

Emperor Vs. Sital Prasad

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Court : Allahabad

Decided On : Dec-18-1924

Reported in : AIR1925All313

Appellant : Emperor

Respondent : Sital Prasad

Judgement :

Walsh, J.

1. We must allow this appeal on the ground that the provisions of Section 71 of the Excise Act, have been entirely ignored. The charge was one of adulteration under Section 64 for having committed a breach of one of the conditions of the licence namely the condition that prohibits the sale of adulterated liquor. The charge was established by showing that the son had done it, and that the licensee was absent at the time. But the Magistrate convicted on the ground that the father was aware of the conduct of his son. The learned Sessions Judge has acquitted the licensee following the decision in the case of Ram Das v. Emperor (1918) 40 All. 568 on the word 'wilfully' used in Section 64. That case contains no reference to Section 71, and Section 71 places the burden upon the licence-holder, for any offence wilfully committed by any person in his employ and acting on his behalf of establishing that he took all due and reasonable precaution to prevent the commission of the offence. Unless he establishes that, he is liable to conviction as though he had

done it himself. No attempt of that kind was made by the defence, and, therefore, the ground upon which the learned Judge has allowed the appeal is not established and the appeal must be allowed and the order of the Magistrate restored.

2. There was a further charge with regard to selling in breach of his licence by charging an excessive price. We think the Magistrate was right about this. The learned Judge does not appear to have said much about this. For the reasons given in the case of King-Emperor v. Kishen Chand (1918) 40 All. 568, Government Appeal No. 929 of 1924 decided to-day, we think that the Magistrate was right in this case also. But in restoring his order we reduce the penalty for selling at an excessive price. We fine him Rs. 1 and reduce the fine for breach of Rule 6 to Rs. 149, the result being that he will pay Rs. 150 in all.

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