

**Emperor Vs. Chitar Singh**

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**SooperKanoon Citation :** [sooperkanoon.com/466495](http://sooperkanoon.com/466495)

**Court :** Allahabad

**Decided On :** Oct-31-1923

**Reported in :** (1924)ILR46All158; 82Ind.Cas.705

**Judge :** Grimwood Mears, Kt., C.J. and ;Piggott, J.

**Appellant :** Emperor

**Respondent :** Chitar Singh

**Judgement :**

Grimwood Mears, Kt., C.J. and Piggott, J.

1. This is an appeal by the Local Government, presenting some peculiar features. The case itself was a simple one. Sub-Inspector Mohan Lal, officer-in-charge of Aurangabad police station, received information that Chitar Singh, a petty shopkeeper of a village called Saidpura, was selling liquor at his shop, which he kept ostensibly for the sale of groceries. Chitar Singh had No. licence for the sale of intoxicating liquor. The Sub-Inspector raided the shop. He says, and he is corroborated by, at any rate, two witnesses, that Chitar Singh was sitting outside his shop as the police officer and those, with him approached, and that he thereupon ran away. The shop being searched, there were found inside seven bottles of country spirit and a barrel of the same, together with a vessel used for filling bottles from the barrel. The expert evidence of Babu Girwar Singh, Excise Inspector, shows that the liquor was of abnormal strength, being more powerful

than what is permitted to be issued from Government distilleries. The accused was not found for some clays. He was eventually arrested, and the Magistrate took cognizance of the case on the report submitted to him by the Sub-Inspector,

2. The accused's defence was that the shop was raided in his absence, at the instigation of some enemy of his, and that the same enemy must have planted the liquor in the shop.

3. In view of the quantity found, this is a very improbable suggestion. We have examined the evidence in detail and we do not think there is any force in the accused's defence. Such evidence as he called in his defence was fragmentary and contradictory. We are satisfied that on the facts the Magistrate was justified in convicting Chitar Singh, as he did, of an offence punishable under Section 60, Clause (a), of the Excise Act. He did not think it necessary to record an opinion, whether the accused had also been guilty of a further offence, that of selling country spirit; punishable under Section 60, Clause (1)

4. Chitar Singh appealed to the Sessions Judge. His memorandum of appeal challenges the decision of the trial court on all questions of fact. It suggests that the conduct of the police in making the search was irregular. There is a plea that the Sub-Inspector ought to have reported the matter to the Magistrate more promptly than he did. But, apart from a general plea that the conviction is contrary to law, there is no suggestion in the petition of appeal that the trying Magistrate had no jurisdiction to take cognizance of the offence on the report of the Sub-Inspector. Before the learned Sessions Judge, however, this plea was orally taken, and he allowed it to be argued without insisting on any amendment of the memorandum of appeal. Chitar Singh was accordingly acquitted upon the mere finding that, by reason of the provisions of Section 71(a) of the Excise Act, the Magistrate had acted without jurisdiction, in that he took cognizance of the offence, not having before him the complaint or report of any Excise Officer.

5. If the learned Sessions Judge had insisted on this plea being formally taken in writing it is probable that the Government Pleader would have found an answer to it, and much trouble and expenditure of judicial time would have been saved.

6. Curiously enough, however, the Local Government in filing this appeal has duplicated the very same mistake. The appeal comes before us on a general plea, that the order of, acquittal is against the weight of evidence on the record. We have refused to entertain the appeal on that ground, which obviously is not an arguable one; but we have permitted the learned Government Advocate, who is himself not responsible for the drafting of the Government's memorandum of appeal, to amend the same by adding a further plea. This is to the effect that, in view of a Government order of the 13th of July, 1910, the Sub-Inspector, being a police officer invested with certain powers under the authority exercisable by the Local Government by virtue of Section 10 of the Excise Act, was by definition an 'Excise Officer,' and, therefore, a person competent to make a complaint or report to a Magistrate under Section 71(a) already referred to. The appeal has been argued on this basis, and counsel has been engaged to represent the accused Chitar Singh, who has also appeared in person.

7. There can be no doubt that under Section 10 of the Excise Act the Local Government had authority to empower, not only a Sub-Inspector of police, but any police officer, to perform duties and exercise powers under that Act, including the conferment of authority to make a report or complaint. Now the Local Government has in express terms authorized any police officer to arrest and to make searches in connection with a number of offences, including the offence of being in illicit possession of intoxicating liquor of which Chitar Singh has been convicted. It would certainly be anomalous if the Sub-Inspector had authority to arrest Chitar Singh and to search his shop, and was moreover required by law to produce Chitar Singh before a competent Magistrate within 24 hours of his arrest, but could not by reporting the facts to the Magistrate give that Magistrate authority to take cognizance of the alleged offence. We think that this anomaly has been avoided by the very wide definition of the words 'Excise Officer' contained in Clause (2) of Section 3 of the Excise Act. According to that definition, an 'Excise Officer' means not merely a Collector, or other officer appointed as such, but also an officer or person, invested with powers under the Act by a Government order lawfully issued under the provisions of Section 10. The Sub-Inspector as a police officer has been invested with powers under that section. This is sufficient to constitute him an Excise Officer within the meaning of the definition, wherever the words 'Excise

Officer' occur in the Act. It was, therefore, unnecessary, and would have complicated matters, for the Local Government, to issue a further notification authorizing persons on whom it had already conferred powers for the purposes of the Act to do something which the Act says any 'Excise Officer' may do. The learned Sessions Judge, therefore, was mistaken in the ground on which he has acquitted Chitar Singh We set aside his order of acquittal, and in lieu thereof we restore the conviction recorded by the trying Magistrate. We have given careful attention to the question of sentence. In view of all the circumstances and of the amount and strength of the liquor seized, we do not think the trying Magistrate was in error in imposing the sentence of three months' rigorous imprisonment. We restore that sentence with effect from the date on which it was passed, that is to say, any period of imprisonment already served by Chitar Singh since the date of his original conviction will be reckoned towards the period of imprisonment which he has been ordered to serve. The accused will be taken into custody and arrangements made for conveying him to the Bulandshahr district to serve out his sentence.