

Emperor Vs. Allahdad Khan

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Court : Allahabad

Decided On : Mar-19-1913

Reported in : (1913)ILR35All358

Judge : Harry Griffin and ;Chamier, JJ.

Appellant : Emperor

Respondent : Allahdad Khan

Judgement :

Harry Griffin and Chamier, JJ.

1. One Allahdad Khan was convicted of an offence punishable under Section 63 of the United Provinces Excise Act, No. IV of 1910, which provides as follows:

Whoever, without lawful authority, has in his possession any quantity of any excisable article knowing the same to have been unlawfully imported, transported or manufactured, and knowing the prescribed duty not to have been paid thereon, shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

2. The Superintendent of Police and the Sub-Inspector in charge of the city police station, on information received, searched the house of Allahdad Khan and discovered there a mixture of cocaine and another drug. The accused was

convicted by a magistrate and sentenced to six weeks' rigorous imprisonment and a fine of Rs. 50. On appeal the Additional Sessions Judge held that the search of the accused's house was illegal and that the absence of a search warrant was fatal to the case for the prosecution. He therefore acquitted the accused. The Local Government has appealed against the order of acquittal. It is doubtful whether the case is one which comes under the provisions of Section 50 of the Excise Act, and we would have some hesitation in holding that the search was legal. Whether the search was legal or not, we have, however, the evidence of the finding in the accused's house of a certain quantity of cocaine, which is an excisable article under the provisions of the Excise Act, for possession of which the accused had no licence. On the facts found we are satisfied that the accused must-have known that the cocaine had been unlawfully imported and that no duty had been paid on it. We allow the appeal, set aside the order of acquittal passed by the Additional Sessions Judge and restore the order of conviction. We reduce the sentence passed on the accused to the term of imprisonment already undergone by him and we set aside the order of fine. We may add that we think that it was the intention of the Legislature that in a case under Section 63, where it is necessary to search a house, a search warrant should be obtained beforehand.

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