

**Shankar Lal Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/463129](http://sooperkanoon.com/463129)

**Court :** Allahabad

**Decided On :** Aug-13-1921

**Reported in :** AIR1922All264; 65Ind.Cas.433

**Judge :** Lindsay, J.

**Appellant :** Shankar Lal

**Respondent :** Emperor

**Judgement :**

**Lindsay, J.**

1. This is an application for revision on behalf of Shankar Lal, a Sub-Inspector of Police, who has been convicted on a charge of wrongful confinement and sentenced to pay a fine of Rs. 300. Both the Courts below have found the charge proved. The facts may be briefly stated as follows: The applicant was the Sub-Inspector of Police at Kamalganj in the Farrukhabad District. It is said that on the 25th of October 1920 he wrongfully arrested and kept in confinement one Ram Ghulam, who is a liquor seller in the Kamalganj Bazar. The story which was put forward by the complainant was that on the evening of the 24th of October the Sub Inspector sent four constables to his liquor shop and demanded two bottles of liquor on credit. Ram Ghulam refused to supply the liquor because the Sub-Inspector owed him the price of ten or twelve bottles previously supplied, Ram Ghulam said that on his refusal the constables used some threats to him and said

that they would see him. The next morning Ram Ghulam was arrested and kept in wrongful confinement till the afternoon, when he produced some sureties and was Released.

2. The counter-story put forward on behalf of the accused was that very late on the night of the 24th of October a report was made at the Police Station that Ram Ghulam was selling liquor at his shop after hours. The Sub Inspector took no action that night but took action the next morning and being of opinion that the report disclosed an offence under Section 60 of the United Provinces Excise Act (IV of 1910), he arrested Ram Ghulam in the exercise of the powers conferred upon Police Officers under Section 50 of that Act.

3. The case was tried at considerable length by the District Magistrate, who came to the conclusion that the story told by the complainant Ram Ghulam was in substance the truth, He has rejected the defence put forward by the Sub-Inspector and has held that there was no reliable evidence before him to show that any report was made at the Police Station on the night of the 24th of October alleging that Ram Ghulam was keeping his shop open after hours for the sale of liquor. In appeal the learned Judge has agreed with the findings of the District Magistrate. Several grounds are set out here in the petition of revision. I have to notice first the point which is raised in the second paragraph in the petition of revision. It is pleaded that Section 42 of the Police Act was a bar to the trial of this case. That argument cannot be sustained. The complaint which was made against the Sub-Inspector was made against him four or five days after the alleged offense was committed. Then it is said that the Sub-Inspector at least had a right to arrest the accused for an offence under Section 60 of the Excise Act (Local Act No. IV of 1910). This argument can only be put forward if it is assumed that any report concerning the commission of such an offence was brought to the notice of the Sub-Inspector. It may be a question whether the offence of selling liquor after hours is an offence under Section 60 or only under Section 64 of the Excise Act. For an offence under the latter section the Police have no authority to arrest without warrant. However, I am satisfied that this point does not really arise, because unless it is established that a report concerning the commission of such an offence was made no question regarding the Police Officer's power to arrest

could possibly arise, The same remark applies to the plea based upon Section 79 of the Indian Penal Code. Section 79 contains one of the general exceptions set out in the Code and provides that 'nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law in doing it.' No plea of good faith can be advanced in view of the findings some to by both the Courts below, namely, that no report was made at the Police Station on the night of the 24th October. On this point both the Courts below are in agreement and hold that the making of such a report was not established. In these circumstances I see no reason to interfere with the order of the learned Sessions Judge and I dismiss this application.

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