

REVISIONAL CRIMINAL

Before Mr. Justice Ziaul Hasan

1936

January, 2

KING-EMPEROR (COMPLAINANT) *v.* BRIJ LAL (ACCUSED)*

Criminal Procedure Code (Act V of 1898), section 342, scope and applicability of—Non-examination of accused, if vitiates trial—United Provinces Prevention of Adulteration Act (VI of 1912), section 4, proviso (c) and section 6 proviso, applicability of—Provisos, if apply in absence of label or warranty—Sentence severe—Reduction, desirability of.

The wording of section 342, Cr. P. C., does not justify the conclusion that the accused should be examined under the section only if he offers to produce defence. But where no defence is open to the accused and no prejudice has resulted to them owing to their not being examined under section 342, the trial is not vitiated. *Onkar Singh v. King-Emperor* (1), and *King-Emperor v. Karna Shankar* (2), distinguished.

Where in a case under section 4, Prevention of Adulteration Act, for offering or exposing for sale milk mixed with water, there is no label or writing showing the mixture as required under clause (c) to proviso to section 4 nor is there any written warranty about the milk exposed for sale by the accused under the proviso to section 6, the said provisos do not apply at all, and hence the defence under these provisions is not open to the accused.

Where the accused are tried summarily under section 4, Prevention of Adulteration Act, for offering or exposing for sale milk mixed with water and on conviction an excessive fine is imposed on them, which is out of proportion to the gravity of the offence, the sentence should be reduced.

Mr. *Avadh Behari Lal Varma*, for the Municipal Board, Hardoi.

Mr. *K. P. Misra*, for the accused.

ZIAUL HASAN, J.:—These are two criminal references by the learned Sessions Judge of Hardoi with the recommendation that either the convictions of Brij Lal and Pohap under section 4 of the Prevention of Adulteration Act should be reduced or the sentences should be reduced.

*Criminal Reference No. 78 of 1935, made by Pandit Tika Ram Misra, Sessions Judge of Hardoi.

(1) (1934) I.L.R., 10 Luck., 235.

(2) (1935) I.L.R., 11 Luck., 461.

ration Act be set aside or the amount of fine imposed on them be reduced.

Brij Lal took a some she-buffalo milk on the 14th of June, 1935, to the house of one Anant Ram for sale when the sanitary inspector suspecting the quality of the milk took some samples of it. The milk was found by the Chemical Examiner to contain 13 per cent. water. In the other case Pohap was exposing for sale cow's milk which on analysis was found to contain 31 per cent. water. In both the cases the accused were tried summarily and each of them was fined Rs.95 by the trying Magistrate. Both the accused applied in revision to the learned Sessions Judge and though the learned Judge has rejected some of the grounds on which the applications for revision were based, he has accepted the revisions on two grounds. One of them is that the accused were not examined under section 342 of the Code of Criminal Procedure and the second is that the sentences are out of proportion to the gravity of the offence.

As regards the first point it is conceded on behalf of the Municipal Board that the provisions of section 342 of the Code of Criminal Procedure were not complied with, but it is said in the first place that so far as Brij Lal is concerned, section 342 does not apply as he did not offer to produce defence and in the second that the presumption, if any, of the prejudice to the accused has in these cases been rebutted. I do not however agree with the view that it is necessary to examine the accused under section 342 of the Code of Criminal Procedure only if he offers to produce defence. The wording of the section does not justify such a conclusion. The second ground on which the plea of the trial being vitiated for non-compliance with section 342 is resisted is, however, in my opinion well-founded. No doubt the cases of *Onkar Singh v. King-Emperor* (1), and *King-Emperor v. Karna Shankar* (2), are authority for the view that prejudice to the accused may be presumed

1936

KING-
EMPEROR
v.
BRIJ
LAL

Ziaul
Hasan, J.

1936

KING-
EMPEROR
v.
BREL
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Ziaval
Hasan, J.

in a case in which he has not been examined under section 342 but a presumption is always liable to be rebutted. The only ground on which both the accused are said to have been prejudiced in the cases before me is that if they had been examined under section 342 both of them could have taken the defences under clause (c) to the proviso to section 4(1) or under the proviso to section 6 of the Prevention of Adulteration Act, 1912. Neither of these defences was however open to the accused in my opinion. Under clause (c) to the proviso to section 4 it is necessary that there should be a label distinctly and legibly written or printed on or with the article showing that any such matter or ingredient as is referred to in the clause has been added to or mixed with the article of food but there was no such label or writing in these cases. Under the proviso to section 6, it is necessary for exemption from the provisions of section 4 to prove not only that the article or drug sold was purchased by the accused as the same in the nature, substance and quality as that demanded by the purchaser and with a written warranty to the effect that it was of such nature, substance and quality but also that he had no reason to believe at the time when he sold it that the articles or drug was not of such nature, substance and quality as aforesaid and also that he sold it in the same state in which he purchased it. As there was no written warranty about the milk exposed for sale by the two accused before me, the proviso to section 6 does not at all apply. I am not therefore satisfied that any prejudice has resulted to the accused owing to their not being examined under section 342 of the Code of Criminal Procedure and therefore the trials were not vitiated.

I agree with the learned Sessions Judge however that the amount of fines imposed on the two accused was rather excessive and I reduce it in each case to a sum of Rs. 10. Under section 19(2) of the Act however it is necessary that in the case of a conviction, the Court should fix the costs of the prosecution and in these cases I fix Rs.20 as such costs in each case.