

## REVISIONAL CRIMINAL

Before Justice Sir Edward Bennet and Mr. Justice Verma

## EMPEROR v. CHHANGA MAL\*

1939  
November,  
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*U. P. Prevention of Adulteration Act (Local Act VI of 1912), section 18—Scope—“In which ghee is manufactured”—Apply to “manufactory, shop or place”—Marginal note.*

The words, “in which ghee is manufactured”, in section 18 of the U. P. Prevention of Adulteration Act apply to the three things previously mentioned, i.e. “manufactory, shop or place”.

As the section stands, it does not apply to a shop or place where ghee is only *sold* but not *manufactured*, though the marginal note to the section contains the words “or sold”.

The court cannot take the words in the marginal note as amounting to law but must follow the text.

Mr. M. A. Aziz, for the applicant.

Mr. A. M. Khwaja, for the opposite party.

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

BENNET and VERMA, JJ.:—This is a criminal reference by the learned Sessions Judge of Aligarh in regard to a conviction of Chhanga Mal under section 18 of the U. P. Prevention of Adulteration Act (Act VI of 1912) and a fine of Rs.150 and Rs.48-12-0 as expenses or in default of payment one month's rigorous imprisonment. The case was tried summarily and was a summons case. The Criminal Procedure Code, section 242 provides as follows: “When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.” In accordance with this section the Magistrate apparently explained the report of the Sanitary Inspector to the accused. This report set out that accused had in his shop certain canisters containing moongphali or groundnut oil and certain canisters con-

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taining ghee and the keeping of these two sets of canisters was contrary to section 18 of the Act. The accused filed a written statement in which ground 2 sets out that groundnut oil cannot be mixed in ghee and the court might examine this itself. Enmity was also alleged with the Sanitary Inspector. No other defence was taken. The accused orally admitted in the statement to the court that some canisters contained ghee and other canisters contained moongphali oil. The first report also set out that one month before the date now charged the accused had been fined Rs.71-15-6 on 19th September, 1938, for selling adulterated ghee. This previous conviction would be relevant to show intention following the well known ruling in the case of *The King v. Armstrong* (1). The accused was convicted and afterwards he made an application in revision to the Sessions Judge. That revision proceeds on the same grounds as his written statement. The learned Sessions Judge, however, took an entirely new ground that the section requires that the shop should be one in which ghee is manufactured and the Sessions Judge states: "Clearly the shop of the applicant was not such a manufactory, shop or place in which ghee is manufactured and therefore section 18 does not apply and therefore the applicant has been wrongly convicted."

Learned counsel for the applicant is quite unable to show anything on the record in support of this finding of the Sessions Judge that the shop of the applicant is not a place in which ghee is manufactured. We adjourned this case for an interval to allow learned counsel to produce the licence and conditions under which the accused has his shop for sale of ghee, but learned counsel merely produced licence receipts of payments. On the back of those receipts it is stated that there are conditions of which a copy is given to the applicant, but such conditions are not produced before us. It is therefore not possible to see whether or not there is in the conditions permission to manufacture ghee in the shop. In

(1) [1922] 2 K.B. 555.

any case, it was for the accused to raise this point under section 242 of the Criminal Procedure Code in the trial court. As accused did not raise the point in the trial court he cannot raise it now in revision.

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The learned single Judge who referred this matter to this Bench desired a pronouncement on the point as to the interpretation of section 18 of the U. P. Prevention of Adulteration Act. We are of opinion that the words—"in which ghee is manufactured"—do apply to the three previous things mentioned, that is, "manufactory, shop or place". If this were not so, then it would be an offence to keep any substance to be used for the adulteration of such ghee in any kind of a factory or any kind of a shop. We do not think that that is what was intended by the legislature but the legislature did intend that the manufactory or the shop were those in which ghee was manufactured.

In the U. P. Prevention of Adulteration (Amendment) Act, 1930, this section 18 is introduced and the marginal note is "Prohibiting of adulterants in places where ghee is manufactured or sold." It is clear from this marginal note that the legislature intended to prevent the adulterant being kept either in the place where ghee was manufactured or in the place where ghee was sold. But in the text after the words "in which ghee is manufactured" in sub-section (1) the words "or sold" are omitted. It appears that the omission of these words "or sold" is a mere verbal error in the Amending Act, otherwise the words would not appear in the margin. This Court cannot take the words in the margin as amounting to law and the Court must follow the text. It is clear that the Act requires further amendment if the intention in the margin is to be carried out. But the marginal note also shows that it was not the intention to interpret the sub-section (1) by omitting to apply the qualifying words to the first two places mentioned, namely, manufactory and shop. As the text stands the qualifying words do apply to the shop.

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Under the circumstances of this case we consider that the conviction by the Magistrate is correct and we refuse this reference and return the record to the court below.

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FULL BENCH

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Before Sir John Thom, Chief Justice, Mr. Justice Allsop and  
Mr. Justice Ganga Nath

1939  
November,  
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SUMER CHAND (DEFENDANT) v. MUKHTARI AND OTHERS  
(PLAINTIFFS)\*

*Land Revenue Act (Local Act III of 1901), section 111(b)—  
Period of limitation for filing civil suit—Withdrawal of the  
civil suit and filing of a fresh suit—Whether fresh suit barred  
by time—Civil Procedure Code, order XXIII, rule 2—Stare  
decisis, application of.*

*Held*, on the principle of *stare decisis*, that where the civil suit directed by section 111(b) of the Land Revenue Act was filed within three months but was subsequently withdrawn with leave to file a fresh suit, and such fresh suit was filed more than three months after the order under section 111(b), the fresh suit was not barred by time.

Apart from the application of *stare decisis*, however, the fresh suit, which is in no sense a continuation of the first suit, would by the operation of order XXIII, rule 2 of the Civil Procedure Code be barred by the limitation of three months prescribed by section 111(b) of the Land Revenue Act.

Mr. G. S. Pathak, for the appellant.

Messrs. Panna Lal and N. C. Shashtri, for the respondents.

THOM, C.J., ALLSOP and GANGA NATH, JJ.:—This is a defendant's appeal arising out of a suit for a declaration of proprietary title. The appeal which is under the Letters Patent is against the order of a learned single Judge of this Court. The only question raised for decision in the appeal is as to whether the suit is time barred.

A suit was instituted following an order by the revenue court under section 111 of the Land Revenue Act. The

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\*Appeal No. 40 of 1938, under section 10 of the Letters Patent.