

In Re: Madho Pershad

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1900)ILR22All441

Judge : Blair, J.

Appellant : In Re: Madho Pershad

Judgement :

Blair, J.

The District Magistrate of Mirzapur refers to this Court this conviction and sentence by a Magistrate, inflicted under Section 49 of Act No. XII of 1896. He doubts the soundness of the conviction in point of law, and in the alternative suggests that as the offence is a purely technical one, the conviction and sentence should be set aside. I may add that an order has been made for the sale of the liquor, part of which has been held to be improperly retailed. The facts are that one Hira Lal, the uncle, as I understand, of the person convicted, whose name is Madho Pershad, held a licence for sale by retail of European spirits, which licence would be in force up to some time in September of the present year. Hira Lal died in the month of April, and it was after his death that Madho Pershad having no licence himself, made the illegal sale or sales of which he has been convicted. It is said, I know not with what truth, that Madho Pershad is Hira Lal's heir, and was his partner during his life. I do not think there is any doubt as to the technical

soundness of the conviction. A licence is a personal grant, largely made for personal reasons, and it certainly does not, after the death of the licensee, attach itself in any way to his property or devolve upon his heirs. I do not think Madho Pershad or any man of ripe years who had any connection with the traffic, could have sold the liquor without, at all events, grave doubt as to whether such sale was in violation of the law. I do not think that a fine of Rs. 50 inflicted upon a substantial man can be anything but a very small sentence for an offence which is punishable by four months' imprisonment or fine of one thousand rupees, or with both. I set aside the order of the Magistrate for the sale of the confiscated liquor, and instruct him to reconsider that question with a view to his arriving at a conclusion whether the liquor confiscated and ordered to be sold is the property of Madho Pershad. In that case I see no reason why he should not order attachment and sale of such liquor. If it is not by devolution or otherwise the property of Madho Pershad, it ought not to be confiscated and sold. Let the papers be returned.

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