

**Emperor Vs. Maiku**

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**Court :** Allahabad

**Decided On :** Sep-04-1929

**Reported in :** AIR1930All279

**Appellant :** Emperor

**Respondent :** Maiku

**Judgement :**

**Young, J.**

1. Maiku Kahar has been convicted by Mr.S.M. Ahmed, Excise Magistrate of Agra under Section 60, Excise Act and has been sentenced to a fine of Rs. 50. The District Magistrate of Agra has through the Sessions Judge referred the case to this Court 'for examination and enhancement of sentence if thought proper.'

2. Mr. Sheodan Lal, an Excise Inspector, raided the house of Maiku Khar which is situated in Sadar Bazaar of the city of Agra. Maiku was caught in the act of distilling liquor. A large quantity of illicit liquor and a complete paraphernalia of instruments for manufacture of illicit liquor was discovered in his house. Maiku was put on his trial and he made no pretence of innocence. He pleaded guilty. The Excise Magistrate considered that he had properly discharged his function as a Magistrate by sentencing Maiku to a fine of Rs. 50.

3. Excise cases are not easy to detect and are difficult to prove. The distiller, not unoften, prepares liquor for purposes of traffic. The game is a profitable one. Illicit distillation of liquor does not only mean a loss of revenue to the Government but is a serious menace to the health and the moral well being of the community. The Local Government, by its letter No. 579-13-55 dated 21st December 1928, had accentuated the fact that the crime was widely prevalent and that the actual distiller or trafficker should be sentenced to a substantial term of imprisonment. Under the Act, the maximum punishment, in the case of first offenders, is one year's rigorous imprisonment and a fine of Rs. 1000.

4. The explanation given by the Excise Magistrate is ridiculous. He says:

I had been Excise Magistrate of Allahabad for over a year and I had to do no other work than excise, as the work is so heavy there. The present Excise Commissioner had been Excise Inspector under me there and he knows well that in all such cases Rs. 50 was considered proper punishment. I decided at least some hundred such and more serious cases with fine but the excise department there never considered the punishment inadequate.

5. It is difficult to understand the above statement together with its implications. Are we to take it that this Magistrate has ignored and pigeon-holed the Government notification which we have alluded to above? Does the Magistrate claim a right to inflict a sentence of fine in all cases because he has done so in hundred other cases-some of which were more serious-without any regard to the nature of facts, upon which each and every case had to be decided? The Magistrate would have been well advised not to bring in the aid of prescription in his favour. It is an elementary proposition in criminal jurisprudence that sentence in each case should be proportionate to the nature and gravity of the crime.

6. The learned Magistrate submits that a fine of Rs. 50 for a man of no means and status is 'quite adequate punishment.' It is worthy of note that there was not a scrap of evidence before the trial Court concerning the means of Maiku. Granting that the financial position of Maiku was not sound why was not the sentence of imprisonment passed?

7. There is an insinuation that the Excise Inspector was shielding the principle culprit and that Maiku was playing the second fiddle. A Magistrate with any sense of responsibility ought to have hesitated and paused before making any insinuation against the Excise Inspector which was not justified by the evidence on the record. In the present case the attack upon the Excise Inspector was wholly unwarranted.

8. The Magistrate's grievance is that the Excise Inspector has moved in this matter and submitted his report for enhancement with a view to 'minimise the blame brought against the Excise Inspector in the Peoples' Herald.' Any publication in the Peoples' Herald is outside the judicial record. Here we have another insinuation and nothing to support it. We hold that the Excise Inspector in bringing the sentence to the notice of the District authorities had done the right and proper thing. The sentence is ridiculous. We sentence Maiku to six months' rigorous imprisonment and maintain the fine of Rs. 50.

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