inspector of Factories and Boilers. It appears that the applicant is the manager of a dairy owned by Messrs. L. Moti Lal and Sons, Army Contractors. For the purposes of the dairy it is necessary to clean and sterilize utensils used for keeping milk and other products. In order to sterilize such vessels a contrivance was in use at the said dairy which consisted of a closed tin canister with a capacity of more than 7 gallons with two stop-cocks, one on the top and the other at the bottom, placed upon a brick furnace. It is admitted and indeed cannot be denied that this contrivance generates steam under pressure. It appears that the Chief Inspector of Boilers happened to arrive on the spot one day and saw the contrivance while it was actually being worked. He found that steam was being generated under

*Criminal Revision No. 263 of 1939, from an order of R. F. S. Baylis, Sessions Judge of Meerut, dated the 30th of November, 1938.

1939

EMPEROR
v.
A. S.
AGARWAL

pressure. Thereupon he made a complaint to the District Magistrate with the result that the applicant was tried for an offence under section 23 of the Indian Boilers Act and convicted and sentenced as mentioned above.

The substance of the argument on behalf of the applicant is that the contrivance which was in use at his dairy does not fall within the purview of the definition of "boiler" as contained in section 2(b) of the Indian Boilers Act of 1923. The said definition runs as follows: "'Boiler' means any closed vessel exceeding five gallons in capacity which is used expressly for generating steam under pressure." Now the contention is that the contrivance which was being used at the applicant's dairy was not a thing "used expressly for generating steam under pressure". Great emphasis is laid upon the use of the word "expressly" and it is argued that the steam generated under pressure must be used as such in order to justify the finding that the contrivance is used expressly for generating steam under pressure. The only use to which the steam was being put was the cleaning of vessels and it is contended upon that basis that the contrivance does not fall within the definition of a boiler. I am entirely unable to accept this contention. I think the clear meaning of the definition is that the definite and clear object of a contrivance should be to generate steam under pressure. It is evident that the contrivance in question was designed for that very object and for no other. The use to which the steam was ultimately put is to my mind quite irrelevant to the issue.

The result, therefore, is that I see no reason to interfere with the applicant's conviction and sentence and dismiss this application.

APPELLATE CIVIL

Before Justice Sir Edward Bennet and Mr. Justice Verma

RAI INDRA NARAIN (OBJECTOR) v. MUHAMMAD ISMAIL
AND OTHERS (OPPOSITE PARTIES)*

1939
July, 25

*Transfer of Property Act (IV of 1882), section 100 (as amended)
—Retrospective effect of amendment—Charge—Execution
purchase of property subject to a charge under a decree—
Purchaser without notice of the charge—Enforcement of
charge against the property in his hands—Transfer of Pro-
perty Act, section 2(d)—Transfer of Property Act, section
5—“Transfer of Property”.*

Section 100 of the Transfer of Property Act, as amended by Act XX of 1929, does not apply to auction sales or auction purchasers.

The word “transfer” in section 100 must be read as defined in section 5. This definition can not include an execution purchase, as the auction purchaser is not a person to whom the judgment-debtor has conveyed his property but is a person who has acquired the property by the order of the court.

Section 2(d) of the Transfer of Property Act provides that nothing in the Act shall apply to any transfer in execution of a decree, save as provided by section 57 and chapter IV of the Act. Section 100 is no doubt in chapter IV but it does not refer to auction sales. The reference in section 2(d) to chapter IV is doubtless to the repealed sections 85 to 90 which contained provisions for auction sales. According to section 2(d), therefore, section 100 can have no application to the case of an execution purchase.

So, where a decree awarded a monthly maintenance and charged the same on a certain property, and this property was subsequently purchased at an auction sale in execution of a decree, without notice of the charge, it was held that section 100 as amended could not apply and the charge could be enforced against the property in the hands of the execution purchaser.

The amendment to section 100 of the Transfer of Property Act, made by section 50 of the amending Act XX of 1929, has a retrospective effect.

Mr. B. Malik, for the appellant.

The respondents were not represented.

*Second Appeal No. 488 of 1937, from a decree of Shamsul Hasan, District Judge of Aligarh, dated the 10th of December, 1936, confirming a decree of Shankar Lal, Civil Judge of Etah, dated the 21st of September, 1935.