

---

**(1933) 04 AHC CK 0047**

**Allahabad High Court**

**Case No:** None

Rudra Dat Bhatt

APPELLANT

Vs

Emperor

RESPONDENT

---

**Date of Decision:** April 27, 1933

**Final Decision:** Dismissed

---

### **Judgement**

@JUDGMENTTAG-ORDER

1. This is an application in revision on behalf of one Pandit Rudra Datt Bhatt, who has been convicted u/s 168, Penal Code, read with Section 34, District Boards Act, and sentenced to four months' simple imprisonment and a fine of Rs. 1,000 or three months' simple imprisonment in default of payment. The charge framed against the accused was that being a member of the District Board of Almora from November 1928 of November 1930 he carried on during this period the business of supplying coir matting to the said District Board in the name of Gangaram Kishorimohan thus engaging in trade without the permission of the Commissioner contrary to Section 34(1), District Boards Act, and thereby committed an offence punishable u/s 168, Penal Code. The conviction and sentence of the Magistrate was upheld on appeal by the learned Sessions Judge. The finding of the Sessions Court is that there was:

a carefully worked out scheme to get something like a 100 per cent profit from the Board "while the appellant was a member of it" and that:

in one year the District Board paid Rs. 1,005, and for matting the price came to a little under Rs. 950. The price of the matting with freight as entered in the ledger of the accused came to about half that amount.

2. The points in regard to the facts were not pressed before us and we consider that the facts found are correct. The arguments which have been addressed to us are arguments on points of law. In the first place it was argued that the sanction in this case was not sufficient and that the prosecution had not been properly initiated. There was a letter of sanction from the Local Government stating that Government

gave sanction u/s 197, Criminal P.C., to the prosecution of the accused u/s 168, Penal Code, read with Section 34, District Boards Act, and that the accused was formerly a member of the Almora District Board. The Local Government further directed that the trial should be held in the Court of Rai Sahib Pandit Gokaran Nath Ugra, Deputy Collector of Almora. This sanction was conveyed in a letter addressed to the Deputy Commissioner of Almora and the Deputy Commissioner apparently had an enquiry made by the Tahsildar and a complaint was filed in the Court by the Assistant Inspector of Schools, Ku-maun. An argument was addressed to us that the sanction was addressed to the Deputy Commissioner and he should have filed a complaint. There is no provision in Section 197, Criminal P.C, for a sanction to be addressed to any particular officer. A sanction is an order directing the prosecution of a certain person and in the ordinary way that order is conveyed to the authorities who are responsible for initiating prosecutions in the locality in question. That was what was done in the present case and we do not see that there was anything irregular in the procedure. The sanction was given in the present case because when the accused was a member of the District Board he was not removable from his office without the consent of the Local Government. A further argument was addressed to us. u/s 182, District Boards Act, of 1922, the following provision is made:

Unless otherwise expressly provided, no Court shall take cognizance of any of the offence punishable under this Act or under any rule or bye-law except on the complaint of, or upon information received from, the Board or some person authorized by the Board by general or special order in this behalf.

3. The argument for the applicant was that the present prosecution should have been started under this section on a complaint of the Board or some person authorised by the Board and that this has not been done. But the section refers to "offences punishable under this Act or under any rule or "by a law." The present offence is not an offence which falls within this description. It was argued that the present offence was one u/s 34, District Boards Act. That may be so but it is not punishable u/s 34, on the contrary it is punishable u/s 168, Penal Code. Section 34, Sub-section (1) runs as follows:

A member of the Board who, otherwise than with the permission in writing of the Commissioner, knowingly acquires, or continues to have directly or indirectly by himself or his partner, any share or interest in any contract or employment by, or on behalf of the Board shall be deemed to have committed an offence under S. IC 8, I.P.C.

4. There is no penalty prescribed in Section 34 itself, and to ascertain a penalty we have to look to Section 168, Penal Code. learned Counsel argued that because reference was made to Section 168, I.P.C, therefore that section was incorporated into Section 34, District Boards Act. He referred to a ruling of their Lordships of the Privy Council reported in the AIR 1931 149 (Privy Council) That ruling was on a point

which is different from the point before us and the ruling merely laid down that where a statute is incorporated by a reference into a second statute the repeal of the first statute does not affect the second. We think therefore that the ruling cannot be applied in the further extended meaning which learned Counsel desires. If Section 182 had been intended to cover the present case it would have referred to "offence punishable under this Act or any Act referred to in this Act or any rule or bye-law." As the wording of Section 182 is different and does not purport to deal with offences referred to in the Act we consider that Section 182 has no application to the present case.

5. An argument was next made as to whether this was a contract given by the Board or not. The contracts in question were given by the Educational Committee of the Board under the provisions of Sections 63-A and 65-A, District Boards Act, which empower the Educational Committee to give contracts for educational purposes, but the wording in Section 34 is not merely a contract by the Board but a contract-by or on behalf of the Board. We consider that a contract given in accordance with the Act by the Educational Committee is a contract given on behalf of the Board. We may also refer to the definition of Board in Section 3 of the Act where it is stated that Board includes in any case where a power is expressed as being conferred or a duty as being imposed on a Board, a committee appointed by a Board. It was further argued that the contracts were given by the Educational Committee and that accused was not a member of the Education Committee and therefore it was said he would not be guilty of the offence u/s 34, but Section 34, Sub-section (1) refers in general terms to "A member of the Board" and is not limited to members of particular committees. The next argument addressed to us was that the accused would be exempted u/s 34(2)(f) which states that the section does not apply to a person: "having a share or interest in the occasional sale to the Board of an article, in which he regularly trades, up to a value not exceeding, in any one year, such amount as the Board with the sanction of the Local Government fixes in this behalf."

6. It is not shown that any amount has been fixed under this sub-section. We consider that the sub-section refers to occasional sales of single articles as distinct from contracts. In the present case the accused entered into contracts for the supply of thousand yards of coir matting. Such contracts cannot be considered to be occasional sales of single articles. The exemptions therefore does not apply. Some argument was made in regard to an alleged irregularity in the signature of one contract and it was said that Ex. 25 was signed by the Chairman of the Educational Committee instead of by the Secretary as prescribed by Section 65-A(4). This document, Ex. 25, does not appear to be a contract but an order by the Chairman directing the purchase of certain articles including matting. No irregularity is shown. If there was any such irregularity it does not appear to us that would have any bearing on the guilt of the accused. We consider that the conviction of the accused u/s 34, District Boards Act, read with Section 168, Penal Code, is correct. On the question of sentence we consider that this is not a case in which any further period

of imprisonment should be undergone and accordingly we reduce the period of imprisonment to the period already undergone, which is only a few days and we maintain the sentence of fine of Rs. 1,000 or three months" simple imprisonment in default. We do not consider the fine excessive in view of the illegal profit which the accused is found to have made. If the fine has been paid the bail bond will be cancelled.