

**AzimuddIn Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/462706](http://sooperkanoon.com/462706)

**Court :** Allahabad

**Decided On :** Oct-20-1924

**Reported in :** AIR1925All307

**Appellant :** Azimuddin

**Respondent :** Emperor

**Judgement :**

**Mukerji, J.**

1. Without discussing the law on the point at length, it seems to be clear that in this case there should have been no conviction of Azimuddin under Section 64 of the Excise Act (Local Act, 1910) read with Section 71 of the same Act.

2. Azimuddin's servant was found selling toddy after the prescribed hours, not at the shop of Azimuddin but in a palmgrove. The learned Sessions Judge, who has made the reference, presumes, and very correctly that the object of the servant being allowed to stay in the grove was to watch the trees and the juice, and not to sell toddy. If the servant took it into his head to keep some toddy for himself and to sell it after the prescribed hours, no amount of precaution on the part of the master could prevent this. The object of the enactment as contained in Section 71 of the Excise Act seems to have been this. Where, however, innocently, the holder of a license puts his servant in a position in which he would have an opportunity of contravening the law, the master is as much guilty as the servant. In this particular

case it has not been stated what were the precautions which the master, Azimuddin could have or should have taken, in order to prevent his servant from selling toddy at his own hut.

3. Accepting the reference made by the learned Sessions Judge of Allahabad, I set aside the conviction of Azimuddin under Section 64 of the Excise Act of 1910, and also the sentence. The fine, if paid, will be refunded. Azimuddin is represented in this Court by learned Counsel.

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